

NORTH CAROLINA GENERAL ASSEMBLY
1971 SESSION

CHAPTER 698
HOUSE BILL 153

AN ACT TO CONSOLIDATE, REVISE, AND AMEND THE GENERAL STATUTES
RELATING TO CITIES AND TOWNS.

The General Assembly of North Carolina do enact:

Section 1. A new chapter is inserted in the General Statutes of North Carolina as follows:

**"CHAPTER 160A
"CITIES AND TOWN
"ARTICLE 1.**

"Definitions and Statutory Construction.

"§ 160A-1. Application and meaning of terms. — Unless otherwise specifically provided, or unless otherwise clearly required by the context, the words and phrases defined in this section shall have the meanings indicated when used in this Chapter.

- (1) 'City' means a municipal corporation organized under the laws of this State for the better government of the people within its jurisdiction and having the powers, duties, privileges, and immunities conferred by law on cities, towns, and villages. The term 'city' does not include counties or municipal corporations organized for a special purpose. 'City' is interchangeable with the terms 'town' and 'village,' is used throughout this Chapter in preference to those terms, and shall mean any city as defined in this paragraph without regard to the terminology employed in charters, local acts, other portions of the General Statutes, or local customary usage.
- (2) 'Council' means the governing board of a city. 'Council' is interchangeable with the terms 'board of aldermen' and 'board of commissioners,' is used throughout this Chapter in preference to those terms, and shall mean any city council as defined in this paragraph without regard to the terminology employed in charters, local acts, other portions of the General Statutes, or local customary usage.
- (3) 'Mayor' means the chief executive officer of a city by whatever title known.
- (4) 'Local act' means an act of the General Assembly applying to one or more specific cities by name, or to all cities within one or more specifically named counties. 'Local act' is interchangeable with the terms 'special act,' 'public-local act,' and 'private act,' is used throughout this Chapter in preference to those terms, and shall mean a local act as defined in this paragraph without regard to the terminology employed in charters, local acts, or other portions of the General Statutes.
- (5) 'Charter' means the entire body of local acts currently in force applicable to a particular city, including articles of incorporation issued to a city by an administrative agency of the State, and any amendments thereto adopted pursuant to 1917 Pub. Laws, c. 136, sub-chap. 16, Part VII, secs. 1 and 2, or Article 6, Part 4, of this Chapter.

- (6) 'General law' means an act of the General Assembly applying to all units of local government, to all cities, or to all cities within a class defined by population or other criteria, including a law that meets the foregoing standards but contains a clause or section exempting from its effect one or more cities or all cities in one or more counties.
- (7) 'Publish,' 'publication,' and other forms of the verb 'to publish' mean insertion in a newspaper qualified under G.S. 1-597 to publish legal advertisements in the county or counties in which the city is located.

"§ 160A-2. Effect upon prior laws. — Nothing in this Chapter shall repeal or amend any city charter in effect as of January 1, 1972, or any portion thereof, unless this Chapter or a subsequent enactment of the General Assembly shall clearly show a legislative intent to repeal or supersede all local acts. The provisions of this Chapter, insofar as they are the same in substance as laws in effect as of December 31, 1971, are intended to continue such laws in effect and not to be new enactments. The enactment of this Chapter shall not require the readoption of any city ordinance enacted pursuant to laws that were in effect before January 1, 1972, and are restated or revised herein. The provisions of this Chapter shall not affect any act heretofore done, any liability incurred, any right accrued or vested, or any suit or prosecution begun or cause of action accrued as of January 1, 1972.

"§ 160A-3. General Laws supplementary to charters. — (a) When a procedure that purports to prescribe all acts necessary for the performance or execution of any power, duty, function, privilege, or immunity is provided by both a general law and a city charter, the two procedures may be used as alternatives, and a city may elect to follow either one.

(b) When a procedure for the performance or execution of any power, duty, function, privilege, or immunity is provided by both a general law and a city charter, but the charter procedure does not purport to contain all acts necessary to carry the power, duty, function, privilege, or immunity into execution, the charter procedure shall be supplemented by the general law procedure; but in case of conflict or inconsistency between the two procedures, the charter procedure shall control.

(c) When a power, duty, function, privilege, or immunity is conferred on cities by a general law, and a charter enacted earlier than the general law omits or expressly denies or limits the same power, duty, function, privilege or immunity, the general law shall supersede the charter.

"§ 160A-4. Broad construction. — It is the policy of the General Assembly that the cities of this State should have adequate authority to execute the powers, duties, privileges, and immunities conferred upon them by law. To this end, the provisions of this Chapter and of city charters shall be broadly construed and grants of power shall be construed to include any additional and supplementary powers that are reasonably necessary or expedient to carry them into execution and effect: Provided, that the exercise of such additional or supplementary powers shall not be contrary to State or federal law or to the public policy of this State.

"160A-5. Statutory references deemed amended to conform to Chapter. — Whenever a reference is made in another portion of the General Statutes or any local act to a portion of Chapter 160 of the General Statutes that is repealed or superseded by this Chapter, the reference shall be deemed amended to refer to that portion of this Chapter which most clearly corresponds to the repealed or superseded portion of Chapter 160.

"ARTICLE 2.

"General Corporate Powers.

"§160A-11. Corporate powers. — The inhabitants of each city heretofore or hereafter incorporated by act of the General Assembly or by the former Municipal Board of Control shall be and remain a municipal corporation by the name specified in the city charter. Under that name they shall be vested with all of the property and rights in property belonging to the corporation; shall have perpetual succession; may sue and be sued; may contract and be

contracted with; may acquire and hold any property, real and personal, devised, bequeathed, sold, or in any manner conveyed, dedicated to, or otherwise acquired by them, and from time to time may hold, invest, sell, or dispose of the same; may have a common seal and alter and renew the same at will; and shall have and may exercise in conformity with the city charter and the general laws of this State all municipal powers, functions, rights, privileges, and immunities of every name and nature whatsoever.

"§ 160A-12. **Exercise of corporate power.** — All powers, functions, rights, privileges, and immunities of the corporation shall be exercised by the city council and carried into execution as provided by the charter or the general law. A power, function, right, privilege, or immunity that is conferred or imposed by charter or general law without directions or restrictions as to how it is to be exercised or performed shall be carried into execution as provided by ordinance or resolution of the city council.

"ARTICLE 3.

"Contracts.

"§ 160A-16. **Contracts to be in writing; exception.** — All contracts made by or on behalf of a city shall be in writing. A contract made in violation of this section shall be void and unenforceable unless it is expressly ratified by the council.

"§ 160A-17. **Continuing contracts.** — A city is authorized to enter into continuing contracts, some portion or all of which are to be performed in ensuing fiscal years. Sufficient funds shall be appropriated to meet any amount to be paid under the contract in the fiscal year in which it is made, and in each ensuing fiscal year, the council shall appropriate sufficient funds to meet the amounts to be paid during the fiscal year under continuing contracts previously entered into.

"§ 160A-18. **Certain deeds validated.** — (a) All deeds made, executed, and delivered by any city before July 1, 1970, for a good and valuable consideration are hereby in all respects validated, ratified, and confirmed notwithstanding any lack of authority to make the deed or any irregularities in the procedures by which conveyance of the land or premises described therein was authorized by the city council.

(b) All conveyances and sales of any interest in real property by private sale, including conveyances in fee and releases of vested or contingent future interests, made by the governing body of any city, school district, or school administrative unit before July 1, 1970, are hereby validated, ratified, and confirmed notwithstanding the fact that such conveyances or releases were made by private sale and not after notice and public outcry.

(c) Nothing in this section shall affect any action or proceeding begun before January 1, 1972.

"ARTICLE 4.

"Corporate Limits.

"Part 1. General Provisions

"§ 160A-21. **Existing boundaries.** — The boundaries of each city shall be those specified in its charter with any alterations that are made from time to time in the manner provided by law or by local act of the General Assembly.

"§ 160A-22. **Map of corporate limits.** — The current city boundaries shall at all times be drawn on a map, 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 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 city charter or by the council. Copies of the map or description reproduced by any method of reproduction that gives legible and permanent copies, when certified by the city 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 council may provide for the redrawing of any map

of the city boundaries. A redrawn map shall supersede for all purposes the earlier map or maps that it is designated to replace.

"§ 160A-23. District map; reapportionment. — (a) If the city is divided into electoral districts for the purpose of electing the members of the council, the map or description required by G.S. 160A-22 shall also show the boundaries of the several districts.

(b) The council shall have authority to revise electoral district boundaries from time to time. If district boundaries are set out in the city charter and the charter does not provide a method for revising them, the council may revise them only for the purpose of (i) accounting for territory annexed to or excluded from the city, and (ii) correcting population imbalances among the districts shown by a new federal census or caused by exclusions or annexations. When district boundaries have been established in conformity with the federal Constitution, the council shall not be required to revise them again until a new federal census of population is taken or territory is annexed to or excluded from the city, whichever event first occurs. In establishing district boundaries, the council may use data derived from the most recent federal census and shall not be required to use any other population estimates.

"ARTICLE 5.

"Form of Government.

"Part 1. General Provisions

"§ 160A-60. Qualifications for appointive office. — Residence within a city shall not be a qualification for or prerequisite to appointment to any city office not filled by election of the people, unless the charter or an ordinance provides otherwise. City councils shall have authority to fix qualifications for appointive offices, but shall have no authority to waive qualifications for appointive offices fixed by charters or general laws.

"§ 160A-61. Oath of office. — Every person elected by the people or appointed to any city office shall, before entering upon the duties of the office, take and subscribe the oath of office prescribed in Article VI, Sec. 7 of the Constitution. Oaths of office shall be administered by some person authorized by law to administer oaths, and shall be filed with the city clerk.

"§ 160A-62. Officers to hold over until successors qualified. — All city officers, whether elected or appointed, shall continue to hold office until their successors are chosen and qualified. This section shall not apply when an office or position has been abolished, when an appointed officer or employee has been discharged, or when an elected officer has been removed from office.

"§ 160A-63. Vacancies. — All vacancies that occur in any elective office of a city shall be filled by appointment of the city council for the remainder of the unexpired term. If the number of vacancies on the council is such that a quorum of the council cannot be obtained, the mayor shall appoint enough members to make up a quorum, and the council shall then proceed to fill the remaining vacancies. If the number of vacancies on the council is such that a quorum of the council cannot be obtained and the office of mayor is vacant, the Governor may fill the vacancies upon the request of any remaining member of the council, or upon the petition of any five registered voters of the city. Vacancies in appointive offices shall be filled by the same authority that makes the initial appointment. This section shall not apply to vacancies in cities that have not held a city election, levied any taxes, or engaged in any municipal functions for a period of five years or more.

"§ 160A-64. Compensation of mayor and council. — (a) The council may fix its own compensation and the compensation of the mayor and any other elected officers of the city, in such sums as may be just and reasonable. Any increase in the compensation of the council shall not take effect until after the next succeeding regular municipal election. Adjustments in the compensation of the mayor and any other elected officers may be made effective at such time as the council may direct, but the salary of an elected officer shall not be reduced during the then current term of office unless he shall agree thereto. Elected officers shall be entitled to

reimbursement for actual expenses incurred in the course of performing their official duties at rates not in excess of those allowed to other city officers and employees.

(b) All charter provisions in effect as of January 1, 1972, fixing the compensation or allowances of any city officer or employee are repealed, but persons holding office or employment on January 1, 1972, shall continue to receive the compensation and allowances then prescribed by law until the council provides otherwise in accordance with this section or G.S. 160A-162.

"§ 160A-65. Fidelity bonds. — (a) Every officer, employee, or agent of a city who handles or has in his custody more than \$100 of city funds at any time shall, before assuming his duties, give bond with good sureties payable to the city in an amount to be determined by the council, that he will faithfully perform the duties of his office and render a true accounting for all city funds that may come into his custody or control. Unless otherwise required by law, the council may waive the faithful performance bond, but may not waive the true accounting bond. The city may pay the premiums on all bonds. The bond, when approved, shall be deposited with the city clerk.

(b) Cities may adopt a system of blanket faithful performance or true accounting bonding as an alternative to individual bonds. When such a system is adopted, statutory requirements of individual bonds, except for accountants, treasurers, and tax collectors by whatever title known, shall not apply to any officer or employee covered by the blanket bond.

"Part 2. Mayor and Council.

"§ 160A-66. Composition of council. — Unless otherwise provided by its charter, each city shall be governed by a mayor and a council of three members, who shall be elected from the city at large for terms of two years.

"§ 160A-67. General powers of mayor and council. — Except as otherwise provided by law, the government and general management of the city shall be vested in the council. The powers and duties of the mayor shall be such as are conferred upon him by law, together with such other powers and duties as may be conferred upon him by the council pursuant to law. The mayor shall be recognized as the official head of the city for the purpose of service of civil process, and for all ceremonial purposes.

"Part 3. Organization and Procedures of the Council.

"§ 160A-68. Organizational meeting of council. — The organizational meeting of the council shall be the first regular meeting after the regular city election. At the organizational meeting, the newly elected mayor and councilmen shall qualify by taking the oath of office prescribed in Article VI, Sec. 7 of the Constitution. The organization of the council shall take place notwithstanding the absence, death, refusal to serve, failure to qualify, or nonelection of one or more members, but at least a quorum of the members must be present.

"§ 160A-69. Mayor to preside over council. — The Mayor shall preside at all council meetings, but shall have the right to vote only when there are equal numbers of votes in the affirmative and in the negative.

"§ 160A-70. Mayor pro tempore; disability of Mayor. — At the organizational meeting the council shall elect from among its members a mayor pro tempore to serve at the pleasure of the council. A councilman serving as mayor pro tempore shall be entitled to vote on all matters and shall be considered a councilman for all purposes, including the determination of whether a quorum is present. During the absence of the mayor, the council may confer upon the mayor pro tempore any of the powers and duties of the mayor. If the mayor should become physically or mentally incapable of performing the duties of his office, the council may by unanimous vote declare that he is incapacitated and confer any of his powers and duties on the mayor pro tempore. Upon the mayor's declaration that he is no longer incapacitated, and with the concurrence of a majority of the council, the mayor shall resume the exercise of his powers and duties.

"§ 160A-71. Regular and special meetings; procedure. — (a) The council shall fix the time and place for its regular meetings.

(b) The mayor, the mayor pro tempore, or any two members of the council may at any time call a special council meeting by signing a written notice stating the time and place of the meeting and the subjects to be considered. The notice shall be delivered to the mayor and each councilman or left at his usual dwelling place at least six hours before the meeting. Special meetings may be held at any time when the mayor and all members of the council are present and consent thereto or when those not present have signed a written waiver of notice. Only those items of business specified in the notice may be transacted at a special meeting, unless all members are present or have signed a written waiver of notice.

(c) The council may adopt its own rules of procedure, not inconsistent with the city charter, general law, or generally accepted principles of parliamentary procedure.

"§ 160A-72. Minutes to be kept; ayes and noes. — Full and accurate minutes of the council proceedings shall be kept, and shall be open to the inspection of the public. Upon request of any member of the council, the ayes and noes upon any question shall be taken and entered in the minutes.

"§ 160A-73. Meetings open to public. — All legislative sessions of the council shall be open to the public. No question, matter, or issue may be considered or voted upon by the council except in public session, and the results of each vote shall be recorded in the minutes.

"§ 160A-74. Quorum. — A majority of the membership of the council shall constitute a quorum. The number required for a quorum shall not be affected by vacancies. A member who has withdrawn from a meeting without being excused by majority vote of the remaining members present shall be counted as present for purposes of determining whether or not a quorum is present.

"§ 160A-75. Voting. — No member shall be excused from voting except upon matters involving the consideration of his own financial interest or official conduct. In all other cases, a failure to vote by a member who is physically present in the council chamber, or who has withdrawn without being excused by a majority vote of the remaining members present, shall be recorded as an affirmative vote.

An affirmative vote equal to a majority of all the members of the council not excused from voting on the question in issue (including the mayor's vote in case of an equal division) shall be required to adopt an ordinance, take any action having the effect of an ordinance, authorize or commit the expenditure of public funds, or make, ratify, or authorize any contract on behalf of the city. In addition, no ordinance nor any action having the effect of any ordinance may be finally adopted on the date on which it is introduced except by an affirmative vote equal to or greater than two-thirds of all the members of the council (not including the mayor unless he has the right to vote on all questions before the council).

"§ 160A-76. Franchises; technical ordinances. — (a) No ordinance making a grant, renewal, extension, or amendment of any franchise shall be finally adopted until it has been passed at two regular meetings of the council, and no such grant, renewal, extension, or amendment shall be made otherwise than by ordinance.

(b) Any published technical code or any standards or regulations promulgated by any public agency may be adopted in an ordinance by reference. Subject to G.S. 143-138(e), a technical code or set of standards or regulations adopted by reference in a city ordinance shall have the force of law within the city. Official copies of all technical codes, standards, and regulations adopted by reference shall be maintained for public inspection in the office of the city clerk.

"§ 160A-77. Code of ordinances. — (a) Not later than July 1, 1974, each city having a population of 5,000 or more shall adopt and issue a code of its ordinances. The code may be reproduced by any method that gives legible and permanent copies, and may be issued as a securely bound book or books with periodic separately bound supplements, or as a loose-leaf

book maintained by replacement pages. Supplements or replacement pages should be adopted and issued annually at least, unless no additions to or modifications of the code have been adopted by the council during the year. The code may consist of two separate parts, the 'General Ordinances' and the 'Technical Ordinances.' The technical ordinances may be published as separate books or pamphlets, and may include ordinances regarding the construction of buildings, the installation of plumbing and electric wiring, the installation of cooling and heating equipment, the use of public utilities, buildings, or facilities operated by the city, the zoning ordinance, the subdivision control ordinance, the privilege license tax ordinance, and other similar technical ordinances designated as such by the council. The council may omit from the code designated classes of ordinances of limited interest or transitory nature, but the code should clearly describe the classes of ordinances omitted therefrom.

(b) The council may provide that one or more of the following classes of ordinances shall be codified by appropriate entries upon official map books to be retained permanently in the office of the city clerk or some other city office generally accessible to the public:

- (1) establishing or amending the boundaries of zoning districts;
- (2) designating the location of traffic control devices;
- (3) designating areas or zones where regulations are applied to parking, loading, bus stops, or taxicab stands;
- (4) establishing speed limits;
- (5) designating the location of through streets, stop intersections, yield-right-of-way intersections, waiting lanes, one-way streets, or truck traffic routes; and
- (6) establishing regulations upon vehicle turns at designated locations.

(c) It is the intent of this section to make uniform the law concerning the adoption of city codes. To this end, all charter provisions in conflict with this section in effect as of January 1, 1972, are expressly repealed, except to the extent that the charter makes adoption of a code mandatory, and no local act taking effect on or after January 1, 1972, shall be construed to repeal or amend this section in whole or in part unless it shall expressly so provide by specific reference.

"§ 160A-78. Ordinance book. — Effective January 1, 1972, each city shall file a true copy of each ordinance adopted on or after January 1, 1972, in an ordinance book separate and apart from the council's minute book. The ordinance book shall be appropriately indexed and maintained for public inspection in the office of the city clerk. Effective July 1, 1973, true copies of all ordinances that were adopted before January 1, 1972, and are still in effect shall be filed and indexed in the ordinance book. If the city has adopted and issued a code of ordinances in compliance with G.S. 160A-77, its ordinances shall be filed and indexed in the ordinance book until they are codified.

"§ 160A-79. Pleading and proving city ordinances. — (a) In all civil and criminal cases it shall be sufficient to plead any city ordinance by its caption, or by its caption and the number assigned to it in a code adopted and issued in compliance with G.S. 160A-77.

(b) Any of the following shall be admitted in evidence in all actions or proceedings before courts or administrative bodies and shall have the same force and effect as would an original ordinance:

- (1) A city code adopted and issued in compliance with G.S. 160A-77, containing a statement that the code is published by order of the council pursuant to G.S. 160A-77.
- (2) Copies of any part of an official map book maintained in accordance with G.S. 160A-77 and certified under seal by the city clerk as having been adopted by the council and maintained in accordance with its directions (the clerk's certificate need not be authenticated).

- (3) A copy of an ordinance as set out in the minutes, code, or ordinance book of the council, certified under seal by the city clerk as a true copy (the clerk's certificate need not be authenticated).

(c) The burden of pleading and proving the existence of any modification or repeal of an ordinance, map, or code, a copy of which has been duly pleaded or admitted in evidence in accordance with this section, shall be upon the party asserting such modification or repeal. It shall be presumed that any portion of a city code that is admitted in evidence in accordance with this section has been codified in compliance with G.S. 160A-77, and the burden of pleading and proving to the contrary shall be upon the party seeking to obtain an advantage thereby.

(d) From and after the respective effective dates of G.S. 160A-77 and G.S. 160A-78, no city ordinance shall be enforced or admitted into evidence in any court unless it has been codified or filed and indexed in accordance with G.S. 160A-77 or G.S. 160A-78. It shall be presumed that an ordinance which has been properly pleaded and proved in accordance with this section has been codified or filed and indexed in accordance with G.S. 160A-77 or G.S. 160A-78, and the burden of pleading and proving to the contrary shall be upon the party seeking to obtain an advantage thereby.

(e) It is the intent of this section to make uniform the law concerning the pleading and proving of city ordinances. To this end, all charter provisions in conflict with this section in effect as of January 1, 1972, are expressly repealed, and no local act taking effect on or after January 1, 1972, shall be construed to repeal or amend this section in whole or in part unless it shall expressly so provide by specific reference.

"§ 160A-80. Power of investigation; subpoena power. — (a) The council shall have power to investigate the affairs of the city, and for that purpose may subpoena witnesses, administer oaths, and compel the production of evidence.

(b) If a person fails or refuses to obey a subpoena issued pursuant to this section, the council 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 council pursuant to a subpoena issued in exercise of the power conferred by this section may be used against him 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 council, willfully swears falsely, he is guilty of a misdemeanor.

(c) This section shall not apply to cities having a population of less than 5,000.

"§ 160A-81. Conduct of public hearings. — Public hearings may be held at any place within the city or within the county in which the city is located. The council may adopt reasonable rules governing the conduct of public hearings, including but not limited to rules (i) fixing the maximum time allotted to each speaker, (ii) providing for the designation of spokesmen for groups of persons supporting or opposing the same positions, (iii) providing for the selection of delegates from groups of persons supporting or opposing the same positions when the number of persons wishing to attend the hearing exceeds the capacity of the hall, and (iv) providing for the maintenance of order and decorum in the conduct of the hearing.

The council may continue any public hearing without further advertisement. If a public hearing is set for a given date and a quorum of the council is not then present, the hearing shall be continued until the next regular council meeting without further advertisement.

"§ 160A-82. Applicability of Part. — Nothing in this Part, except G.S. 160A-77, G.S. 160A-78 and G.S. 160A-79, shall be construed to repeal any portion of any city charter inconsistent with anything contained herein.

"Part 4. Modification of Form of Government

"§ 160A-101. Optional forms. — Any city may change its name or alter its form of government by adopting any one or combination of the options prescribed by this section:

- (1) Name of the corporation:
The name of the corporation may be changed to any name not deceptively similar to that of another city in this State.
- (2) Style of the corporation:
The city may be styled a city, town, or village.
- (3) Style of the governing board:
The governing board may be styled the board of commissioners, the board of aldermen, or the council.
- (4) Terms of office of members of the council:
Members of the council shall serve terms of office of not less than two nor more than four years. All of the terms need not be of the same length, and all of the terms need not expire in the same year.
- (5) Number of members of the council:
The council shall consist of any number of members not less than three nor more than twelve.
- (6) Mode of election of the council:
 - a. All candidates shall be nominated and elected by all the qualified voters of the city.
 - b. The city shall be divided into electoral districts; council members shall be apportioned to the districts so that each member represents the same number of persons as nearly as possible, except for members apportioned to the city at large, if any; the qualified voters of each district shall nominate and elect candidates who reside in the district for seats apportioned to that district; and all the qualified voters of the city shall nominate and elect candidates apportioned to the city at large, if any.
 - c. The city shall be divided into electoral districts; council members shall be apportioned to the districts so that each member represents the same number of persons as nearly as possible, except for members apportioned to the city at large; and candidates shall reside in and represent the districts according to the apportionment plan adopted, but all candidates shall be nominated and elected by all the qualified voters of the city.

If either of options b. or c. is adopted, the council shall divide the city into the requisite number of electoral districts according to the apportionment plan adopted, and shall cause a map of the districts so laid out to be drawn up and filed as provided by G.S. 160A-22 and 160A-23. No more than one half of the council may be apportioned to the city at large. An initiative petition may specify the number of electoral districts to be laid out, but the drawing of district boundaries and apportionment of members to the districts shall be done in all cases by the council.

- (7) Elections:
 - a. Partisan. — Municipal primaries and elections shall be conducted on a partisan basis as provided in Chapter 163 of the General Statutes for the nomination and election of county officers (as modified by Article 6 of this Chapter).
 - b. Nonpartisan. — Municipal elections shall be conducted as provided in Article 6 of this Chapter.
- (8) Selection of mayor:
 - a. The mayor shall be elected by all the qualified voters of the city for a term of not less than two years nor more than four years.

- b. The mayor shall be selected by the council from among its membership to serve at its pleasure.
- (9) Form of government:
 - a. The city shall operate under the mayor-council form of government in accordance with Part 3 of Article 7 of this Chapter.
 - b. The city shall operate under the council-manager form of government in accordance with Part 2 of Article 7 of this Chapter and any charter provisions not in conflict therewith.

"§ 160A-102. Amendment by ordinance. — By following the procedure set out in this section, the council may amend the city charter by ordinance to implement any of the optional forms set out in G.S. 160A-101. The council shall first adopt a resolution of intent to consider an ordinance amending the charter. The resolution of intent shall describe the proposed charter amendments briefly but completely and with reference to the pertinent provisions of G.S. 160A-101, but it need not contain the precise text of the charter amendments necessary to implement the proposed changes. At the same time that a resolution of intent is adopted, the council shall also call a public hearing on the proposed charter amendments, the date of the hearing to be not more than 45 days after adoption of the resolution. A notice of the hearing shall be published at least once not less than 10 days prior to the date fixed for the public hearing, and shall contain a summary of the proposed amendments. Following the public hearing, but not earlier than the next regular meeting of the council and not later than 60 days from the date of the hearing, the council may adopt an ordinance amending the charter to implement the amendments proposed in the resolution of intent.

The council may, but shall not be required to unless a referendum petition is received pursuant to G.S. 160A-103, make any ordinance adopted pursuant to this section effective only if approved by a vote of the people, and may by resolution adopted at the same time call a special election for the purpose of submitting the ordinance to a vote. The date fixed for the special election shall be not more than 90 days after adoption of the ordinance.

Within 10 days after an ordinance is adopted under this section, the council shall publish a notice stating that an ordinance amending the charter has been adopted and summarizing its contents and effect. If the ordinance is made effective subject to a vote of the people, the council shall publish a notice of the election not less than 20 days before the last day on which voters may register to vote in the special election, and need not publish a separate notice of adoption of the ordinance.

The council may not commence proceedings under this section between the time of the filing of a valid initiative petition pursuant to G.S. 160A-128 and the date of any election called pursuant to such petition.

"§ 160A-103. Referendum on charter amendments by ordinance. — An ordinance adopted under G.S. 160A-102 that is not made effective upon approval by a vote of the people shall be subject to a referendum petition. Upon receipt of a referendum petition bearing the signatures of a number of qualified voters of the city equal to at least 10 per cent of the whole number of voters who are registered to vote in city elections according to the most recent figures certified by the State Board of Elections or 5,000, whichever is less, the council shall submit an ordinance adopted under G.S. 160A-102 to a vote of the people. The date of the special election shall be fixed at not more than 120 nor fewer than 60 days after receipt of the petition. A referendum petition shall be addressed to the council and shall identify the ordinance to be submitted to a vote. A referendum petition must be filed with the city clerk not later than 30 days after publication of the ordinance following its adoption.

"§ 160A-104. Initiative petitions for charter amendments. — The people may initiate a referendum on proposed charter amendments. An initiative petition shall bear the signatures of a number of qualified voters of the city equal to at least ten percent (10%) of the whole number of voters who are registered to vote in city elections according to the most recent figures

certified by the State Board of Elections or 5,000, whichever is less. The petition shall set forth the proposed amendments by describing them briefly but completely and with reference to the pertinent provisions of G.S. 160A-101, but it need not contain the precise text of the charter amendments necessary to implement the proposed changes. The petition may not propose changes in the alternative, or more than one integrated set of charter amendments. Upon receipt of a valid initiative petition, the council shall call a special election on the question of adopting the charter amendments proposed therein. The date of the special election shall be fixed at not more than 120 nor fewer than 60 days after receipt of the petition. If a majority of the votes cast in the special election shall be in favor of the proposed changes, the council shall adopt an ordinance amending the charter to put them into effect. Such an ordinance shall not be subject to a referendum petition. No initiative petition may be filed (i) between the time the council initiates proceedings under G.S. 160A-102 by publishing a notice of hearing on proposed charter amendments and the time proceedings under that section have been carried to a conclusion either through adoption or rejection of a proposed ordinance or lapse of time, nor (ii) within one year and six months following the effective date of an ordinance amending the city charter pursuant to this article, nor (iii) within one year and six months following the date of any election on charter amendments that were defeated by the voters.

The restrictions imposed by this section on filing initiative petitions shall apply only to petitions concerning the same subject matter. For example, pendency of council action on amendments concerning the method of electing the council shall not preclude an initiative petition on adoption of the council-manager form of government.

Nothing in this section shall be construed to prohibit the submission of more than one proposition for charter amendments on the same ballot so long as no proposition offers a different plan under the same option as another proposition on the same ballot.

"§ 160A-105. Submission of propositions to voters; form of ballot. — A proposition to approve an ordinance or petition shall be printed on the ballot in substantially the following form:

Shall the ordinance (describe the effect of the ordinance) be approved?

YES

NO

The ballot shall be separate from all other ballots used at the election.

If a majority of the votes cast on a proposition shall be in the affirmative, the plan contained therein shall be put into effect as provided in this Article. If a majority of the votes cast shall be against the proposition, the ordinance or petition proposing the amendments shall be void and of no effect.

"§ 160A-106. Amendment of charter provisions dependent on form of government. — The authority conferred by this Article to amend charter provisions within the options set out in G.S. 160A-101 also includes authority to amend other charter provisions dependent on the form of city government to conform them to the form of government amendments. By way of illustration and not limitation, if a charter providing for a five-member council is amended to increase the size of the council to seven members, a charter provision defining a quorum of the council as three members shall be amended to define a quorum as four members.

"§ 160A-107. Plan to continue for two years. — Charter amendments adopted as provided in this Article shall continue in force for at least two years after the beginning of the term of office of the officers elected thereunder.

"§ 160A-108. Municipal officers to carry out plan. — It shall be the duty of the mayor, the council, the city clerk, and other city officials in office, and all boards of election and election officials, when any plan of government is adopted as provided by this Article or is proposed for adoption, to comply with all requirements of this Article, to the end that all things may be done which are necessary for the nomination and election of the officers first to be elected under the new plan so adopted.

"§ 160A-109. **Effective date.** — The council may submit new charter amendments proposed under this Article at any regular or special municipal election, or at a special election called for that sole purpose. Any amendment affecting the election of city officers shall be finally adopted and approved at least 90 days before the first election for mayor or council members held thereunder.

"§ 160A-110. **Charters to remain in force.** — The charter of any city that adopts a new form of government as provided in this Article shall continue in full force and effect notwithstanding adoption of a new form of government, except to the extent modified by an ordinance adopted under the authority conferred and pursuant to the procedures prescribed by this Article.

"Article 6. Elections.

"§ 160A-116. **General elections law applicable except as otherwise provided.** — Except as otherwise provided in this Article or in the city charter, all city elections and referenda shall be conducted under the provisions of Chapter 163 of the General Statutes governing the conduct of general elections as it may be amended from time to time. This Article does not repeal or supersede any portion of a city charter except as expressly provided herein.

"§ 160A-117. **State Board of Elections to supervise city elections.** — The State Board of Elections has authority to issue rules and regulations necessary to adapt the general elections law for the conduct of partisan and nonpartisan city elections in conformity with the requirements of this Article. These rules and regulations shall be adopted and filed in accordance with Article 18 of Chapter 143 of the General Statutes. The State Board of Elections has the same authority to hear appeals from city boards of elections that it has with respect to county boards of elections, but has no authority to remove from office any city election official. This section repeals all portions of city charters inconsistent herewith.

"§ 160A-118. **City elections to be nonpartisan.** — Unless otherwise provided in the city charter, all city elections shall be conducted on a nonpartisan basis.

"§ 160A-119. **Date of regular city election.** — The regular city election for mayor and members of the council shall be held on Tuesday after the first Monday in May, 1973, and biennially thereafter.

"§ 160-120. **City board of elections.** — City elections and referenda shall be conducted by a city board of elections of three members appointed by the council for two-year terms. If city elections are nonpartisan, appointments to the board shall be made without regard to political party affiliation. If city elections are partisan, not more than two members of the board may be affiliated with the same political party. No person may serve as a member of a city board of elections who would be ineligible for appointment to a county board of elections. The board of elections shall be appointed not later than 90 days before the regular city election. City boards of elections have, with respect to city elections and referenda, all of the powers and duties held by county boards of elections with respect to general elections.

Instead of appointing a city board of elections, the city council of any city of less than 5,000 population may act as the board of elections.

This section repeals all portions of city charters inconsistent herewith.

"§ 160A-121. **Precinct officials and polling places.** — The city board of elections shall establish precincts and polling places within the city, and shall appoint a registrar and two judges of election for each precinct. These appointments shall be made at least 30 days before the regular city election and shall be for terms of two years.

"§ 160-122. **Registration of voters.** — (a) Each city may either contract with the county board of elections for the use of the county registration records in the conduct of city elections, pursuant to G.S. 163-71, or it may establish its own registration system in conformity with this section and the provisions of Chapter 163 of the General Statutes governing registration in counties not employing the full-time and permanent registration system as those provisions read on January 1, 1971. Notwithstanding the foregoing, cities may purge their registration books pursuant to the procedures prescribed in G.S. 163-69.

(b) City registration books shall be open for registration of voters beginning at 9:00 a.m. on the third Saturday before the election and ending at 5:00 p.m. on the second Saturday before the election. On the two Saturdays during the registration period, the registrars shall attend at the polling places. On all days, except Sunday, the books shall be open for registration between the hours of 9:00 a.m. and 5:00 p.m. The board of elections may extend the days and hours of registration by resolution adopted and published not later than 30 days before the election.

(c) With the consent of the city council, the board of elections may at any time order a new registration. When this is done, the registration period shall begin at 9:00 a.m. on the fourth Saturday preceding the election at which the new registration is first to be employed, and shall close at 5:00 p.m. on the second Saturday preceding that election. On each Saturday during the registration period, the registrars shall attend at the polling places. On each day of the registration period, except Sunday, the books shall be open from 9:00 a.m. to 5:00 p.m. The board of elections may extend the days and hours of a new registration by resolution adopted and published not later than 30 days before the election. The board of elections shall give notice of each new registration by publication not later than 30 days before the first day of the registration period.

(d) This section repeals and supersedes all portions of city charters concerning the registration of voters for city elections.

"§ 160-123. **Notice of election.** — Not later than 30 days before each regular or special election, the board of elections shall publish a notice fixing or stating the date of the election, giving notice of any changes in precinct boundaries or polling places, showing the names and addresses of precinct registrars and judges, and stating the days and hours of registration.

"§ 160-124. **Notice of candidacy and filing fee.** — Each person offering himself as a candidate for election to any city office shall do so by filing a notice of candidacy with the city board of elections in the following form, inserting the words in brackets when appropriate:

"Date _____

I hereby file notice that I am a candidate for election to the office of _____ [at large] [for the _____ Ward] in the regular city election to be held in _____ (city) _____ on _____ (date).

Signed _____

Witness: _____
 For the Board of Elections."

If a person who is not registered to vote in the city wishes to file notice of candidacy, the board of elections may accept the notice subject to the candidate's registering to vote for the election in which he seeks to run. Before the ballots are printed, the board shall ascertain whether all candidates are registered to vote in the election, and shall cancel the notice of candidacy of those who are not.

(b) Candidates may file their notice of candidacy with the board of elections at any time after 12:00 noon on the Friday preceding the eighth Saturday and before 12:00 noon on Friday preceding the second Saturday before the election. If no candidates, or an insufficient number of candidates, has filed by the filing deadline, the board of elections may by resolution extend the deadline. Any person may withdraw his notice of candidacy at any time before the filing deadline, and is entitled to a refund of his filing fee if he does so.

(c) At the time of filing, each candidate shall pay to the board of elections a filing fee in an amount fixed by the city council but not more than \$50.00.

"§ 160-125. **Determining the results of the election.** — When more than one person is seeking election to a single office, the candidate who receives the highest number of votes shall be declared elected. When more persons are seeking election to two or more offices (constituting a group) than there are offices to be filled, those candidates receiving the highest number of votes, equal in number to the number of offices to be filled, shall be declared

elected. If two or more candidates receiving the highest number of votes each receive the same number of votes, the board of elections shall determine the winner by lot.

"§ 160-126. **Canvass.** — The city board of elections shall meet and canvass the election at 12:00 noon on the third day following the election.

"§ 160A-127. **Voting machines.** — Cities may acquire voting machines for use in all city elections and referenda.

"ARTICLE 7.

"Administrative Offices.

"Part 1. Organization and Reorganization of City Government

"§ 160A-146. **Council to organize city government.** — The council may create, change, abolish, and consolidate offices, positions, departments, boards, commissions, and agencies of the city government and generally organize and reorganize the city government in order to promote orderly and efficient administration of city affairs, subject to the following limitations:

- (1) The council may not abolish any office, position, department, board, commission, or agency established and required by law;
- (2) The council may not combine offices or confer certain duties on the same officer when such action is specifically forbidden by law;
- (3) The council may not discontinue or assign elsewhere any functions or duties assigned by law to a particular office, position, department, or agency.

"Part 2. Administration of Council-Manager Cities

"§ 160A-147. **Appointment of city manager.** — In cities whose charters provide for the council manager form of government, the council shall appoint a city manager to serve at its pleasure. The manager shall be appointed solely on the basis of his executive and administrative qualifications. He need not be a resident of the city or State at the time of his appointment. The office of city manager is hereby declared to be an office that may be held concurrently with other appointive (but not elective) offices pursuant to Article VI, Sec. 9, of the Constitution.

"§ 160A-148. **Powers and duties of manager.** — The manager shall be the chief administrator of the city. He shall be responsible to the council for administering all municipal affairs placed in his charge by them, and shall have the following powers and duties:

- (1) He shall appoint and suspend or remove all city employees, except the city attorney, in accordance with such general personnel rules, regulations, policies, or ordinances as the council may adopt.
- (2) He shall direct and supervise the administration of all departments, offices, and agencies of the city, subject to the general direction and control of the council, except as otherwise provided by law.
- (3) He shall attend all meetings of the council and recommend any measures that he deems expedient.
- (4) He shall see that all laws of the State, the city charter, and the ordinances, resolutions, and regulations of the council are faithfully executed within the city.
- (5) He shall prepare and submit the annual budget and capital program to the council.
- (6) He shall annually submit to the council and make available to the public a complete report on the finances and administrative activities of the city as of the end of the fiscal year.
- (7) He shall make any other reports that the council may require concerning the operations of city departments, offices, and agencies subject to his direction and control.
- (8) He shall perform any other duties that may be required or authorized by the council.

"§ 160A-149. **Acting city manager.** — By letter filed with the city clerk, the manager may designate, subject to the approval of the council, a qualified person to exercise the powers and perform the duties of manager during his temporary absence or disability. During this absence or disability, the council may revoke that designation at any time and appoint another to serve until the manager returns or his disability ceases.

"§ 160A-150. **Interim city manager.** — When the position of city manager is vacant, the council shall designate a qualified person to exercise the powers and perform the duties of manager until the vacancy is filled.

"§ 160A-151. **Mayor and councilmen ineligible to serve or act as manager.** — Neither the mayor nor any member of the council shall be eligible for appointment as manager or acting or interim manager.

"§ 160A-152. **Applicability of Part.** — This Part shall apply only to those cities having the council-manager form of government. If the powers and duties of a city manager set out in any city charter shall differ materially from those set out in G.S. 160A-148, the council may by ordinance confer or impose on the manager any of the powers or duties set out in G.S. 160A-148 but not contained in the charter.

"Part 3. Administration of Mayor-Council Cities

"§ 160A-155. **Council to provide for administration in mayor-council cities.** — The council shall appoint, suspend, and remove the heads of all city departments. The head of each department shall appoint, suspend, and remove all city employees assigned to his department, and shall see that all laws of the State, the city charter, and the ordinances, resolutions, and regulations of the council concerning his department are faithfully executed within the city. Otherwise, the administration of the city shall be performed as provided by law or direction of the council.

"§ 160A-156. **Acting department heads.** — By letter filed with the city clerk, the head of any department may designate, subject to the approval of the council, a qualified person to exercise the powers and perform the duties of head of that department during his temporary absence or disability. During his absence or disability, the council may revoke that designation at any time and appoint another officer to serve until the department head returns or his disability ceases.

"§ 160A-157. **Interim department heads.** — When the position of head of any department is vacant, the council may designate a qualified person to exercise the powers and perform the duties of head of the department until the vacancy is filled.

"§ 160A-158. **Mayor and councilmen ineligible to serve or act as heads of departments.** — Neither the mayor nor any member of the council shall be eligible for appointment as head of any city department or as acting or interim head of a department. This section shall not apply to cities having a population of less than 5,000.

"§ 160A-159. **Applicability of Part.** — This Part shall apply only to those cities having the mayor-council form of government.

"Part 4. Personnel

"§ 160A-162. **Compensation.** — (a) The council shall fix or approve the schedule of pay, expense allowances, and other compensation of all city employees, and may adopt position classification plans. In cities with the council-manager form of government, the manager shall be responsible for preparing position classification and pay plans for submission to the council and, after any such plans have been adopted by the council, shall administer them. In cities with the mayor-council form of government, the council shall appoint a personnel officer (or confer the duties of personnel officer on some city administrative officer); the personnel officer shall then be responsible for administering the pay plan and any position classification plan in accordance with general policies and directives adopted by the council.

(b) The council may purchase life insurance and health insurance for the benefit of all or any class of city employees as a part of their compensation, and may provide other fringe benefits for city employees.

"§ 160A-163. **Retirement benefits.** — (a) The council may provide for enrolling city employees in the Local Governmental Employees' Retirement System, the Law Enforcement Officers' Benefit and Relief Fund, the Firemen's Pension Fund, or a retirement plan certified to be actuarially sound by a qualified actuary as defined in subsection (d) of this section, and may make payments into any such retirement system or plan on behalf of its employees. The city may also supplement from local funds benefits provided by the Local Governmental Employees' Retirement System, the Law Enforcement Officers' Benefit and Relief Fund, or the Firemen's Pension Fund.

(b) The council may create and administer a special fund for the relief of members of the police and fire departments who have been retired for age, or for disability or injury incurred in the line of duty, but any such funds established on or after January 1, 1972, shall be subject to the provisions of subsection (c) of this section. The council may receive donations and bequests in aid of any such fund, shall provide for its permanence and increase, and shall prescribe and regulate the conditions under which benefits may be paid.

(c) No city shall make payments into any retirement system or plan established or authorized by local act of the General Assembly unless the plan is certified to be actuarially sound by a qualified actuary as defined in subsection (d) of this section.

(d) A qualified actuary means an individual certified as qualified by the Commissioner of Insurance, or any member of the American Academy of Actuaries.

"§ 160A-164. **Personnel rules.** — The council may adopt or provide for rules and regulations or ordinances concerning but not limited to annual leave, sick leave, special leave with full pay or with partial pay supplementing workmen's compensation payments for employees injured in accidents arising out of and in the course of employment, hours of employment, holidays, working conditions, service award and incentive award programs, other personnel policies, and any other measures that promote the hiring and retention of capable, diligent, and honest career employees.

"§ 160A-165. **Personnel board.** — The council may establish a personnel board with authority to administer tests designed to determine the merit and fitness of candidates for appointment or promotion, to conduct hearings upon the appeal of employees who have been suspended, demoted, or discharged, and hear employee grievances.

"§ 160A-166. **Participation in Social Security Act.** — The council may take any action necessary to allow city employees to participate fully in benefits provided by the federal Social Security Act.

"§ 160A-167. **Defense of employees and officers.** — Upon request made by or in behalf of any employee or officer, or former employee or officer, any city may provide for the defense of any civil or criminal action or proceeding brought against him either in his official or in his individual capacity, or both, on account of any act done or omission made, or any act allegedly done or omission allegedly made, in the scope and course of his employment or duty as an employee or officer of the city. The defense may be provided by the city by its own counsel, or by employing other counsel, or by purchasing insurance which requires that the insurer provide the defense. Providing for a defense pursuant to this section is hereby declared to be for a public purpose, and the expenditure of funds therefor is hereby declared to be a necessary expense. Nothing in this section shall be deemed to require any city to provide for the defense of any action or proceeding of any nature.

"Part 5. City Clerk

"§ 160A-171. **City clerk; appointment and duties.** — There shall be a city clerk who shall give notice of meetings of the council, keep a journal of the proceedings of the council, be the custodian of all city records, and shall perform any other duties that may be required by law or the council.

"§ 160A-172. **Deputy clerk.** — The council may provide for a deputy city clerk who shall have full authority to exercise and perform any of the powers and duties of the city clerk that may be specified by the council.

"Part 6. City Attorney

"§ 160A-173. **City attorney; appointment and duties.** — The council shall appoint a city attorney to serve at its pleasure and to be its legal adviser.

"ARTICLE 8.

"Delegation and Exercise of the General Police Power.

"§ 160A-174. **General ordinance-making power.** — (a) A city may by ordinance define, prohibit, regulate, or abate acts, omissions, or conditions detrimental to the health, safety, or welfare of its citizens and the peace and dignity of the city, and may define and abate nuisances.

(b) A city ordinance shall be consistent with the Constitution and laws of North Carolina and of the United States. An ordinance is not consistent with State or federal law when:

- (1) The ordinance infringes a liberty guaranteed to the people by the State or federal Constitution;
- (2) The ordinance makes unlawful an act, omission or condition which is expressly made lawful by State or federal law;
- (3) The ordinance makes lawful an act, omission, or condition which is expressly made unlawful by State or federal law;
- (4) The ordinance purports to regulate a subject that cities are expressly forbidden to regulate by State or federal law;
- (5) The ordinance purports to regulate a field for which a State or federal statute clearly shows a legislative intent to provide a complete and integrated regulatory scheme to the exclusion of local regulation.
- (6) The elements of an offense defined by a city ordinance are identical to the elements of an offense defined by State or federal law. The fact that a State or federal law, standing alone, makes a given act, omission, or condition unlawful shall not preclude city ordinances requiring a higher standard of conduct or condition.

"§ 160A-175. **Enforcement of ordinances.** — (a) A city shall have power to impose fines and penalties for violation of its ordinances, and may secure injunctions and abatement orders to further insure compliance with its ordinances as provided by this section.

(b) Unless the council shall otherwise provide, violation of a city ordinance shall be a misdemeanor as provided by G.S. 14-4. An ordinance may also provide by express statement that the maximum fine or term of imprisonment to be imposed for its violation shall be some figure or number of days less than the maximum penalties prescribed by G.S. 14-4.

(c) An ordinance may provide that violation shall subject the offender to a civil penalty to be recovered by the city in a civil action in the nature of debt if the offender does not pay the penalty within a prescribed period of time after he has been cited for violation of the ordinance.

(d) An ordinance may provide that it may be enforced by an appropriate equitable remedy issuing from a court of competent jurisdiction. In such case, the General Court of Justice shall have jurisdiction to issue such orders as may be appropriate, and it shall not be a defense to the application of the city for equitable relief that there is an adequate remedy at law.

(e) An ordinance that makes unlawful a condition existing upon or use made of real property may be enforced by injunction and order of abatement, and the General Court of Justice shall have jurisdiction to issue such orders. When a violation of such an ordinance occurs the city may apply to the appropriate division of the General Court of Justice for a mandatory or prohibitory injunction and order of abatement commanding the defendant to correct the unlawful condition upon or cease the unlawful use of the property. The action shall

be governed in all respects by the laws and rules governing civil proceedings, including the Rules of Civil Procedure in general and Rule 65 in particular.

In addition to an injunction, the court may enter an order of abatement as a part of the judgment in the cause. An order of abatement may direct that buildings or other structures on the property be closed, demolished, or removed; that fixtures, furniture, or other movable property be removed from buildings on the property; that grass and weeds be cut; that improvements or repairs be made; or that any other action be taken that is necessary to bring the property into compliance with the ordinance. If the defendant fails or refuses to comply with an injunction or with an order of abatement within the time allowed by the court, he may be cited for contempt, and the city may execute the order of abatement. The city shall have a lien on the property for the cost of executing an order of abatement in the nature of a mechanic's and materialman's lien. The defendant may secure cancellation of an order of abatement by paying all costs of the proceedings and posting a bond for compliance with the order. The bond shall be given with sureties approved by the clerk of superior court in an amount approved by the judge before whom the matter is heard and shall be conditioned on the defendant's full compliance with the terms of the order of abatement within a time fixed by the judge. Cancellation of an order of abatement shall not suspend or cancel an injunction issued in conjunction therewith.

(f) Subject to the express terms of the ordinance, a city ordinance may be enforced by any one, all, or a combination of the remedies authorized and prescribed by this section.

(g) A city ordinance may provide, when appropriate, that each day's continuing violation shall be a separate and distinct offense.

"§ 160A-176. Ordinances effective on city property outside limits. — Unless otherwise provided in the ordinance, all city ordinances shall apply to property and rights-of-way belonging to the city and located outside the corporate limits.

"§ 160A-177. Enumeration not exclusive. — The enumeration in this Article or other portions of this Chapter of specific powers to regulate, restrict or prohibit acts, omissions, and conditions shall not be deemed to be exclusive or a limiting factor upon the general authority to adopt ordinances conferred on cities by G.S. 160A-174.

"§ 160A-178. Regulation of solicitation campaigns and itinerant merchants. — A city may by ordinance regulate, restrict or prohibit the solicitation of contributions from the public for any charitable or eleemosynary purpose, and also the business activities of itinerant merchants, salesmen, promoters, drummers, peddlers, or hawkers. These ordinances may include, but shall not be limited to, requirements that an application be made and a permit issued, that an investigation be made, that activities be reasonably limited as to time and place, that proper credentials and proof of financial stability be submitted, that not more than a stated percentage of contributions to solicitation campaigns be retained for administrative expenses, and that an adequate bond be posted to protect the public from fraud.

"§ 160A-179. Regulation of begging. — A city may by ordinance prohibit or regulate begging or otherwise canvassing the public for contributions for the private benefit of the solicitor or any other person.

"§ 160A-180. Regulation of aircraft overflights. — A city may by ordinance regulate the operation of aircraft over the city.

"§ 160A-181. Regulation of places of amusement. — A city may by ordinance regulate places of amusement and entertainment, and may regulate, restrict or prohibit the operation of pool and billiard halls, dance halls, carnivals, circuses, or any itinerant show or exhibition of any kind. Places of amusement and entertainment shall include coffee houses, cocktail lounges, night clubs, beer halls, and similar establishments, but any regulations thereof shall be consistent with any permits or licenses issued by the State Board of Alcoholic Control.

"§ 160A-182. Abuse of animals. — A city may by ordinance define and prohibit the abuse of animals.

"§ 160A-183. Regulation of explosive, corrosive, inflammable, or radioactive substances. — A city may by ordinance restrict, regulate or prohibit the sale, possession, storage, use, or conveyance of any explosive, corrosive, inflammable, or radioactive substances, or any weapons or instrumentalities of mass death and destruction within the city.

"§ 160A-184. Loud noises — A city may by ordinance regulate, restrict, or prohibit the production or emission of loud noises or amplified speech, music, or other sounds that tend to annoy, disturb, or frighten its citizens.

"§ 160A-185. Emission of pollutants. — A city may by ordinance regulate, restrict, or prohibit the emission or disposal of smoke, noxious chemicals, or any other substances or effluents that tend to pollute or contaminate land, water, or air, rendering it unfit for or dangerous to human, animal, or plant life. Any such ordinance shall be consistent with and supplementary to State and federal laws and regulations.

"§ 160A-186. Regulation of domestic animals. — A city may by ordinance regulate, restrict, or prohibit the keeping, running, or going at large of any domestic animals, including dogs and cats. The ordinance may provide that animals allowed to run at large in violation of the ordinance may be seized and sold or destroyed after reasonable efforts to notify their owner.

"§ 160A-187. Possession or harboring of wild animals. — A city may by ordinance regulate, restrict, or prohibit the possession or harboring within the city of wild animals dangerous to person or property or offensive to the senses.

"§ 160A-188. Bird sanctuaries. — A city may by ordinance create and establish a bird sanctuary within the city limits. The ordinance may not protect any birds classified as unprotected by the Wildlife Resources Commission or by law. When a bird sanctuary has been established, it shall be unlawful for any person to hunt, kill, trap, or otherwise take any protected birds within the city limits except pursuant to a permit issued under G.S. 113-87.

"§ 160A-189. Firearms. — A city may by ordinance regulate, restrict, or prohibit the discharge of firearms at any time or place within the city except when used in defense of person or property or pursuant to lawful directions of law enforcement officers, and may regulate the display of firearms on the streets, sidewalks, alleys, or other public property. Nothing in this section shall be construed to limit a city's authority to take action under Article 36A of Chapter 14 of the General Statutes.

"§ 160A-190. Pellet guns. — A city may by ordinance regulate, restrict, or prohibit the sale, possession or use within the city of pellet guns or any other mechanism or device designed or used to project a missile by compressed air or mechanical action with less than deadly force.

"§ 160A-191. Limitations on enactment of Sunday-closing ordinances. — No ordinance regulating or prohibiting business activity on Sundays shall be enacted unless the council shall hold a public hearing on the proposed ordinance. Notice of the hearing shall be published once each week for four successive weeks before the date of the hearing. The notice shall fix the date, hour and place of the public hearing, and shall contain a statement of the council's intent to consider a Sunday-closing ordinance, the purpose for such an ordinance, and one or more reasons for its enactment. No 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 90 days after the date of final enactment. This section shall not apply to ordinances enacted pursuant to G.S. 18-107.

"§ 160A-192. Regulation of trash and garbage. — (a) A city may by ordinance regulate the disposal of solid wastes within the city, and may require the owners or occupants of houses and other buildings to place solid waste in specified places or receptacles for the convenience of city collection and disposal, and may impose charges for such collection and disposal.

(b) Any two or more cities, counties, sanitary districts, or any combination thereof, are authorized to enter into contracts and agreements for the joint ownership, construction, operation and maintenance of solid waste collection and disposal systems and facilities. In operating such systems and facilities, the participating units may exercise jointly any power

that they might exercise individually with respect to solid waste collection and disposal systems and facilities.

"§ 160A-193. **Abatement of public health nuisances.** — A city shall have authority to summarily remove, abate, or remedy everything in the city limits, or within one mile thereof, that is dangerous or prejudicial to the public health. The expense of the action shall be paid by the person in default, and, if not paid, shall be a lien upon the land or premises where the trouble arose, and shall be collected as unpaid taxes.

"§ 160A-194. **Regulating and licensing businesses, trades, etc.** — A city may by ordinance, subject to the general law of the State, regulate and license occupations, businesses, trades, professions, and forms of amusement or entertainment and prohibit those that may be inimical to the public health, welfare, safety, order, or convenience. In licensing trades, occupations, and professions, the city may, consistent with the general law of the State, require applicants for licenses to be examined and charge a reasonable fee therefor. Nothing in this section shall impair the city's power to levy privilege license taxes on occupations, businesses, trades, professions, and other activities pursuant to G.S. 160A-211.

Nothing in this section shall authorize a city to examine or license a person holding a license issued by an occupational licensing board of this State as to the profession or trade that he has been licensed to practice or pursue by the State.

"ARTICLE 9

"Taxation.

"§ 160A-206. **General power to impose taxes.** — A city shall have power to impose taxes only as specifically authorized by act of the General Assembly. Except when the statute authorizing a tax provides for penalties and interest, the power to impose a tax shall include the power to impose reasonable penalties for failure to declare tax liability, if required, or to impose penalties or interest for failure to pay taxes lawfully due within the time prescribed by law or ordinance. The power to impose a tax shall also include the power to provide for its administration in a manner not inconsistent with the statute authorizing the tax.

"§ 160A-207. **Remedies for collecting taxes.** — In addition to any other remedies provided by law, the remedies of levy, garnishment, and attachment shall be available for collecting any city tax under the rules and procedures prescribed by the Machinery Act for the enforcement of tax liability against personal property, except that:

- (1) the remedies shall become available on the due date of the tax and not before that time;
- (2) rules dependent on the existence of a lien against real property for the same tax shall not apply; and
- (3) the lien acquired by levy, garnishment, or attachment shall be inferior to any prior or simultaneous lien for property taxes acquired under the Machinery Act.

"§ 160A-208. **Continuing taxes.** — Except for taxes levied on property under the Machinery Act, a city may impose an authorized tax by a permanent ordinance that shall stand from year to year until amended or repealed, and it shall not be necessary to re-impose the tax in each annual budget ordinance.

"§ 160A-209. **Property taxes.** — (a) A city shall have power to levy taxes on property having a situs within the corporate limits of the city under the rules and according to the procedures prescribed by the Machinery Act. Unless otherwise specifically provided by the law, authority to engage in and undertake any function or activity shall include authority to levy property taxes to defray the expense thereof, subject to the limitations imposed by Article V, Sec. 2(5) of the Constitution of North Carolina.

(b) The property tax shall not be levied at an effective rate exceeding \$1.50 on each \$100 of appraised value of property subject to taxation before the application of any assessment ratio. This limitation shall not apply to property taxes levied for the purpose of paying the

principal and interest on bonds, notes, or other evidences of indebtedness, nor to special taxes levied for the purpose of meeting the expense of additional law enforcement personnel and equipment that may be required to suppress riots or other civil disorders involving an extraordinary breach of law and order within the jurisdiction of the city, nor to property taxes approved by a vote of the people.

"§ 160A-210. **Capitation tax.** — For the fiscal year 1971-1972, a city shall have power to levy a capitation tax not to exceed \$1.00 on persons subject to the county capitation tax. From and after July 1, 1972, cities may not levy capitation taxes.

"§ 160A-211. **Privilege license taxes.** — Except as otherwise provided by law, a city shall have power to levy privilege license taxes on all trades, occupations, professions, businesses, and franchises carried on within the city.

"§ 160A-212. **Animal taxes.** — A city shall have power to levy an annual license tax on the privilege of keeping any domestic animal, including dogs and cats, within the city. This section shall not limit the city's authority to enact ordinances under G.S.

160A-186.

"§ 160A-213. **Motor vehicle taxes.** — A city may impose an annual license tax on motor vehicles as permitted by G.S. 20-97.

"§ 160A-214. **Cable television franchise tax.** — A city may impose an annual franchise tax on cable television companies franchised under G.S. 160A-320 to operate within the city.

"ARTICLE 10.

"Special Assessments.

"§ 160A-216. **Authority to make special assessments.** — Any city is authorized to make special assessments against benefited property within its corporate limits for:

- (1) constructing, reconstructing, paving, widening, installing curbs and gutters, and otherwise building and improving streets;
- (2) constructing, reconstructing, paving, widening, and otherwise building or improving sidewalks in any public street;
- (3) constructing, reconstructing, extending, and otherwise building or improving water lines;
- (4) constructing, reconstructing, extending, and otherwise building or improving sanitary sewer lines; and
- (5) constructing, reconstructing, extending, and otherwise building or improving storm sewer and drainage systems.

"§ 160A-217. **Petition for street and sidewalk improvements.** — (a) A city shall have no power to levy special assessments for street and sidewalk improvements unless it receives a petition for the improvements signed by at least a majority in number of the owners of property to be assessed, who must represent at least a majority of all the lineal feet of frontage of the lands abutting on the street or portion thereof to be improved. Unless the petition specifies another percentage, not more than fifty percent (50%) of the cost of the improvement may be assessed (not including the cost of improvements made at street intersections).

(b) Property owned by the United States shall not be included in determining the lineal feet of frontage on the improvement, nor shall the United States be included in determining the number of owners of property abutting the improvement. Property owned by the State of North Carolina shall be included in determining frontage and the number of owners only if the State has consented to assessment in the manner provided in G.S. 160A-221. Property owned by railroad companies shall be included in determining frontage and the number of owners to the extent that the property is subject to assessment under G.S. 160A-222. Property owned by railroad companies that is not subject to assessment shall not be included in determining frontage and the number of owners. If it is necessary to exclude property owned by the United States, the State of North Carolina, or a railroad company in order to obtain a valid petition under subsection (a), not more than fifty percent (50%) of the cost (not including the cost of

improvement at street intersections) may be assessed unless all of the owners subject to assessment agree to a higher percentage.

(c) No right of action or defense asserting the invalidity of street or sidewalk assessments on grounds that the city did not comply with this section in securing a valid petition shall be asserted except in an action or proceeding begun within 90 days after publication of the notice of adoption of the preliminary assessment resolution.

"§ 160A-218. Basis for making assessments. — Assessments may be made on the basis of:

- (1) the frontage abutting on the project, at an equal rate per foot of frontage, or
- (2) the area of land served, or subject to being served, by the project, at an equal rate per unit of area, or
- (3) the value added to the land served by the project, or subject to being served by it, being the difference between the appraised value of the land without improvements as shown on the tax records of the county, and the appraised value of the land with improvements according to the appraisal standards and rules adopted by the county at its last revaluation, at an equal rate per dollar of value added; or
- (4) the number of lots served, or subject to being served, where the project involves extension of an existing system to a residential or commercial subdivision, at an equal rate per lot; or
- (5) a combination of two or more of these bases.

Whenever the basis selected for assessment is either area or value added, the council may provide for the laying out of benefit zones according to the distance of benefited property from the project being undertaken, and may establish differing rates of assessment to apply uniformly throughout each benefit zone.

For each project, the council shall endeavor to establish an assessment method from among the bases set out in this section which will most accurately assess each lot or parcel of land according to the benefit conferred upon it by the project. The council's decision as to the method of assessment shall be final and conclusive and not subject to further review or challenge.

"§ 160A-219. Corner lot exemptions. — The council shall have authority to establish schedules of exemptions from assessments for corner lots when a project is undertaken along both sides of such lots. The schedules of exemptions shall be based on categories of land use (residential, commercial, industrial, or agricultural) and shall be uniform for each category. The schedule of exemptions may not provide exemption of more than seventy-five percent (75%) of the frontage of any side of a corner lot, or 150 feet, whichever is greater.

"§ 160A-220. Lands exempt from assessment. — No lands within a city, except as herein provided, shall be exempt from special assessments except lands belonging to the United States that are exempt under the provisions of federal statutes.

"§ 160A-221. Assessments against lands owned by the State. — (a) When any city proposes to make local improvements that would benefit lands owned by the State of North Carolina or any board, agency, commission, or institution thereof, the council may request the Council of State to consent to special assessments against the property. The Council of State may authorize the Director of Administration to give consent for special assessments against State property, but the city may appeal to the Council of State if the Director of Administration refuses to give consent. When consent is given for special assessments against State lands, the Council of State may direct that the assessment be paid from the Contingency and Emergency Fund of the State of North Carolina or from any other available funds. If consent to the assessment is refused, the State-owned property shall be exempt from assessment.

"§ 160A-222. Assessments against railroads. — Assessments shall not be made against land owned, leased or controlled by a railroad company, except that if there is a building on the land, the portion of railroad property subject to assessment shall be a lot whose frontage equals the

actual front footage occupied by the building plus 25 feet on each side thereof, but not more than the amount of land owned, leased, or controlled by the railroad. If a building is placed on land that would have been subject to assessment but for the limitations imposed by this section after an improvement is made, then the railroad company shall be subject to an assessment without interest on the same basis as if the building had been on the property when the improvement was made.

It is the intent of this section to make uniform the law concerning assessments against railroads. To this end, all provisions of law, whether general or local, in conflict with this section are repealed; and no local act taking effect on or after January 1, 1972, shall be construed to modify, amend, or repeal any portion of this section unless it shall specifically so provide by reference hereto.

"§ 160A-223. Preliminary resolution; contents. — Whenever the council decides to finance a proposed project by special assessments, it shall first adopt a preliminary resolution that shall contain the following:

- (1) a statement of intent to undertake the project;
- (2) a general description of the nature and location of the project;
- (3) a statement as to the proposed basis for making assessments, which shall include a general description of the boundaries of the area benefited if the basis of assessment is either area or value added;
- (4) a statement as to the percentage of the cost of the work that is to be assessed;
- (5) a statement as to which, if any, assessments shall be held in abeyance and for how long;
- (6) a statement as to the proposed terms of payment of the assessment; and
- (7) an order setting a time and place for a public hearing on all matters covered by the preliminary resolution which shall be not earlier than three weeks nor later than ten weeks from the date of the adoption of the preliminary resolution.

"§ 160A-224. Notice of preliminary resolution. — At least 10 days before the date set for the public hearing, the council shall publish a notice that a preliminary assessment resolution has been adopted and that a public hearing will be held on it at a specified time and place. The notice shall generally describe the nature and location of the improvement. In addition, at least 10 days prior to the hearing, the council shall cause a copy of the preliminary resolution to be mailed to the owners, as shown on the county tax records, of all property subject to assessment if the project should be undertaken. The person designated to mail these resolutions shall file with the council a certificate showing that they were mailed -by first class mail and on what date. The certificate shall be conclusive as to compliance with the mailing provisions of this section in the absence of fraud.

"§ 160A-225. Hearing on preliminary resolution; assessment resolution. — At the public hearing, the council shall hear all interested persons who appear with respect to any matter covered by the preliminary resolution. After the public hearing, the council may adopt a resolution directing that the project or portions thereof be undertaken. The assessment resolution shall describe the project in general terms (which may be by reference to projects described in the preliminary resolution) and shall set forth the following:

- (1) the basis on which the special assessments shall be levied, together with a general description of the boundaries of the area benefited if the basis of assessment is either area or value added;
- (2) the percentage of the cost to be specially assessed;
- (3) the terms of payment, including the conditions under which assessments are to be held in abeyance, if any.

The percentage of cost to be assessed may not be different from the percentage proposed, and the projects authorized may not be greater in scope than the projects described in the

preliminary resolution. If the council decides that a different percentage of the cost should be assessed than that proposed in the preliminary resolution, or that any project should be enlarged, it shall adopt and advertise a new preliminary resolution as herein provided.

"§ 160A-226. Determination of costs. — When the project is complete, the council shall ascertain the total cost. In addition to construction costs, the cost of all necessary legal services, the amount of interest paid during construction, costs of rights of way, and the costs of publication of notices and resolutions may be included. The determination of the council as to the total cost of any project shall be conclusive.

"§ 160A-227. Preliminary assessment roll; publication. — When the total cost of a project has been determined, the council shall have a preliminary assessment roll prepared. The preliminary roll shall contain a brief description of each lot, parcel, or tract of land assessed, the basis for the assessment, the amount assessed against each, the terms of payment, and the name of the owner of each parcel of land as far as this can be ascertained from the county tax records. A map of the project on which is shown each parcel assessed with the basis of its assessment, the amount assessed against it, and the name of the owner, as far as this can be ascertained from the county tax records, shall be a sufficient assessment roll.

After the preliminary assessment roll has been completed, it shall be filed in the city clerk's office where it shall be available for public inspection. A notice of the completion of the assessment roll, setting forth in general terms a description of the project, noting the availability of the assessment roll in the clerk's office for inspection, and stating the time and place for a hearing on the preliminary assessment roll, shall be published at least ten days before the date set for the hearing on the preliminary assessment roll. The council shall also cause a notice of the hearing on the preliminary assessment roll to be mailed to the owners of property listed thereon at least ten days before the hearing. The notice mailed to each property owner shall give notice of the time and place of the hearing, shall note the availability of the preliminary assessment roll for inspection in the city clerk's office and shall state the amount of the assessment against the property of the owner as shown on the preliminary assessment roll. The person designated to mail these notices shall file with the council a certificate showing they were mailed by first class mail and on what date. Such a certificate shall be conclusive as to compliance with the mailing provisions of this section in the absence of fraud.

"§ 160A-228. Hearing on preliminary assessment roll; revision; confirmation; lien. — At the public hearing, which may be adjourned from time to time until all persons have had an opportunity to be heard, the council shall hear objections to the preliminary assessment roll from all interested persons who appear. Then or thereafter, the council shall annul, modify, or confirm the assessments, in whole or in part, either by confirming the preliminary assessments against any or all of the lots or parcels described in the preliminary assessment roll, or by canceling, increasing, or reducing them as may be proper in compliance with the basis of assessment. If any property is omitted from the preliminary assessment roll, the council may place it on the roll and levy the proper assessment. Whenever the council confirms assessments for any project, the city clerk shall enter in the minutes of the council the date, hour, and minute of confirmation. From and after the time of confirmation the assessments shall be a lien on the property assessed of the same nature and to the same extent as the lien for county and city property taxes, and shall be superior to all other liens and encumbrances of whatsoever nature. After the assessment roll is confirmed, a copy of it shall be delivered to the city tax collector for collection in the same manner as property taxes, except as herein provided.

"§ 160A-229. Publication of notice of confirmation of assessment roll. — After the expiration of 20 days from the confirmation of the assessment roll, the city tax collector shall publish once a notice that the assessment roll has been confirmed, and that assessments may be paid without interest at any time before the expiration of 30 days from the date that the notice is published, and that if they are not paid within this time, all installments thereof shall bear interest as provided in G.S. 160A-233.

"§ 160A-230. **Appeal to General Court of Justice.** — 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 the assessment, he may, within ten days after the confirmation of the assessment roll, file a notice of appeal to the appropriate division of the General Court of Justice. He shall then have twenty days after the confirmation of the assessment roll to serve on the council or the city clerk a statement of facts upon which the appeal is based. The appeal shall be tried like other actions at law.

"§ 160A-231. **Reassessment.** — The council shall have the power, when in its judgment any irregularity, omission, error or lack of jurisdiction in any of the proceedings related thereto, has occurred, to set aside the whole of any special assessment made by it and thereupon to make a reassessment. In that case, all additional interest paid, or to be paid, as a result of the delay in confirming the assessment shall be included as a part of the project cost. The proceeding shall, as far as practicable, in all respects take place as it had with the original assessments, and the reassessment shall have the same force as if it had originally been properly made.

"§ 160A-232. **Payment of assessments in cash or by installments.** — The owners of assessed property shall have the option, within 30 days after the publication of the notice that the assessment roll has been confirmed, of paying the assessment either in cash or in not more than ten annual installments, as may have been determined by the council in the resolution directing the project giving rise to the assessment to be undertaken. With respect to payment by installment, the council may provide (1) that the first installment with interest shall become due and payable on the date when property taxes are due and payable, and one subsequent installment and interest shall be due and payable on the same date in each successive year until the assessment is paid in full, or (2) that the first installment with interest shall become due and payable 60 days after the date that the assessment roll is confirmed, and one subsequent installment and interest shall be due and payable on the same day of the month in each successive year until the assessment is paid in full.

"§ 160A-233. **Enforcement of assessments; interest; foreclosure; limitations.** — (a) Any portion of an assessment that is not paid within 30 days after publication of the notice that the assessment roll has been confirmed shall bear interest until paid at a rate to be fixed in the assessment resolution but not more than eight per cent (8%) per annum.

(b) If any installment of an assessment is not paid on or before the due date, all of the installments remaining unpaid shall immediately become due and payable, unless the council waives acceleration. The council may waive acceleration and permit the property owner to pay all installments in arrears together with interest due thereon and the cost to the city of attempting to obtain payment. If this is done, the remaining installments shall be reinstated so that they fall due as if there had been no default. Waiver of acceleration and reinstatement of future installments may be done at any time before foreclosure proceedings have been instituted.

(c) Assessment liens may be foreclosed under any procedure prescribed by law for the foreclosure of property tax liens, except that lien sales and lien sale certificates shall not be required, and foreclosure may be begun at any time after 30 days after the due date. The city shall not be entitled to a deficiency judgment in an action to foreclose an assessment lien. The lien of special assessments shall be inferior to all prior and subsequent liens for State, local, and federal taxes, and superior to all other liens.

(d) No city may maintain an action or proceeding to enforce any remedy for the foreclosure of special assessment liens unless the action or proceeding is begun within 10 years from the date that the assessment or the earliest installment thereof included in the action or proceeding became due. Acceleration of installments under subsection (b) shall not have the effect of shortening the time within which foreclosure may be begun, but in that event the statute of limitations shall continue to run as to each installment as if acceleration had not occurred.

"§ 160A-234. **Assessments on property held by tenancy for life or years.** — (a) Assessments upon real property in the possession or enjoyment of a tenant for life, or a tenant for a term of years, shall be paid pro rata by the tenant and the remaindermen after the life estate, or the owner in fee after the expiration of the tenancy for years according to their respective interests in the land calculated as provided in G.S. 37-13.

(b) If any person having an interest in land held by tenancy for life or years shall pay more than his pro rata share of any assessment against the property, he shall have the right to maintain an action in the nature of a suit for contribution against the delinquent party to recover from him his pro rata share of the assessment, with interest thereon from the date of payment, and shall be subrogated to the right of the city to a lien on the property for the same.

"§ 160A-235. **Lien in favor of a co-tenant or joint owner paying special assessments.** — Any one of several tenants in common, or joint tenants, or co-partners shall have the right to pay the whole or any part of any special assessment levied against property held jointly or in common, and all sums by him so paid in excess of his share of the assessment, interests, costs, and amounts required for redemption, shall constitute a lien upon the shares of his co-tenants or associates, which he may enforce in proceedings for partition, actual or by sale, or in any other appropriate judicial proceeding. The lien herein provided for shall not be effective against an innocent purchaser for value unless and until notice thereof is filed in the office of the clerk of superior court in the county in which the land lies and indexed and docketed in the same manner as other liens required by law to be filed in the clerk's office.

"§ 160A-236. **Apportionment of assessments.** — When special assessments are made against property which has been or is about to be subdivided, the council may, with the consent of the owner of the property, apportion the assessment among the lots or tracts within the subdivision, or release certain lots or tracts from the assessments if, in the opinion of the council, some of the lots or tracts in the subdivision are not benefited by the project. Upon an apportionment, each of the lots and tracts in the subdivision shall be released from the lien of the original assessment, and the portions of the original assessment assessed against each lot or tract shall have the same force and effect as the original assessment as to the particular lot or tract assessed. At the time of making an apportionment under this section, the council shall enter on its minutes a statement to the effect that the apportionment is made with the consent of the owners of the property affected, and this entry shall be conclusive in the absence of fraud. Reassessments made under this section may include past due installments of principal and interest as well as installments not then due, and any installments not then due shall fall due at the same dates as they would have under the original assessment. The council may delegate authority to make apportionment of assessments to the chief financial officer, but apportionments shall in all cases be reported to the council at its next regular meeting and entered in the minutes.

"ARTICLE 11.

"Eminent Domain.

"§ 160A-240. **Definitions.** — As used in this Article, the following words and phrases have the meanings indicated unless the context clearly requires another meaning:

- (1) 'Property' means any right, title, or interest in land, including leases and options to buy or sell. 'Property' also includes rights of access, rights-of-way, easements, water rights, air rights, and any other privilege or appurtenance in or to the possession, use, and enjoyment of land.
- (2) 'Owner' includes the plural when appropriate and means any person holding a vested estate of inheritance in the property, a tenant for life or for years, tenants by the entirety, the holder of the equity of redemption under a mortgage, and the grantor and third party beneficiary under a deed of trust. Unless otherwise provided, 'owner' does not include persons holding liens,

- judgments, options, or any other encumbrances of record on the title to the property, or persons holding unvested future interests in the property.
- (3) 'Person' includes the plural when appropriate and means a natural person, association, partnership, corporation, the State of North Carolina, the United States of America, a body politic and corporate, and any other legal entity capable of owning or having any interest in property under the laws of North Carolina.
 - (4) 'Eminent domain' means the power to divest title from the owner of property and vest it in the possessor of the power against the will of the owner upon the payment of just compensation for the right, title, and interest divested.
 - (5) 'Condemnation' means the procedure prescribed by law for exercising the power of eminent domain.

"§ 160A-241. Power of eminent domain conferred. — In addition to powers conferred by any other general law, charter, or local act, each city shall possess the power of eminent domain and may acquire by purchase or condemnation any property necessary or useful for the following purposes:

- (1) Opening, widening, extending, or improving streets, alleys, sidewalks, and public wharves.
- (2) Establishing, extending, enlarging, or improving any of the public enterprises listed in G.S. 160A-311.
- (3) Establishing or enlarging parks, playgrounds, and other recreational facilities.
- (4) Establishing, extending, enlarging, or improving storm sewer and drainage systems and works.
- (5) Establishing, enlarging, or improving cemeteries.
- (6) Constructing, enlarging, or improving city halls, fire stations, office buildings, and other buildings for use by any city department.

The power to acquire property by condemnation shall not depend on any prior effort to acquire the same property by grant or purchase, nor shall the power to negotiate for the grant or purchase of property be impaired by initiation of condemnation proceedings for acquisition of the same property.

In exercising the power of eminent domain, a city may in its discretion use the procedures of Article 2 of Chapter 40 of the General Statutes, or the procedures of this Article, or the procedures of any other general law, charter, or local act applicable to the city.

"§ 160A-242. Acquisition of whole parcel or building. — (a) When the proposed right-of-way of a street or highway requires condemnation of only a portion of a parcel of land leaving a remainder of such shape, size or condition that it is of little value, a city may acquire the entire parcel by purchase or condemnation. If the remainder is to be included in the land described in the preliminary and final condemnation resolutions, the resolutions shall include:

- (1) determination by the council that a partial taking of the land would substantially destroy the economic value or utility of the remainder, or
- (2) a determination by the council that an economy in the expenditure of public funds will be promoted by taking the entire parcel, or
- (3) a determination by the council that the interest of the public will be best served by acquiring the entire parcel.

(b) Residues acquired under this section may be sold or disposed of in the manner provided for the disposition of city property, or may be exchanged for other property needed by the city.

(c) When the proposed right-of-way of a street or highway requires condemnation of a portion of a building or other structure, the city may acquire the entire building or structure by purchase or condemnation, together with the right to enter upon the surrounding land for the

purpose of removing the building or structure. If the entire building is to be included in the property described in the preliminary and final condemnation resolutions, the resolutions shall include a determination by the city council either

- (1) that an economy in the expenditure of public funds will be promoted by acquiring the entire building or structure; or
- (2) that it is not feasible to cut off a portion of the building or structure without destroying the whole; or
- (3) that the convenience, safety, or improvement of the street or highway will be promoted by acquiring the entire building or structure.

Nothing in this section shall be deemed to compel the city to condemn the underlying fee of the portion of any building or structure that lies outside the right-of-way of any existing or proposed street or highway.

"§ 160A-243. Limitations upon power of eminent domain. — (a) A city shall not possess the power of eminent domain with respect to property owned by the State of North Carolina unless the State consents to the taking. The State's consent shall be given by the Council of State, or by the Director of Administration if the Council of State delegates this authority to him. In a condemnation proceeding against State property consented to by the State, the only issue shall be the compensation to be paid for the property by the city. Therefore, the preliminary condemnation resolution shall not be required, but all other procedures prescribed by this Article shall be followed.

(b) A city shall possess the power of eminent domain with respect to property owned by a county, another city, or a municipal corporation organized for a special purpose only if the property proposed to be taken is not being used or is not needed for any governmental or proprietary purpose.

(c) A city shall possess the power of eminent domain for the purpose of acquiring the fee or any lesser interest in properties already devoted to the public use and owned by a public service corporation, including public utilities as defined in Chapter 62 of the General Statutes and electric and telephone membership corporations, only if such acquisition will not prevent or unreasonably impair the continued devotion to the public use of such properties and their operation by such public service corporation.

"§ 160A-244. Fee simple title acquired. — Unless otherwise expressly provided in the preliminary and final condemnation resolutions, condemnation shall vest in the city an estate in fee simple absolute to the property acquired.

"§ 160A-245. Rules of Civil Procedure applicable. — All notices required to be served by this Article shall be served in the manner prescribed for service of summons in a civil action by Rule 4(k) of the Rules of Civil Procedure (G.S. 1A-1). Appointment of and service of notice on guardians ad litem shall be done in the manner prescribed by Rule 17 of the Rules of Civil Procedure (G.S. 1A-1). In all other respects, the procedure to be followed in exercise of the power of eminent domain by a city shall be that prescribed in this Article supplemented when necessary or appropriate by the procedures prescribed by the Rules of Civil Procedure in general and in particular by those portions of the Rules of Civil Procedure governing proceedings in which jurisdiction is derived primarily from the presence of property in the State of North Carolina.

"§ 160A-246. Preliminary condemnation resolution. — (a) Condemnation shall begin with the city council's adoption of a preliminary condemnation resolution containing substantially the following:

- (1) description of each lot, tract, parcel of land, or body of water in which property rights are to be acquired;
- (2) the nature of the right, title, or interest to be acquired in the property, including a description of the location of any easement or other right in property that can be located on the ground, but is less than an estate in fee;

- (3) a statement of the purpose for which the property is to be acquired;
- (4) a statement as to whether the owner will be permitted to remove all or a specified portion of any buildings, structures, permanent improvements, or fixtures situated on or affixed to the property;
- (5) the name and address of the owner of the property and all other persons known to have an interest in the property, including the holders of vested or contingent future interests, the holders of liens, options, judgments, or other encumbrances on the title to the property; the holder of the equity of redemption under a mortgage; and the grantor and third party beneficiary under a deed of trust. Persons known to have an interest in the property but whose names or addresses cannot be ascertained with reasonable diligence and expense may be named as 'unknown persons' or addressed as 'address unknown.' A person's interest in property shall be deemed known if it appears of record, or could or would be discovered by the exercise of reasonable diligence and expense.
- (6) a statement and notice as to the composition, method of selection, time and place of first meeting, and general duties of the board of appraisers;
- (7) the name of the member of the board of appraisers appointed by the city.

(b) Unless the preliminary condemnation resolution specifically provides otherwise, the description of a parcel of land and the statement of intention to acquire title to it in fee simple absolute shall be deemed to include all buildings, structures, permanent improvements, and fixtures situated on or affixed to the land, and all privileges, appurtenances, and other property rights running with the land.

(c) The preliminary condemnation resolution shall initiate condemnation against all property described and all parties named therein. It shall not be necessary to initiate separate proceedings against each individual lot, tract, or parcel of land or each individual owner, but the resolution shall be limited to condemnation for a single project or purpose, and to property under common ownership.

"§ 160A-247. Preliminary condemnation resolution served on owners. — A copy of the preliminary condemnation resolution shall be served on all persons named as owners or parties therein.

"§ 160A-248. Board of appraisers. — (a) The property described in the preliminary condemnation resolution shall be appraised by a board of appraisers composed of one person appointed by the city (who shall be named in the preliminary condemnation resolution), one person appointed by the owner, and one person appointed jointly by the other two appraisers. Each appraiser shall be a freeholder of the city who has no right, title, or interest in or to the property being condemned, is not related by blood or marriage to any of the owners, is not an officer, employee, or agent of the city, and is disinterested in the rights of the parties in every way. Either the city or the owner may reject an appraiser appointed by the other or by the city's and owner's appraiser if the person so appointed is not disinterested. Notice of rejection of an appraiser shall be given within 48 hours of his appointment or else the right to object shall be deemed to have been waived. If an appointment is rejected, the city or owner shall immediately appoint another appraiser and shall give notice of this action to the other parties.

(b) The owner's appraiser shall be appointed and his name reported to the city clerk within 15 days after the resolution has been served on all owners. If there is more than one owner, the appointment shall be made by those having a majority in interest in the property. For purposes of appointing an appraiser, the holders of future interests whether vested or contingent, the holder of the equity of redemption under a mortgage, and the grantor and third party beneficiary under a deed of trust shall not be considered owners.

(c) If the owner fails to appoint an appraiser within the time allowed, or if the owner's appraiser and the city's appraiser fail to agree upon appointment of the third appraiser, the city

may apply to the clerk of superior court of the county in which the land lies for appointment of either an appraiser to represent the owner or the third appraiser, as appropriate.

(d) Each appraiser shall take an oath or affirmation that he will fairly and impartially discharge his duties as an appraiser.

"§ 160A-249. Meetings of board of appraisers. — (a) The first meeting of the board of appraisers shall be convened at or near the site of the property being condemned at the time fixed by the preliminary condemnation resolution. The board of appraisers shall first view the property to be acquired and then hear any evidence presented by the owner or the city as to the damages and benefits that will result from the proposed condemnation. The evidence need not be reduced to writing unless one of the parties demands a hearing on the record, in which event he shall bear the cost of the transcript. The hearing of evidence need not be held at the site of the property if this is not convenient, and the appraisers may retire to some suitable place immediately after viewing the property.

(b) If for any reason the first meeting of the board of appraisers cannot be held at the time fixed in the preliminary condemnation resolution or at the site of the property being condemned, the appraisers may fix another time or place and shall serve notice of the change in time or place upon each person upon whom the preliminary condemnation was served. Notice changing the time and place of the first meeting shall be served not later than 5 days before the date of the meeting.

(c) The board of appraisers may adjourn the first meeting to any other time or place to hear additional evidence, or it may hold additional meetings. No notice need be given of an adjourned meeting if the time and place of the adjourned meeting were fixed before the close of the first or the adjourned meeting. Notice of additional meetings shall be given as provided for a change in the time or place of the first meeting if they are to be held to hear evidence, but not otherwise.

"§ 160A-250. Report of Board of appraisers. — (a) The board of appraisers shall determine the compensation to be paid to the owner by the city for its acquisition of the property. In determining the compensation, the appraisers shall take into consideration both the loss or damage that will result to the owner from the acquisition and any benefits that will inure to any remainder of the property from the improvement or project for which the property is being condemned. Benefits shall include both benefits or advantages special to the property and benefits or advantages to the property in common with other property affected by the improvement or project. If the owner is to be allowed to remove any building or other permanent improvement or fixtures from the property, the value thereof shall not be included in the compensation award, but the cost of removal shall be considered as an element of damages.

(b) When it has determined damages and benefits, the board of appraisers shall make its report to the city council. The Board shall report within 30 days of its appointment, unless the council allows a longer time. The report shall show separately the amount of damage, the amount of benefits, and the amount of compensation to be paid to the owner. The report shall be sufficient if it is concurred in by two of the three appraisers. If no two of the appraisers can agree upon a report, or if the Board fails to report within the time allowed, a new board of appraisers may be appointed in the same manner as the original board and shall follow the same procedure required of the original board.

"§ 160A-251. Council action on report. — Within 30 days after the board of appraisers' report is submitted to the council, the council shall decide what action it will take thereon. If the council decides to abandon the condemnation, it shall adopt a resolution to that effect. Failure of the city to take any action within 80 days after the report has been submitted shall be deemed an abandonment of the condemnation.

Abandonment of condemnation shall not preclude the city from thereafter instituting another proceeding to acquire the property included in the abandoned proceedings.

"§ 160A-252. **Final resolution of condemnation.** — If the council decides to proceed with the condemnation and acquire the property described in the preliminary condemnation resolution after considering the report of the board of appraisers, it shall adopt a final condemnation resolution containing substantially the following provisions:

- (1) a recital that a board of appraisers has been appointed to determine the compensation to be paid for the property acquired and that the appraisers have submitted their report to the council;
- (2) a statement of the amount of damages and benefits and the amount of compensation to be paid to the owner as fixed by the board of appraisers;
- (3) a statement that the city hereby acquires the property described herein under the power of eminent domain;
- (4) a description of each lot, tract, or parcel of land or body of water in which property rights are acquired and the nature and extent of the estate or rights acquired in each, including a description of the location of any easement, right-of- way, or right of access acquired;
- (5) a statement of the purpose for which the property is acquired;
- (6) the names of the owner and all other persons made a party to the proceeding;
- (7) the determination of the council as to the time when the city will take possession of the property or begin to exercise the property rights acquired, and a direction that the premises be vacated or control over the rights acquired relinquished by such time;
- (8) if the owner is allowed to remove any building or portion thereof or any permanent improvements or fixtures from the property, a direction that these buildings, improvements, or fixtures be removed before the date fixed for possession or control together with notice of the city's right to remove them and the lien therefor provided by G.S. 160A-260;
- (9) a statement that the owner has 45 days within which to give notice of appeal to the General Court of Justice.

"§ 160A-253. **Service of final resolution of condemnation.** — A copy of the final condemnation resolution shall be served upon each person named therein by registered mail to his last known address. Service on persons whose name or address is unknown shall be by publication in the manner prescribed by Rule 4(j)(9)a of the Rules of Civil Procedure. Personal service of the final condemnation resolution shall not be required.

"§ 160A-254. **Vesting of title in city.** — Title to the property being acquired shall vest in the city as between the city and the owners and other parties named in the final condemnation resolution on the date specified in the resolution, or if no date is specified on the date the final condemnation resolution is adopted. The resolution shall have the effect of a judgment against the city for the amount of compensation fixed by the board of appraisers. Title shall not vest in the city as to persons not named in the final condemnation resolution until it has been recorded and indexed in the office of the register of deeds of the county in which the property or any portion thereof is located. The city shall not be entitled to possession of the property until the owners have been paid in full or a deposit of award has been made in accordance with G.S. 160A-258. If there is any dispute or doubt as to who is entitled to receive the compensation, and the owners have not appealed, the city may deposit the compensation with the clerk of superior court and upon making the deposit shall be entitled to immediate possession of the property.

"§ 160A-255. **Appeal to General Court of Justice.** — Any party to a condemnation proceeding, including the city, may appeal the proceeding to the appropriate division of the General Court of Justice, but the city may appeal only as to the issue of compensation. Notice of appeal shall be given within 10 days from the date that the final resolution of condemnation is adopted, and shall be served on all parties to the proceeding by registered mail to their last

known address. An appeal shall not delay the vesting in the city of title to the property or hinder the city in any way from proceeding with the project or improvement for which the property was acquired, except that if the appeal is by a party described in G.S. 160A-243(b) or (c), vesting of title in the city shall be suspended until the court has rendered final judgment on the power of the city to acquire the property and the amount of compensation to be paid. In an appeal by a party described in G.S. 160A-243(b), the court may, in its discretion, reduce the amount of property that may be acquired by the city.

"§ 160A-256. Record on appeal. — Upon an appeal the city clerk shall certify copies of all records in the condemnation proceeding to the appropriate division of the General Court of Justice. The appeal shall be tried like other actions at law. The record on appeal shall consist of the preliminary condemnation resolution, the proofs of service of all notices required to be served, the oaths of the members of the board of appraisers, the report of the board of appraisers, the transcript of testimony before the board of appraisers, if any; the final condemnation resolution; and the notice of appeal. The record on appeal, or any portion thereof, shall be competent as evidence in the trial of an appeal. The trial of the issue of damages upon an appeal shall be de novo.

"§ 160A-257. Registration of condemnation proceedings. — A copy of the final condemnation resolution, and any judgment modifying any portion thereof as to the nature and extent of the property acquired, shall be certified by the city clerk, and recorded in the office of the register of deeds of the county in which the property is located.

"§ 160A-258. Deposit of award. — At any time following an appeal, the city may deposit with the clerk of superior court a sum of money equal to the compensation determined by the board of appraisers if the appealing party is the owner, or a sum estimated by the city to be just compensation for the taking if the city is an appealing party. The owners may apply to the clerk for disbursement of the money deposited in court, or any portion thereof, as full compensation, or as a credit against just compensation without prejudice to further proceedings in the cause. Upon such application, the clerk shall order that the money deposited be paid to the persons entitled thereto in accordance with the application. The clerk shall have power to make such orders with respect to encumbrances, liens, rents, taxes, assessments, insurance, and other charges, if any, as shall be just and equitable.

"§ 160A-259. Interest on award. — The amount awarded as damages by judgment of the General Court of Justice shall include interest at six per cent (6%) per annum on the award from the date of taking to the date of judgment unless a deposit of award has been made. Interest on a court award shall not be allowed from the date of a deposit of award as provided by G.S. 160A-258 on whatever portion thereof has been paid into court as provided in that section.

"§ 160A-260. Removal of structures on condemned land; lien. — The city may allow the owner of property acquired by condemnation to remove any building, permanent improvement, or fixture wholly or partially located on or affixed to the property, and may specify a time after adoption of the final condemnation resolution within which it may be removed. If the report of the board of appraisers deducted the value of any such property to be removed from the award of compensation and allowed the cost of removal as an element of damages and the owner fails to remove it within the time allowed, the city may remove it and the cost of the removal and storage of the property shall be chargeable against the owner and a lien upon any remainder of the property not acquired by the city, to be recovered or foreclosed in the manner provided by law for recovery of debt or foreclosure of mortgages.

"§ 160A-261. Sale or other disposition of land condemned. — When any land condemned in fee by the city is no longer needed for the purpose for which it was condemned, it may be used for any other public purpose or may be sold or disposed of in the manner prescribed by law for the sale and disposition of surplus property.

"§ 160A-262. **Article supplementary to other laws.** — This article is supplementary to any other laws, whether general or local, conferring the power of eminent domain and prescribing a procedure for the exercise thereof, and shall not be construed to repeal or amend any portion of any such laws.

"ARTICLE 12.

"Sale and Disposition of Property.

"§ 160A-266. **Methods of sale; limitation.** — (a) Subject to the limitations prescribed in subsection (b) of this section, and according to the procedures prescribed in this Article, a city may dispose of any real or personal property belonging to the city by:

- (1) private negotiation and sale;
- (2) advertisement for sealed bids;
- (3) negotiated offer, advertisement, and upset bid; or
- (4) public auction.

(b) Private negotiation and sale may be used only (i) with respect to personal property valued at less than \$5,000 for any one item or group of similar items, or (ii) with respect to the exchange of facilities of a city-owned enterprise for like facilities located within or outside the corporate limits. Real property and personal property valued at \$5,000 or more for any one item or group of similar items may be sold by any method permitted by this Article other than private negotiation and sale, or may be exchanged as permitted by this subsection.

"§ 160A-267. **Private sale.** — When the council proposes to dispose of property by private sale, it shall at a regular council meeting adopt a resolution or order authorizing an appropriate city official to dispose of the property by private sale at a negotiated price. The resolution or order shall identify the property to be sold and may, but need not, specify a minimum price. The resolution or order shall be published once after its adoption, and no sale shall be consummated thereunder until 10 days after its publication.

"§ 160A-268. **Advertisement for sealed bids.** — The sale of property by advertisement for sealed bids shall be done in the manner prescribed by law for the purchase of property, except that in the case of real property the advertisement for bids shall be begun not less than 30 days before the date fixed for opening bids.

"§ 160A-269. **Negotiated offer, advertisement, and upset bids.** — A city may receive, solicit, or negotiate an offer to purchase property and advertise it for upset bids. When an offer is made and the council proposes to accept it, the council shall require the offeror to deposit five percent (5%) of his bid with the city clerk, and shall publish a notice of the offer. The notice shall contain a general description of the property, the amount and terms of the offer, and a notice that within 10 days any person may raise the bid by not less than ten percent (10%) of the first \$1,000 and five percent (5%) of the remainder. When a bid is raised, the bidder shall deposit with the city clerk five percent (5%) of the increased bid, and the clerk shall re-advertise the offer at the increased bid. This procedure shall be repeated until no further qualifying upset bids are received, at which time the council may accept the offer and sell the property to the highest bidder for cash. The council may at any time reject any and all offers.

"§ 160A-270. **Public auction.** — When it is proposed to sell real or personal property by public auction, the council shall first adopt a resolution authorizing the sale, describing the property to be sold, specifying the date, time, place, and terms of sale, and stating that any offer or bid must be accepted and confirmed by the council before the sale will be effective. The resolution may, but need not, require that the highest bidder at the sale make a bid deposit in an amount specified in the resolution. The council shall then publish a notice of the sale once 30 days before the sale. The notice shall contain a general description of the land sufficient to identify it, the terms of the sale, and a reference to the authorizing resolution. After bids have been received, the highest bid shall be reported to the council, and the council shall accept or reject it within 30 days thereafter. If the bid is rejected, the council may re-advertise the property for sale.

"§ 160A-271. Exchange of property. — A city may exchange any real property belonging to the city for other real property by private negotiation if the city receives a full and fair consideration in exchange for its property. Property shall be exchanged only pursuant to a resolution authorizing the exchange adopted at a regular meeting of the council upon 10 days' public notice. Notice shall be given by publication describing the properties to be exchanged, stating the value of the properties and other consideration changing hands, and announcing the council's intent to authorize the exchange at its next regular meeting.

"§ 160A-272. Lease or rental of property. — Any property owned by a city may be leased or rented for such terms and upon such conditions as the council may determine, but not for longer than 10 years (except as otherwise provided herein) and only if the council determines that the property will not be needed by the city for the term of the lease. Subject to G.S. 160A-321, a city-owned utility or public service enterprise may be leased for a period of more than 10 years. In determining the term of a proposed lease, periods that may be added to the original term by options to renew or extend shall be included. Property may be rented or leased only pursuant to a resolution of the council authorizing the execution of the lease or rental agreement adopted at a regular council meeting upon 10 days' public notice. Notice shall be given by publication describing the property to be leased or rented, stating the annual rental or lease payments, and announcing the council's intent to authorize the lease or rental at its next regular meeting.

No public notice need be given for resolutions authorizing leases or rentals for terms of one year or less, and the council may delegate to the city manager or some other city administrative officer authority to lease or rent city property for terms of one year or less. Leases for terms of more than 10 years shall be treated as a sale of property and may be executed by following any of the procedures authorized for sale of real property.

"§ 160A-273. Grant of easements. — A city shall have authority to grant easements over, through, under, or across any city property or the right-of-way of any public street or alley that is not a part of the State highway system. Easements in a street or alley right-of-way shall not be granted if the easement would substantially impair or hinder the use of the street or alley as a way of passage. A grant of air rights over a street right-of-way or other property owned by the city for the purpose of erecting a building or other permanent structure (other than utility wires or pipes) shall be treated as a sale of real property, except that a grant of air rights over a street right-of-way for the purpose of constructing a bridge or passageway between existing buildings on opposite sides of the street shall be treated as the grant of an easement.

"§ 160A-274. Sale, lease, exchange, and joint use of governmental property. — (a) For the purposes of this section, "governmental unit" means a city, county, school administrative unit, sanitary district, fire district, the State, or any other public district, authority, department, agency, board, commission, or institution.

(b) Any governmental unit may, upon such terms and conditions as it deems wise, exchange with, lease to, lease from, sell to, purchase from, or enter into agreements regarding the joint use by any other governmental unit of any interest in real or personal property that it may own.

(c) Action under this section shall be taken by the governing body of the governmental unit. Action hereunder by any State agency, except the State Highway Commission, shall be taken only after approval by the Division of Property Control of the Department of Administration. Action with regard to State property under the control of the State Highway Commission shall be taken by the Commission or its duly authorized delegate.

"§ 160A-275. Warranty deeds. — Any city, county, or other municipal corporation is authorized to execute and deliver deeds to any real property with full covenants of warranty, without regard to how the property was acquired, when, in the opinion of the governing body, it is in the best interest of the city, county, or other municipal corporation to convey by warranty deed. Members of the governing boards of counties, cities, and other municipal corporations

are hereby relieved of any personal or individual liability by reason of the execution of warranty deeds to governmentally-owned property unless they act in fraud, malice, or bad faith.

"ARTICLE 13.

"Law Enforcement.

"§ 160A-281. **Policemen appointed.** — A city is authorized to appoint a chief of police and to employ other police officers who may reside outside the corporate limits of the city if the council shall permit.

"§ 160A-282. **Auxiliary police.** — A city may by ordinance provide for the organization of an auxiliary police department made up of volunteer members. While undergoing official training and while performing duties on behalf of the city pursuant to orders or instructions of the chief of police of the city, auxiliary policemen shall be entitled to all powers, privileges, and immunities afforded by law to regularly employed policemen, including benefits under the North Carolina Workmen's Compensation Act.

"§ 160A-283. **Oath of office.** — Each person appointed or employed as chief of police, policeman, or auxiliary policeman shall take and subscribe before some person authorized by law to administer oaths the oath of office required by Article VI, Sec. 7, of the Constitution. The oath shall be filed with the city clerk. The offices of policeman, chief of police, and auxiliary policeman are hereby declared to be offices that may be held concurrently with any other appointive office pursuant to Article VI, Sec. 9, of the Constitution.

"§ 160A-284. **Powers and duties of policemen.** — As a peace officer, a policeman shall have within the corporate limits of the city all of the powers invested in law enforcement officers by statute or common law. He shall also have power to serve all civil and criminal process that may be directed to him by any officer of the General Court of Justice and may enforce the ordinances and regulations of the city as the council may direct.

"§ 160A-285. **Extraterritorial jurisdiction of policemen.** — In addition to their authority within the corporate limits, city policemen shall have all the powers invested in law enforcement officers by statute or common law within one mile of the corporate limits of the city.

When any offense is committed within the corporate limits of a city or within its extraterritorial jurisdiction under circumstances that would authorize a police officer to arrest the offender without a warrant, the officer may pursue the offender outside the corporate limits and outside the city's extraterritorial jurisdiction for a distance of not more than three miles from the corporate limits for the purposes of making an arrest. Any officer pursuing an offender outside the corporate limits or extraterritorial jurisdiction of the city shall be entitled to all of the privileges, immunities, and benefits to which he would be entitled if acting within the city, including coverage under the workmen's compensation laws.

"§ 160A-286. **City lock-ups.** — A city shall have authority to establish, erect, repair, maintain and operate a lock-up for the temporary detention of prisoners pending their transferal to the county or district jail or the State Department of Corrections.

"§ 160A-287. **Law enforcement officers of one political subdivision to assist officers of another political subdivision upon request.** — (a) Any political subdivision of the State upon the request of any other political subdivision of the State may send any law enforcement officer or officers to assist the law enforcement officers of the requesting political subdivision in the performance of their duties in cases of emergency. A complete record of the request and sending together with the names of the officers sent shall be recorded in the minutes of the next regular or special meeting of the governing bodies of both the requesting and the sending political subdivisions.

(b) This assistance shall be rendered only in emergencies, which shall be declared by the chief elected official of the requesting political subdivision, or, in his absence, the person normally acting in his stead during his absence. But no political subdivision shall request or send law enforcement officers unless the requesting and sending political subdivisions have a

prior agreement to do so, which agreement shall be spread upon the minutes of both governing bodies and duly signed. This agreement may provide for reimbursing the sending political subdivision for the services of the law enforcement officers to be sent and any other expenses involved in the sending.

(c) When law enforcement officers are sent to another political subdivision pursuant to this section, the jurisdiction, authority, rights, privileges and immunities, including coverage under the workmen's compensation laws, which they have in the sending political subdivision shall extend to and include the area in which like benefits and authorities are or could be afforded to the law enforcement officers of the requesting political subdivision and the area between the two political subdivisions when the officer or officers are acting within the scope of the authority conferred by this section. When so sent, they shall have the same authority to make arrests and to execute criminal process as the law vests in the law enforcement officers of the requesting political subdivision, but this section shall not extend the effect of the laws of the sending political subdivision.

"§ 160A-288. Training and development programs for law enforcement. — A city shall have authority to plan and execute training and development programs for law enforcement agencies, and for that purpose may

- (1) contract with other cities, counties, and the State and federal governments and their agencies;
- (2) accept, receive, and disburse funds, grants, and services;
- (3) create joint agencies to act for and on behalf of participating counties and cities;
- (4) make applications for, receive, administer, and expend federal grant funds; and
- (5) appropriate and expend available tax or nontax funds.

"ARTICLE 14.

"Fire Protection.

"§ 160A-291. Firemen appointed. — A city is authorized to appoint a fire chief; to employ other firemen; to establish, organize, equip, and maintain a fire department; and to prescribe the duties of the fire department.

"§ 160A-292. Duties of fire chief. — Where not otherwise prescribed, the duties of the fire chief shall be to preserve and care for fire apparatus, have charge of fighting and extinguishing fires and training the fire department, seek out and have corrected all places and conditions dangerous to the safety of the city and its citizens from fire, and make annual reports to the council concerning these duties.

"§ 160A-293. Fire protection outside city limits; immunity; injury to firemen. — (a) A city may install and maintain water mains, pipes, hydrants, buildings and equipment outside its corporate limits and may send its firemen and equipment outside its corporate limits to provide fire protection to rural or unincorporated areas pursuant to agreements between the city and the county, or between the city and the owner of the property to be protected. Counties are hereby authorized to enter into these agreements and to make from tax funds any payments agreed upon for rural fire protection.

(b) No city or any officer or employee thereof shall be held to answer in any civil action or proceeding for failure or delay in answering calls for fire protection outside the corporate limits, nor shall any city be held to answer in any civil action or proceeding for the acts or omissions of its officers or employees in rendering fire protection services outside its corporate limits.

(c) Any employee of a city fire department, while engaged in any duty or activity outside the corporate limits of the city pursuant to orders of the fire chief or council, shall have all of the jurisdiction, authority, rights, privileges, and immunities, including coverage under the workmen's compensation laws, which they have within the corporate limits of the city.

"ARTICLE 15.

"Streets, Traffic and Parking.

"§ 160A-296. **Establishment and control of streets.** — A city shall have general authority and control over all public streets, sidewalks, alleys, bridges, and other ways of public passage within its corporate limits except to the extent that authority and control over certain streets and bridges is vested in the State Highway Commission. General authority and control includes but is not limited to:

- (1) the duty to keep the public streets, sidewalks, alleys, and bridges in proper repair;
- (2) the duty to keep the public streets, sidewalks, alleys, and bridges open for travel and free from unnecessary obstructions;
- (3) the power to open new streets and alleys, and to widen, extend, pave, clean, and otherwise improve existing streets, sidewalks, alleys, and bridges, and to acquire the necessary land therefor by dedication and acceptance, purchase, or eminent domain;
- (4) the power to close any street or alley either permanently or temporarily;
- (5) the power to regulate the use of the public streets, sidewalks, alleys, and bridges;
- (6) the power to regulate, license, and prohibit digging in the streets, sidewalks, or alleys, or placing therein or thereon any pipes, poles, wires, fixtures, or appliances of any kind either on, above, or below the surface;
- (7) the power to provide for lighting the streets, alleys, and bridges of the city; and
- (8) the power to grant easements in street rights-of-way as permitted by G.S. 160A-273.

"§ 160A-297. **Streets under authority of State Highway Commission.** — (a) A city shall not be responsible for maintaining streets or bridges under the authority and control of the State Highway Commission, and shall not be liable for injuries to persons or property resulting from any failure to do so.

(b) A city may, at its own expense, widen any street or bridge under the authority and control of the State Highway Commission, subject to the Commission's engineering and design specifications.

(c) Nothing in this Article shall authorize any city to interfere with the rights and privileges of the State Highway Commission with respect to streets and bridges under the authority and control of the Commission.

"§ 160A-298. **Railroad crossings.** — (a) A city shall have authority to direct, control, and prohibit the laying of railroad tracks and switches in public streets and alleys and to require that all railroad tracks, crossings, and bridges be constructed so as not to interfere with drainage patterns or with the ordinary travel and use of the public streets and alleys.

(b) The costs of constructing, reconstructing, and improving public streets and alleys, including the widening thereof, within areas covered by railroad cross ties, including cross timbers, shall be borne equally by the city and the railroad company. The costs of maintaining and repairing such areas after construction shall be borne by the railroad company.

(c) A city shall have authority to require the installation, construction, erection, reconstruction, and improvement of warning signs, gates, lights, and other safety devices at grade crossings, and the city shall bear 90% of the costs thereof and the railroad company shall bear 10% of the costs. The costs of maintaining warning signs, gates, lights, and other safety devices installed after January 1, 1972, shall be borne equally by the city and the railroad company. The maintenance shall be performed by the railroad company and the city shall pay annually to the railroad company 50% of these costs. In maintaining maintenance cost records

and determining such costs, the city and the railroad company shall use the same methods and procedures as are now or may hereafter be used by the State Highway Commission.

(d) A city shall have authority to require that a grade crossing be eliminated and replaced by a railroad bridge or by a railroad underpass, if the council finds as a fact that the grade crossing constitutes an unreasonable hazard to vehicular or pedestrian traffic. In such event, the city shall bear 90% of the costs and the railroad company shall bear 10% of the costs. If the city constructs a new street which requires a grade separation and which does not replace an existing street, the city shall bear all of the costs. If a railroad company constructs a new track across at grade, or under, or over an existing street, the railroad company shall pay the entire cost thereof. The city shall pay the costs of maintaining street bridges which cross over railroads. Railroad companies shall pay the cost of maintaining railroad bridges over streets, except that cities shall pay the costs of maintaining street pavement, sidewalks, street drainage, and street lighting where streets cross under railroads.

(e) Whenever the widening, improving, or other changes in a street require that a railroad bridge be relocated, enlarged, heightened, or otherwise reconstructed, the city shall bear 90% of the costs and the railroad company shall bear 10% of the costs.

(f) It is the intent of this section to make uniform the law concerning the construction and maintenance of railroad crossings, bridges, underpasses, and warning devices within cities. To this end, all general laws and local acts in conflict with this section are repealed, and no local act taking effect on or after January 1, 1972, shall be construed to modify, amend, or repeal any portion of this section unless it specifically so provides by express reference to this section.

"§ 160A-299. Procedure for permanently closing streets and alleys. — (a) When a city proposes to permanently close any street or public alley, the council shall first adopt a resolution declaring its intent to close the street or alley and calling a public hearing on the question. The resolution shall be published once a week for four successive weeks prior to the hearing, a copy thereof shall be sent by registered or certified mail to all owners of property adjoining the street or alley as shown on the county tax records, and a notice of the closing and public hearing shall be prominently posted in at least two places along the street or alley. If the street or alley is under the authority and control of the State Highway Commission, a copy of the resolution shall be mailed to the Commission. At the hearing, any person may be heard on the question of whether or not the closing would be detrimental to the public interest, or the property rights of any individual. If it appears to the satisfaction of the council after the hearing that closing the street or alley is not contrary to the public interest, and that no individual owning property in the vicinity of the street or alley or in the subdivision in which it is located would thereby be deprived of reasonable means of ingress and egress to his property, the council may adopt an order closing the street or alley. A certified copy of the order (or judgment of the court) shall be filed in the office of the register of deeds of the county in which the street, or any portion thereof, is located.

(b) Any person aggrieved by the closing of any street or alley including the State Highway Commission if the street or alley is under its authority and control, may appeal the council's order to the General Court of Justice within 30 days after its adoption. The court shall hear the matter de novo, and shall have full jurisdiction to try the issues arising and to order the street or alley closed upon proper findings of fact by the jury. No cause of action or defense founded upon the invalidity of any proceedings taken in closing any street or alley may be asserted, nor shall the validity of the order be open to question in any court upon any ground whatever, except in an action or proceeding begun within 30 days after the order is adopted.

(c) Upon the closing of a street or alley in accordance with this section, all right, title, and interest in the right-of-way shall be conclusively presumed to be vested in those persons owning lots or parcels of land adjacent to the street or alley, and the title of such adjoining

landowners, for the width of the abutting land owned by them, shall extend to the center line of the street or alley.

(d) This section shall apply to any street or public alley that has been irrevocably dedicated to the public, without regard to whether it has actually been opened.

"§ 160A-300. Traffic control. — A city may by ordinance prohibit, regulate, divert, control, and limit pedestrian or vehicular traffic upon the public streets, sidewalks, alleys, and bridges of the city.

"§ 160A-301. On-street parking. — A city may by ordinance regulate, restrict, and prohibit the parking of vehicles on the public streets, alleys, and bridges. To enforce an on-street parking ordinance, a city may install a system of parking meters and make it unlawful to park at a metered location unless the meter is kept in continuous operation. The meters may be actuated by coins or tokens, but no more than ten cents shall be required to actuate an on-street parking meter for one hour. The proceeds from the use of parking meters shall be used either (1) to defray the cost of enforcing and administering traffic and parking ordinances and regulations, or (2) to acquire, construct, reconstruct, improve, extend, or operate off-street parking facilities. Parking meter revenues may also be pledged to amortize bonds or other evidences of debt issued under the Local Government Revenue Bond Act. Nothing contained in Pub. Laws 1921, ch. 2, Sec. 29, or Pub. Laws 1937, ch. 407, Sec. 61, shall be construed to affect the validity of a parking meter ordinance or the revenues realized therefrom.

"§ 160A-302. Off-street parking facilities. — A city shall have authority to own, acquire, establish, regulate, operate, and control off-street parking lots, parking garages, and other facilities for parking motor vehicles, and to make a charge for the use of such facilities.

"§ 160A-303. Removal and disposal of junked and abandoned motor vehicles. — (a) A city may by ordinance prohibit the abandonment of motor vehicles on the public streets or on public or private property within the city, and may enforce any such ordinance by removing and disposing of junked or abandoned motor vehicles according to the procedures prescribed in this section.

(b) A motor vehicle is defined to include all machines designed or intended to travel over land or water by self-propulsion or while attached to any self-propelled vehicle. An abandoned motor vehicle is one that:

- (1) has been left upon a street or highway in violation of a law or ordinance prohibiting parking; or
- (2) is left on property owned or operated by the city for longer than 24 hours; or
- (3) is left on private property without the consent of the owner, occupant, or lessee thereof for longer than two hours; or
- (4) is left on any public street or highway for longer than seven days.

A junked motor vehicle is an abandoned motor vehicle that also:

- (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 years old and worth less than \$50.00; or
- (4) does not display a current license plate.

(c) Any junked or abandoned motor vehicle found to be in violation of an ordinance adopted under this section may be removed to a storage garage or area, but no such vehicle shall be removed from private property without the written request of the owner lessee, or occupant of the premises unless the council or a duly authorized city official or employee has declared it to be a health or safety hazard. The city may require any person requesting the removal of a junked or abandoned motor vehicle from private property to indemnify the city against any loss, expense, or liability incurred because of the removal, storage, or sale thereof. When any junked or abandoned motor vehicle is removed, the city shall give written notice of the removal to the registered owner at his last known address according to the latest registration

certificate or certificate of title on file with the Department of Motor Vehicles. The notice shall inform the owner of the possible sale or other disposition that can be made of the vehicle under this section. The owner may regain possession of the vehicle by paying to the city all reasonable costs incidental to the removal and storage.

(d) After holding an unclaimed abandoned motor vehicle for 30 days, the city may sell or dispose of it as provided by this subsection. If the vehicle appears to be worth less than \$50 00 the city shall have it appraised by two disinterested dealers or garagemen, and if the appraisal is less than \$50.00, the city may dispose of the vehicle as a junked motor vehicle as provided by subsection (e) of this section. With the consent of the owner, the city may remove and dispose of any motor vehicle as a junked motor vehicle without regard to the value, condition or age of the vehicle, and without holding it for any prescribed period of time. If the vehicle is worth \$50.00 or more it shall be sold at public auction. Twenty days' written notice of the sale shall be given to the registered owner at his last known address, the holders of all liens of record against the vehicle, and the Department of Motor Vehicles. Any person having an interest in the vehicle may redeem it at any time before the sale by paying all costs accrued to date. The proceeds of the sale shall be paid to the city treasurer who shall pay to the appropriate officers or persons the cost of removal, storage, investigation, sale, and liens in that order. The remainder of the proceeds of sale, if any, shall be paid over to the registered owner, or held by the city for 60 days if the registered owner cannot be located with reasonable diligence. If the owner does not claim the remainder of the proceeds within 60 days after the sale, the funds shall be deposited in the city's general fund and the owner's rights therein shall be forever extinguished. When it receives a city's bill of sale from a purchaser or other person entitled to receive any vehicle disposed of as provided in this subsection, the Department of Motor Vehicles shall issue a certificate of title for the vehicle as required by law.

(e) After holding an unclaimed junked motor vehicle for 15 days, the city may destroy it or sell it at private sale as junk. Within 15 days after final disposition of a junked motor vehicle, the city shall notify the Department of Motor Vehicles that the vehicle has been determined to be a junked motor vehicle and disposed of as such. The notice shall contain as full and accurate a description of the vehicle as can be reasonably determined. Any proceeds from the sale of a junked motor vehicle, after all costs of removal, storage, investigation and sale, and satisfying any liens of record on the vehicle have been deducted therefrom, shall be held by the city for 30 days and paid to the registered owner upon demand. If the owner does not appear to claim the proceeds within 30 days after disposal of the vehicle, the funds shall be deposited in the city's general fund and the owner's rights therein shall be forever extinguished.

(f) No person shall be held to answer in any civil or criminal action to any owner or other person legally entitled to the possession of any abandoned, lost, or stolen motor vehicle for disposing of the vehicle as provided in this section.

(g) Nothing in this section shall apply to any vehicle in an enclosed building or any vehicle on the premises of a business enterprise being operated in a lawful place and manner if the vehicle is necessary to the operation of the enterprise, or to any vehicle in an appropriate storage place or depository maintained in a lawful place and manner by the city.

§ 160A-304. Regulation of taxis. — (a) A city may by ordinance license and regulate all vehicles operated for hire in the city. The ordinance may require that the drivers and operators of taxicabs engaged in the business of transporting passengers for hire over the public streets shall obtain a license or permit from the city. The following factors shall be deemed sufficient grounds for refusing to issue a permit or for revoking a permit already issued:

- (1) conviction of a felony against this State, or conviction of any offense against another state which would have been a felony if committed in this State;
- (2) violation of any federal or State law relating to the use, possession, or sale of intoxicating liquors or narcotic or barbiturate drugs;

- (3) addiction to or habitual use of intoxicating liquors or narcotic or barbiturate drugs;
- (4) violation of any federal or State law relating to prostitution;
- (5) noncitizenship in the United States;
- (6) habitual violation of traffic laws or ordinances.

The ordinance may also require operators and drivers of taxicabs to display prominently in each taxicab, so as to be visible to the passengers, the city taxi permit, the schedule of fares, a photograph of the driver, and any other identifying matter that the council may deem proper and advisable. The ordinance may also establish rates that may be charged by taxicab operators, may limit the number of taxis that may operate in the city, and may grant franchises to taxicab operators on any terms that the council may deem advisable.

(b) When a city ordinance grants a taxi franchise for operation of a stated number of taxis within the city, the holder of the franchise shall report at least quarterly to the council the average number of taxis actually in operation during the preceding quarter. The council may amend a taxi franchise to reduce the number of authorized vehicles by the average number not in actual operation during the preceding quarter, and may transfer the unused allotment to another franchised operator. Such amendments of taxi franchises shall not be subject to G.S. 160A-76. Allotments of taxis among franchised operators may be transferred only by the city council, and it shall be unlawful for any franchised operator to sell, assign, or otherwise transfer allotments under a taxi franchise.

"§ 160A-305. Agreements under National Highway Safety Act. — Any city is hereby authorized to enter into agreements with the State of North Carolina and its agencies, and with the federal government and its agencies, to secure the full benefits available to the city under the National Highway Safety Act of 1966, and to cooperate with State and federal agencies, other public and private agencies, interested organizations, and individuals, to effectuate the purposes of the act and subsequent amendments thereof.

"§ 160A-306. Building setback lines. — (a) A city shall have authority to (i) classify all or a portion of the streets in the city according to their size, present and anticipated traffic loads, and other characteristics relevant to the achievement of the purposes of this section, and (ii) establish by ordinance minimum distances that buildings and other permanent structures constructed along each class or type of street shall be set back from the right of way line or the center line of the street. Portions of any street may be classified in a manner different from other portions of the same street where the characteristics of the portions differ.

(b) Any setback line shall be designed (i) to promote the public safety by providing adequate sight distances for persons using the street and its sidewalks, lessening congestion in the street and sidewalks, facilitating the safe movement of vehicular and pedestrian traffic on the street and sidewalks and providing adequate fire lanes between buildings, and (ii) to protect the public health by keeping dwellings and other structures an adequate distance from the dust, noise, and fumes created by traffic on the street and by insuring an adequate supply of light and air.

(c) A setback line ordinance shall permit affected property owners to appeal to the council for variance or modification of setback requirements as they apply to a particular piece of property. The council may vary or modify the requirements upon a showing that (i) the peculiar nature of the property results in practical difficulties or unnecessary hardships that impede carrying out the strict letter of the requirement, (ii) the property will not yield a reasonable return or cannot be put to reasonable use unless relief is granted, and (iii) balancing the public interest in enforcing the setback requirements and the interest of the owner, the grant of relief is required by considerations of justice and equity. In granting relief, the council may impose reasonable and appropriate conditions and safeguards to protect the interest of neighboring properties. The council may delegate authority to hear appeals under setback line ordinances to a board established to hear appeals under zoning ordinances. If this is done,

appeal to the council from the board shall be governed by the same laws and rules as appeals from decisions granting or denying variances or modifications under the zoning ordinance.

"§ 160A-307. **Curb cut regulations.** — A city may by ordinance regulate the size, location, and manner of construction of driveway connections into any street or alley.

"ARTICLE 16.

"Public Enterprises.

"Part 1. General Provisions

"§ 160A-311. **Public enterprise defined.** — As used in this article, the term "public enterprise" includes:

- (1) electric power generation, transmission, and distribution systems;
- (2) water supply and distribution systems;
- (3) sewage collection and disposal systems;
- (4) gas distribution systems;
- (5) bus lines and mass transit systems;
- (6) solid waste collection and disposal systems and facilities;
- (7) cable television systems;
- (8) off-street parking facilities and systems;
- (9) airports.

"§ 160A-312. **Authority to operate public enterprises.** — A city shall have authority to acquire, construct, establish, enlarge, improve, maintain, own, and operate any or all of the public enterprises as defined in this article to furnish services to the city and its citizens. Subject to Part 2 of this Article, a city may extend and operate any public enterprise outside its corporate limits within reasonable limitations, but in no case shall a city be held liable for damages to those outside the corporate limits for failure to furnish any public enterprise service. A city shall have full authority to protect and regulate any public enterprise system belonging to it by adequate and reasonable rules and regulations.

"§ 160A-313. **Financing public enterprise.** — Subject to the restrictions, limitations, procedures, and regulations otherwise provided by law, a city shall have full authority to finance the cost of any public enterprise by levying taxes, borrowing money, and appropriating any other revenues therefor, and by accepting and administering gifts and grants from any source on behalf thereof.

"§ 160A-314. **Authority to fix and enforce rates.** — (a) A city may establish and revise from time to time schedules of rents, rates, fees, charges, and penalties for the use of or the services furnished by any public enterprise. Schedules of rents, rates, fees, charges, and penalties may vary according to classes of service, and different schedules may be adopted for services provided outside the corporate limits of the city.

(b) A city shall have power to collect delinquent accounts by any remedy provided by law for collecting and enforcing private debts. A city may also discontinue service to any customer whose account remains delinquent for more than 10 days. When service is discontinued for delinquency, it shall be unlawful for any person other than a duly authorized agent or employee of the city to do any act that results in a resumption of services. If a delinquent customer is not the owner of the premises to which the services are delivered, the payment of the delinquent account may not be required before providing services at the request of a new and different tenant or occupant of the premises, but this restriction shall not apply when the premises are occupied by two or more tenants whose services are measured by the same meter.

(c) Except as provided in subsection (d), rents, rates, fees, charges, and penalties for enterprisory services shall be legal obligations of the person contracting for them, and shall in no case be a lien upon the property or premises served.

(d) Rents, rates, fees, charges, and penalties for enterprisory services shall be legal obligations of the owner of the premises served when:

- (1) The property or premises is leased or rented to more than one tenant and services rendered to more than one tenant are measured by the same meter.
- (2) Charges made for the use of a sewage system are billed separately from charges made for the use of a water distribution system.

(e) Nothing in this section shall repeal any portion of any city charter inconsistent herewith.

"§ 160A-315. Billing and collecting agents for certain sewer systems. — Any city that maintains and operates a sewage collection and disposal system but does not maintain and operate a water distribution system is authorized to contract with the owner or operator of the water distribution system operating within the area served by the city sewer system to act as the billing and collection agent of the city for any charges, rents, or penalties imposed by the city for sewer services.

"§ 160A-316. Independent water companies to supply information. — The owner or operator of any independent or private water distribution system operating within a city that maintains and operates a sewage collection and disposal system shall furnish to the city upon request copies of water meter readings and any other water consumption records and data that the city may require to bill and collect its sewer rents and charges. The city shall pay the reasonable cost of supplying this information.

"§ 160A-317. Power to require connections. — A city may require the owners of improved property located within the city limits and upon or within a reasonable distance of any water line or sewer collection line owned and operated by the city to connect his premises with the water or sewer system or both, and may fix charges for the connections.

"§ 160A-318. Mutual aid contracts. — (a) Any two or more cities, counties, water and sewer authorities, metropolitan sewage districts, sanitary districts, or private utility companies or combination thereof may enter into contracts with each other to provide mutual aid and assistance in restoring electric, water, sewer, or gas services in the event of natural disasters or other emergencies under such terms and conditions as may be agreed upon. Mutual aid contracts may include provisions for furnishing personnel, equipment, apparatus, supplies and materials; for reimbursement or indemnification of the aiding party for loss or damage incurred by giving aid; for delegating authority to a designated official or employee to send aid upon request; and any other provisions not inconsistent with law.

(b) Officials and employees furnished by one party in aid of another party pursuant to a mutual aid contract entered into under authority of this section shall be conclusively deemed for all purposes to remain officials and employees of the aiding party. While providing aid to another and while traveling to and from another city or county pursuant to giving aid, they shall retain all rights, privileges, and immunities, including coverage under the North Carolina Workmen's Compensation Act, as they enjoy while performing their normal duties.

(c) Notwithstanding any other provisions of law to the contrary, any party to a mutual aid contract entered into under authority of this section, may sell or otherwise convey or deliver to another party to the contract personal property to be used in restoring utility services pursuant to the contract, without following procedures for the sale or disposition of property prescribed by any general law, local act, or city charter.

(d) Nothing in this section shall be construed to deprive any party to a mutual aid contract of its discretion to send or decline to send its personnel, equipment, and apparatus in aid of another party to the contract under any circumstances, whether or not obligated by the contract to do so. In no case shall a party to a mutual aid contract or any of its officials or employees be held to answer in any civil or criminal action for declining to send personnel, equipment, or apparatus to another party to the contract, whether or not obligated by contract to do so.

"§ 160A-319. Utility franchises. — A city shall have authority to grant upon reasonable terms franchises for the operation within the city of any of the enterprises listed in G.S. 160A-311.

No franchise shall be granted for a period of more than sixty years, and cable television franchises shall not be granted for a period of more than twenty years. Except as otherwise provided by law, upon granting a franchise, a city may by ordinance make it unlawful to operate an enterprise without a franchise.

For the purposes of this section, 'cable television system' means any system or facility that, by means of a master antenna and wires or cables, or by wires or cables alone, receives, amplifies, modifies, transmits, or distributes any television, radio, or electronic signal, audio or video or both, to subscribing members of the public for compensation. 'Cable television system' does not include providing master antenna service only to property owned or leased by the same person, firm, or corporation, nor communication services rendered to a cable television system by a public utility that is regulated by the North Carolina Utilities Commission or the Federal Communications Commission in providing those services.

"§ 160A-321. Sale, lease, or discontinuance of city-owned enterprise. — A city is authorized to sell or lease as lessor any enterprise that it may own upon any terms and conditions that the council may deem best. However, a city-owned enterprise shall not be sold, leased to another, or discontinued unless the proposal to sell, lease, or discontinue is first submitted to a vote of the people and approved by a majority of those who vote thereon. Voter approval shall not be required for the sale, lease, or discontinuance of airports, off-street parking systems and facilities, or solid waste collection and disposal systems.

"§ 160A-322. Contracts for electric power and water. — A city is authorized to enter into contracts for a period not exceeding forty years for the supply of water, and for a period not exceeding thirty years for the supply of electric power or other public commodity or services.

"Part 2. Electric Service in Urban Areas

"§ 160A-331. Definitions. — Unless the context otherwise requires, the following words and phrases shall have the meanings indicated when used in this part:

- (1) 'Primary supplier' means a city that owns and maintains its own electric system, or a person, firm, or corporation that furnishes electric service within a city pursuant to a franchise granted by, or contract with, a city, or that, having furnished service pursuant to a franchise or contract, is continuing to furnish service within a city after the expiration of the franchise or contract.
- (2) 'Secondary supplier' means a person, firm, or corporation that furnishes electricity at retail to one or more customers other than itself within the limits of a city but is not a primary supplier. A primary supplier that furnishes electric service within a city pursuant to a franchise or contract that limits or restricts the classes of consumers or types of electric service permitted to such supplier shall, in and with respect to any area annexed by the city after April 20, 1965, be a primary supplier for such classes of consumers or types of service, and if it furnishes other electric service in the annexed area on the effective date of annexation, shall be a secondary supplier, in and with respect to such annexed area, for all other electric service. A primary supplier that continues to furnish electric service after the expiration of a franchise or contract that limited or restricted such primary supplier with respect to classes of consumers or types of electric service shall, in and with respect to any area annexed by the city after April 20, 1965, be a secondary supplier for all electric service if it is furnishing electric service in the annexed area on the effective date of annexation.
- (3) 'Premises' means the building, structure, or facility to which electricity is being or is to be furnished. Two or more buildings, structures, or facilities that are located on one tract or contiguous tracts of land and are used by one electric consumer for commercial, industrial, institutional, or governmental purposes, shall together constitute one 'premises,' except that any such

building, structure, or facility shall not, together with any other building, structure, or facility, constitute one 'premises' if the electric service to it is separately metered and the charges for such service are calculated independently of charges for service to any other building, structure, or facility.

- (4) 'Line' means any conductor located inside the city for distributing or transmitting electricity, other than
 - a. for overhead construction, a conductor from the pole nearest the premises of a consumer to such premises, or a conductor from a line tap to such premises, and
 - b. for underground construction, a conductor from the transformer (or the junction point, if there be one) nearest the premises of a consumer to such premises.
- (5) The 'determination date' is
 - a. April 20, 1965, with respect to areas within the corporate limits of any city as of April 20, 1965;
 - b. the effective date of annexation with respect to areas annexed to any city after April 20, 1965; c. the date a primary supplier comes into being with respect to any city first incorporated after April 20, 1965.

"§ 160A-332. Electric service within city limits. — (a) The suppliers of electric service inside the corporate limits of any city in which a secondary supplier was furnishing electric service on the determination date (as defined in G.S. 160A-331(5)) shall have rights and be subject to restrictions as follows:

- (1) The secondary supplier shall have the right to serve all premises being served by it, or to which any of its facilities are attached, on the determination date.
- (2) The secondary supplier shall have the right, subject to subdivision (3) of this section, to serve all premises initially requiring electric service after the determination date which are located wholly within 300 feet of its lines and located wholly more than 300 feet from the lines of the primary supplier, as such suppliers' lines existed on the determination date.
- (3) Any premises initially requiring electric service after the determination date which are located wholly within 300 feet of a secondary supplier's lines and wholly within 300 feet of another secondary supplier's lines, but wholly more than 300 feet from the primary supplier's lines, as the lines of all suppliers existed on the determination date, may be served by the secondary supplier which the consumer chooses, and no other supplier shall thereafter furnish electric service to such premises, except with the written consent of the supplier then serving the premises.
- (4) A primary supplier shall not furnish electric service to any premises which a secondary supplier has the right to serve as set forth in subdivisions (1), (2), and (3) of this section, except with the written consent of the secondary supplier.
- (5) Any premises initially requiring electric service after the determination date which are located wholly or partially within 300 feet of the primary supplier's lines and are located wholly or partially within 300 feet of the secondary supplier's lines, as such suppliers' lines existed on the determination date, may be served by either the secondary supplier or the primary supplier, whichever the consumer chooses, and no other supplier shall thereafter furnish service to such premises, except with the written consent of the supplier then serving the premises.

- (6) Any premises initially requiring electric service after the determination date, which are located only partially within 300 feet of the secondary supplier's lines and are located wholly more than 300 feet from the primary supplier's lines, as such supplier's lines existed on the determination date, may be served either by the secondary supplier or the primary supplier, whichever the consumer chooses, and no other supplier shall thereafter furnish service to such premises, except with the written consent of the supplier then serving the premises.
- (7) Except as provided in subdivisions (1), (2), (3), (5), and (6) of this section, a secondary supplier shall not furnish electric service within the corporate limits of any city unless it first obtains the written consent of the city and the primary supplier.

(b) In any city that is first incorporated after April 20, 1965, in which, on the effective date of the incorporation, there is more than one supplier of electric service, all suppliers of electric service therein shall continue to have the rights and be subject to the restrictions in effect before the city was incorporated until there is a primary supplier within the city.

"§ 160A-333. Temporary electric service. — No electric supplier shall furnish temporary electric service for the construction of premises which it would not have the right to serve under this Part if such premises were already constructed. The construction of lines for, and the furnishing of, temporary electric service for the construction of premises which any other electric supplier, if chosen by the consumer, would have the right to serve if such premises were already constructed, shall not impair the right of such other electric supplier to furnish services to such premises after the construction thereof, if then chosen by the consumer; nor, unless the consumer chooses to have such premises served by the supplier that furnished the temporary service, shall the furnishing of such temporary service or the construction of a line therefor impair the right of any other electric supplier to furnish service to any other premises which, without regard to the construction of such temporary service line, it has the right to serve.

"§ 160A-334. Authority and jurisdiction of Utilities Commission. — Notwithstanding G.S. 160A-332 and 160A-333, the North Carolina Utilities Commission shall have authority and jurisdiction, after notice to the affected electric supplier, and after hearing, if a hearing is requested by any interested party, to:

- (1) order a primary supplier that is subject to the jurisdiction of the Commission to furnish electric service to any consumer who desires service from the primary supplier at any premises served by a secondary supplier, or at premises which a secondary supplier has the right to serve pursuant to other sections of this Part, and to order such secondary supplier to cease and desist from furnishing electric service to such premises, or
- (2) order any secondary supplier to cease and desist from furnishing electric service to any premises being served by it or to any premises which it has the right to serve pursuant to other sections of this Part, if the consumer desires service from a primary supplier that is not subject to the jurisdiction of the Commission and which is willing to furnish service to such premises, if the Commission finds that service being furnished to or to be furnished to the consumer by a secondary supplier is or will be inadequate or undependable, or that the rates, conditions of service regulations, applied to such consumer, are unreasonably discriminatory.

"§ 160A-335. Discontinuance of service and transfer of facilities by secondary supplier. — A secondary supplier may voluntarily discontinue its service to any premises and remove any of its electric facilities located inside the corporate limits of a city or sell and transfer such facilities to a primary supplier in such city, subject to approval by the North Carolina Utilities

Commission, if the Commission determines that the public interest will not thereby be adversely affected.

"§ 160A-336. **Electric service for city facilities.** — No provisions of this Part shall prevent a city that is a primary supplier from furnishing its own electric service for city facilities, or prevent any other primary supplier from furnishing electric street lighting service to a city inside its corporate limits.

"§ 160A-337. **Effect of Part on rights and duties of primary supplier.** — Except for the rights granted to and restrictions upon primary suppliers contained in the provisions of this Part, nothing in this Part shall diminish, enlarge, alter, or affect in any way the rights and duties of a primary supplier to furnish electric service to premises within the corporate limits of a city.

"§ 160A-338. **Electric suppliers subject to police power.** — No provisions of this Part shall restrict the exercise of the police power of a city over the erection and maintenance of poles, wires, and other facilities of electric suppliers in streets, alleys, and other public ways.

"ARTICLE 17.

"Cemeteries.

"§ 160A-341. **Authority to establish and operate cemeteries.** — A city shall have authority to establish, operate, and maintain cemeteries either inside or outside its corporate limits, may acquire and hold real and personal property for cemetery purposes by gift, purchase, or (for real property) by exercise of the power of eminent domain, may devote any property owned by the city to use as a cemetery, may prohibit burials at any place within the city other than city cemeteries, and may regulate the manner of burial in city cemeteries. Nothing in this section shall confer upon any city authority to prohibit or regulate burials in cemeteries licensed by the State Burial Association Commissioner, or in church cemeteries.

As used in this Article 'cemetery' includes columbariums and facilities for cremation.

"§ 160A-342. **Authority to transfer cemeteries.** — A city may transfer and convey any city cemetery property, together with any accumulated perpetual care trust funds set aside for the maintenance of the cemetery, to any religious organization or cemetery licensed by the State Burial Association Commissioner, upon condition that the transferee will continue use of the property as a cemetery, will perpetually maintain it, and will apply any perpetual care trust funds so transferred only for maintenance of the cemetery.

"§ 160A-343. **Authority to abandon cemeteries.** — A city shall have authority to abandon any cemetery that has not been used for interment purposes within ten years. Upon abandonment, all monuments, tombstones, and the contents of all graves within the cemetery shall be transferred at city expense to another city cemetery, or to a cemetery licensed by the State Burial Association Commissioner. After the transfer of monuments, tombstones, and the contents of graves, the city may take possession of, convey, or use the former cemetery property for any lawful purpose.

"§ 160A-344. **Authority to assume control of abandoned cemeteries.** — (a) Whenever property not under the control or in the possession of any church or religious organization in any city has been heretofore set aside or used for cemetery purposes, and the trustees or owners named in the deed or deeds for the property have died, or are unknown, or the deeds of conveyance have been lost or misplaced and no record of title thereto has been found, and the property has been occupied and used for burial purposes for a time sufficient to identify its use as cemetery property, the city in which the cemetery is located is authorized to take possession of the land and any adjoining land not held by known claimants of title, have the property surveyed and lines established, and to designate and appropriate the property as a city cemetery.

(b) The city may have the land subdivided and laid off into family burial plots, may sell any of the unused lots so laid off to any person for burial purposes, and may use the proceeds of the sale for the improvement and upkeep of the cemetery.

(c) The city may appropriate and use funds for the improvement and maintenance of the cemetery, and all laws and ordinances applicable to city cemeteries shall apply to the cemetery from and after the date that the city assumes control of it.

"§ 160A-345. Authority to condemn cemeteries. — A city shall have authority to acquire title in fee simple by purchase or exercise of the power of eminent domain to any cemetery, graveyard, or burial place within the city and to operate and maintain the property so acquired as a city cemetery. This section shall not apply to a cemetery licensed by the North Carolina State Burial Association Commissioner, nor to property owned or controlled by any church or religious organization, unless the owner of the property consents to the acquisition.

"§ 160A-346. Authority to condemn easements for perpetual care. — A city shall have authority to acquire an easement for perpetual care by gift, grant, purchase, or exercise of the power of eminent domain in any cemetery, graveyard, or burial place within the city. When a perpetual care easement is acquired under this section, all city ordinances concerning the care and upkeep of city cemeteries shall be applicable to the cemetery, and the income from city perpetual care trust funds may be used to care for and maintain the cemetery. This section shall not apply to a cemetery licensed by the North Carolina State Burial Association Commissioner or to property owned or controlled by any church or religious organization unless the owner of the property consents to the acquisition.

"§ 160A-347. Perpetual care trust funds. — (a) A city is authorized to create a perpetual care trust fund for any cemeteries under its ownership or control, to accept gifts, grants, bequests, and devises on behalf of the perpetual care trust fund, to deposit any revenues realized from the sale of lots in or the operation of city cemeteries in the perpetual care trust fund, and to hold and administer the trust fund for the purpose of perpetually caring for and beautifying the city's cemeteries. The city may make contracts with the owners of plots in city cemeteries obligating the city to maintain the plots in perpetuity upon payment of such sums as the council may fix.

(b) The principal of perpetual care trust funds shall be held intact, and the income from such funds shall be used to carry out contracts with plot owners for the perpetual care of the plots, and to maintain and perpetually care for the cemetery.

(c) Perpetual care trust funds shall be kept separate and apart from all other city funds, and shall in no case be appropriated by, lent to, or in any manner used by the city for any purpose other than the perpetual care of city cemeteries.

"§ 160A-348. Regulation of city cemeteries. — A city may by ordinance adopt rules and regulations concerning the opening of graves, the erection of tombstones and monuments, the building of walls and fences, the hours of opening and closing and all other matters concerning the use, operation, and maintenance of city cemeteries. The ordinance may impose a schedule of prices for lots and fees for the opening of graves in the cemetery, but it may not require, the owners of plots to purchase monuments, vaults, or other items from the city.

"ARTICLE 18.

"Parks and Recreation.

"§ 160A-350. Short title. — This Article shall be known and may be cited as the 'Recreation Enabling Law.'

"§ 160A-351. Declaration of State policy. — The lack of adequate recreational programs and facilities is a menace to the morals, happiness, and welfare of the people of this State. Making available recreational opportunities for citizens of all ages is a subject of general interest and concern, and a function requiring appropriate action by both State and local government. The General Assembly therefore declares that the public good and the general welfare of the citizens of this State require adequate recreation programs, that the creation, establishment, and operation of parks and recreation programs is a proper governmental function, and that it is the policy of North Carolina to forever encourage, foster, and provide these facilities and programs for all its citizens.

"§ 160A-352. **Recreation defined.** — 'Recreation' means activities that are diversionary in character and aid in promoting entertainment, pleasure, relaxation, instruction, and other physical, mental, and cultural development and leisure time experiences.

"§ 160A-353. **Powers.** — In addition to any other powers it may possess to provide for the general welfare of its citizens, each county and city in this State shall have authority to:

- (1) establish and conduct a system of supervised recreation;
- (2) set apart lands and buildings for parks, playgrounds, recreational centers, and other recreational programs and facilities;
- (3) acquire real property, including water and air rights, for parks and recreation programs and facilities by gift, grant, purchase, lease, exercise of the power of eminent domain, or any other lawful method;
- (4) provide, acquire, construct, equip, operate, and maintain parks, playgrounds, recreation centers, and recreation facilities, including all buildings, structures, and equipment necessary or useful in connection therewith;
- (5) appropriate funds to carry out the provisions of this Article;
- (6) accept any gift, grant, lease, loan, bequest, or devise of real or personal property for parks and recreation programs. Devises, bequests, and gifts may be accepted and held subject to such terms and conditions as may be imposed by the grantor or trustor, except that no county or city may accept or administer any terms that require it to discriminate among its citizens on the basis of race, sex, or religion.

"§ 160A-354. **Administration of parks and recreation programs.** — A city or county may operate a parks and recreation system as a line department, or it may create a parks and recreation commission and vest in it authority to operate the parks and recreation system.

"§ 160A-355. **Joint parks and recreation systems.** — Any two or more units of local government may cooperate in establishing parks and recreation systems as authorized in Article 20, Part 1, of this Chapter.

"§ 160A-356. **Financing parks and recreation.** — Each county and city is authorized to expend for its parks and recreation system any of its revenues not otherwise limited as to use by law. Locally levied taxes may be used for parks and recreation purposes only to the extent approved by the qualified voters of the county or city. Bonds and notes may be issued for parks and recreation purposes only if approved by the qualified voters of the county or city.

"§ 160A-357. **Referendum on establishment of system.** — The governing board of any county or city may on its own initiative, and shall upon receipt of a petition from its qualified voters, submit to the voters the question of whether a system of supervised recreation shall be established in the county or city. The petition shall be signed by a number of qualified voters equal to at least ten percent (10%) of the number of voters registered to vote in the county or city according to the most recent figures certified by the State Board of Elections. The proposition may be submitted at a special election called for that purpose, or at any other special or general election or proposition referendum. Propositions for the levy or use of taxes for parks and recreation purposes and the issuance of bonds for these purposes may be placed on the same ballot, but shall be stated as separate and distinct propositions. If the voters approve a proposition to establish a parks and recreation system but disapprove tax or bond propositions, it shall be the duty of the governing board to establish the system only if sufficient nontax revenues are available to it for that purpose.

This section shall not be construed to require voter approval for the establishment of a parks and recreation system financed by nontax revenues.

"ARTICLE 19.

"Planning and Regulation of Development.

"Part 1. General Provisions

"§ 160A-360. **Territorial jurisdiction.** — (a) All of the powers granted by this Article may be exercised by any city within its corporate limits. In addition, any city may exercise these powers within a defined area extending not more than one mile beyond its limits. With the approval of the board or boards of county commissioners with jurisdiction over the area, a city of 10,000 or more population but less than 25,000 may exercise these powers over an area extending not more than two miles beyond its limits and a city of 25,000 or more population may exercise these powers over an area extending not more than three miles beyond its limits. The boundaries of the city's extraterritorial jurisdiction shall be the same for all powers conferred in this Article. No city may exercise extraterritorially any power conferred by this Article that it is not exercising within its corporate limits.

(b) Any council wishing to exercise extraterritorial jurisdiction under this Article shall adopt, and may amend from time to time, an ordinance specifying the areas to be included based upon existing or projected urban development and areas of critical concern to the city, as evidenced by officially adopted plans for its development. Boundaries shall be defined, to the extent feasible, in terms of geographical features identifiable on the ground. A council may, in its discretion, exclude from its extraterritorial jurisdiction areas lying in another county, areas separated from the city by barriers to urban growth, or areas whose projected development will have minimal impact on the city. The boundaries specified in the ordinance shall at all times be drawn on a map, set forth in a written description, or shown by a combination of these techniques. This delineation shall be maintained in the manner provided in G.S. 160A-22 for the delineation of the corporate limits, and shall be recorded in the office of the Register of Deeds of each county in which any portion of the area lies.

(c) Where the extraterritorial jurisdiction of two or more cities overlaps, the jurisdictional boundary between them shall be a line connecting the midway points of the overlapping area unless the city councils agree to another boundary line within the overlapping area based upon existing or projected patterns of development.

(d) If a city fails to adopt an ordinance specifying the boundaries of its extraterritorial jurisdiction, the county of which it is a part shall be authorized to exercise the powers granted by this Article in any area beyond the city's corporate limits. The county may also, on request of the city council, exercise any or all these powers in any or all areas lying within the city's corporate limits or within the city's specified area of extraterritorial jurisdiction.

(e) No city may hereafter extend its extraterritorial powers under this Article into any area for which the county at that time has adopted and is enforcing a zoning ordinance and subdivision regulations and within which it is enforcing the State Building Code. However, the city may do so where the county is not exercising all three of these powers, or when the city and the county have agreed upon the area within which each will exercise the powers conferred by this Article.

(f) When a city annexes an area that is currently being regulated by the county, the county regulations and powers of enforcement shall remain in effect until (i) the city has adopted such regulations or (ii) a period of 60 days has elapsed following the annexation, which-ever is sooner. During this period the city may hold hearings and take any other measures that may be required in order to adopt its regulations for the area.

(g) When a local government is granted powers by this section subject to the request, approval, or agreement of another local government, the request, approval, or agreement shall be evidenced by a formally adopted resolution of that government's legislative body. Any such request, approval, or agreement can be rescinded upon two years' written notice to the other legislative bodies concerned by repealing the resolution. The resolution may be modified at any time by mutual agreement of the legislative bodies concerned.

(h) Nothing in this section shall repeal, modify, or amend any local act which defines the boundaries of a city's extraterritorial jurisdiction by metes and bounds or courses and distances.

"§ 160A-361. **Planning agency.** — Any city may by ordinance create or designate one or more agencies to perform the following duties:

- (1) make studies of the area within its jurisdiction and surrounding areas;
- (2) determine objectives to be sought in the development of the study area;
- (3) prepare and adopt plans for achieving these objectives;
- (4) develop and recommend policies, ordinances, administrative procedures, and other means for carrying out plans in a coordinated and efficient manner;
- (5) advise the council concerning the use and amendment of means for carrying out plans;
- (6) exercise any functions in the administration and enforcement of various means for carrying out plans that the council may direct;
- (7) perform any other related duties that the council may direct.

An agency created or designated pursuant to this section may include one or more of the following, with such staff as the council may deem appropriate:

- (1) a planning board or commission of any size (not less than three members) or composition deemed appropriate, organized in any manner deemed appropriate;
- (2) a joint planning board created by two or more local governments pursuant to Article 20, Part 1, of this Chapter.

"§ 160A-362. **Extraterritorial representation.** — When a city elects to exercise extraterritorial zoning or subdivision-regulation powers under G.S. 160A-360, it shall in the ordinance creating or designating its planning agency or agencies provide a means of representation for residents of the extraterritorial area to be regulated. Representation may be provided by an advisory board composed of residents of the area. The advisory board shall be given an opportunity to consider and make recommendations concerning any regulations to be applied to the area, any proposed amendments to those regulations, the approval of any proposed land subdivisions within the area, and the grant of any special exceptions, variances, special use permits, or conditional use permits sought for property within the area. In lieu of an advisory board, representation may be provided by appointing residents of the area to the planning agency and the board of adjustment that makes recommendations or grants relief in these matters. The members of the advisory board or representatives on the planning agency and the board of adjustment shall be appointed by the board of county commissioners with jurisdiction over the area. If there is an insufficient number of qualified residents of the area to meet membership requirements, the board of county commissioners may appoint as many other residents of the county as necessary to make up the requisite number. When the extraterritorial area extends into two or more counties, each board of county commissioners concerned shall appoint representatives from its portion of the area, as specified in the ordinance. If a board of county commissioners fails to make these appointments within 90 days after receiving a resolution from the city council requesting that they be made, the city council may make them. If the ordinance so provides, the outside representatives may have equal rights, privileges, and duties with the other members of the agency to which they are appointed, regardless of whether the matters at issue arise within the city or within the extraterritorial area; otherwise they shall function only with respect to matters within the extraterritorial area.

"§ 160A-363. **Supplemental powers.** — A city or its designated planning agency may accept, receive, and disburse in furtherance of its functions any funds, grants, and services made available by the federal government and its agencies, the State government and its agencies, any local government and its agencies, and any private and civic sources. Any city, or its designated planning agency with the concurrence of the council, may enter into and carry out contracts with the State and federal governments or any agencies thereof under which financial or other planning assistance is made available to the city and may agree to and comply with any reasonable conditions that are imposed upon such assistance.

Any city, or its designated planning agency with the concurrence of the council, may enter into and carry out contracts with any other city, county, or regional council or planning agency under which it agrees to furnish technical planning assistance to the other local government or planning agency. Any city, or its designated planning agency with the concurrence of its council, may enter into and carry out contracts with any other city, county, or regional council or planning agency under which it agrees to pay the other local government or planning agency for technical planning assistance.

Any city council is authorized to make any appropriations that may be necessary to carry out any activities or contracts authorized by this Article or to support any planning agency that it may create pursuant to this Article, and to levy taxes for these purposes as a necessary expense.

"§ 160A-364. Procedure for adopting or amending ordinances under Article. — Before adopting or amending any ordinance authorized by this Article, the city council shall hold a public hearing on it. A notice of the public hearing shall be given once a week for two successive calendar weeks in a newspaper having general circulation in the area. The notice shall be published the first time not less than 15 days nor more than 25 days before the date fixed for the hearing. No ordinance adopted under this Article shall become effective until a copy thereof shall have been recorded in the office of the register of deeds of each county in which any property directly affected thereby is located.

"§ 160A-365. Enforcement of ordinances. — Subject to the provisions of the ordinance, any ordinance adopted pursuant to authority conferred by this Article may be enforced by any remedy provided by G.S. 160A-175.

"Part 2. Subdivision Regulation

"§ 160A-371. Subdivision regulation. — A city may by ordinance regulate the subdivision of land within its territorial jurisdiction.

"§ 160A-372. Contents and requirements of ordinance. — A subdivision control ordinance may provide for the orderly growth and development of the city; for the coordination of streets and highways within proposed subdivisions with existing or planned streets and highways and with other public facilities; for the dedication or reservation of recreation areas serving residents of the immediate neighborhood within the subdivision, and rights of way or easements for street and utility- purposes; and for the distribution of population and traffic in a manner that will avoid congestion and overcrowding and will create conditions essential to public health, safety, and the general welfare. The ordinance may include requirements that the final plat show sufficient data to determine readily and reproduce accurately on the ground the location, bearing, and length of every street and alley line, lot line, easement boundary line, and other property boundaries, including the radius and other data for curved property lines, to an appropriate accuracy and in conformance with good surveying practice.

The ordinance may provide for the more orderly development of subdivisions by requiring the construction of community service facilities in accordance with municipal policies and standards and, to assure compliance with these requirements, the ordinance may provide for the posting of bond or any other method that will offer guarantee of compliance.

The ordinance may provide for the reservation of school sites, according to comprehensive land use plans approved by the council or the planning agency. When a subdivision is submitted for approval, in which, according to the land use plan, a school site should be reserved, the council or planning agency shall notify the appropriate board of education that the subdivision has been submitted for approval and that under the ordinance a school site may be reserved therein. In reviewing the subdivision and giving approval thereto, the council or planning agency shall consult the board of education in determining the exact size and location of any school site to be reserved therein. Before the subdivision is finally approved, the board of education shall determine whether or not it wishes to have a school site reserved in the subdivision. If the board of education does not wish to have a school site reserved in the

subdivision, it shall so notify the council or planning agency, and in that event no school site shall be reserved therein. If the board of education does wish to have a school site reserved in the subdivision, the subdivision as finally approved shall reserve a school site of a size and location agreeable to the board of education and to the council or planning agency. The board of education shall then have eighteen months beginning on the date of final approval of the subdivision within which to acquire the site. If the board of education has not purchased or begun proceedings to acquire the site within eighteen months after the subdivision is finally approved, the subdivider may proceed to dispose of it in accordance with other provisions of the ordinance.

The ordinance may require that a plat be prepared, approved, and recorded pursuant to its provisions whenever any subdivision of land takes place.

"§ 160A-373. Ordinance to contain procedure for plat approval; approval prerequisite to plat recordation; statement by owner. — Any subdivision ordinance adopted pursuant to this Article shall contain provisions setting forth the procedures to be followed in granting or denying approval of a subdivision plat prior to its registration.

The ordinance may provide that final approval of each individual subdivision plat is to be given by

- (1) the city council,
- (2) the city council on recommendation of a planning agency, or
- (3) a designated planning agency.

From and after the time that a subdivision ordinance is filed with the register of deeds of the county, no subdivision plat of land within the city's jurisdiction shall be filed or recorded until it shall have been submitted to and approved by the appropriate agency, as specified in the subdivision ordinance, and until this approval shall have been entered on the face of the plat in writing by the chairman or head of the agency. The register of deeds shall not file or record a plat of a subdivision of land located within the territorial jurisdiction of a city that has not been approved in accordance with these provisions, nor shall the clerk of superior court order or direct the recording of a plat if the recording would be in conflict with this section. The owner of land shown on a subdivision plat submitted for recording, or his authorized agent, shall sign a statement on the plat stating whether or not any land shown thereon is within the subdivision-regulation jurisdiction of any city.

"§ 160A-374. Effect of plat approval on dedications. — The approval of a plat shall not be deemed to constitute or effect the acceptance by the city or public of the dedication of any street or other ground, public utility line, or other public facility shown on the plat. However, any city council may by resolution accept any dedication made to the public of lands or facilities for streets, parks, public utility lines, or other public purposes, when the lands or facilities are located within its subdivision-regulation jurisdiction. Acceptance of dedication of lands or facilities located within the subdivision-regulation jurisdiction but outside the corporate limits of a city shall not place on the city any duty to open, operate, repair, or maintain any street, utility line, or other land or facility, and a city shall in no event be held to answer in any civil action or proceeding for failure to open, repair, or maintain any street located outside its corporate limits.

"§ 160A-375. Penalties for transferring lots in unapproved subdivisions. — If a city adopts an ordinance regulating the subdivision of land as authorized herein, any person who, being the owner or agent of the owner of any land located within the jurisdiction of that city, thereafter subdivides his land in violation of the ordinance or transfers or sells land by reference to, exhibition of, or any other use of a plat showing a subdivision of the land before the plat has been properly approved under such ordinance and recorded in the office of the appropriate register of deeds, shall be guilty of a misdemeanor. The description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring land shall not exempt the transaction from this penalty. The city, through its attorney or other official

designated by the council, may enjoin illegal subdivision, transfer, or sale of land by action for injunction.

"§ 160A-376. Definitions. — For the purpose of this Part, 'subdivision' means all divisions of a tract or parcel of land into two or more lots, building sites, or other divisions for the purpose of sale, or building development (whether immediate or future) and shall include all division of land involving the dedication of a new street or a change in existing streets; but the following shall not be included within this definition nor be subject to the regulations authorized by this Part: (i) the combination or recombination of portions of previously platted lots where the total number of lots is not increased and the resultant lots are equal to or exceed the standards of the municipality as shown in its subdivision regulations; (ii) the division of land into parcels greater than 10 acres where no street right of way dedication is involved; (iii) the public acquisition by purchase of strips of land for the widening or opening of streets; and (iv) the division of a tract in single ownership whose entire area is no greater than two acres into not more than three lots, where no street right of way dedication is involved and where the resultant lots are equal to or exceed the standards of the municipality, as shown in its subdivision regulations.

"Part 3. Zoning

"§ 160A-381. Grant of power. — For the purpose of promoting health, safety, morals, or the general welfare of the community, any city is hereby empowered to regulate and restrict the height, number of stories and size of buildings and other structures, the percentage of lots that may be occupied, the size of yards, courts and other open spaces, the density of population, and the location and use of buildings, structures and land for trade, industry, residence or other purposes. These regulations may provide that a board of adjustment may determine and vary their application in harmony with their general purpose and intent and in accordance with general or specific rules therein contained. The regulations may also provide that the board of adjustment or the city council may issue special use permits or conditional use permits in the classes of cases or situations and in accordance with the principles, conditions, safeguards, and procedures specified therein and may impose reasonable and appropriate conditions and safeguards upon these permits. Where appropriate, such conditions may include requirements that street and utility rights of way be dedicated to the public and that provision be made of recreational space and facilities.

"§ 160A-382. Districts. — For any or all these purposes, the city may divide its territorial jurisdiction into districts of any number, shape, and area that may be deemed best suited to carry out the purposes of this Article; and within those districts it may regulate and restrict the erection, construction, reconstruction, alteration, repair or use of buildings, structures, or land. All regulations shall be uniform for each class or kind of building throughout each district, but the regulations in one district may differ from those in other districts.

"§ 160A-383. Purposes in view. — Zoning regulations shall be made in accordance with a comprehensive plan and designed to lessen congestion in the streets; to secure safety from fire, panic and other dangers; to promote health and the general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; and to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements. The regulations shall be made with reasonable consideration, among other things, as to the character of the district and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such city.

"§ 160A-384. Method of procedure. — The city council shall provide for the manner in which zoning regulations and restrictions and the boundaries of zoning districts shall be determined, established and enforced, and from time to time amended, supplemented or changed, in accordance with the provisions of this Article.

"§ 160A-385. **Changes.** — Zoning regulations and restrictions and zone boundaries may from time to time be amended, supplemented, changed, modified or repealed. In case, however, of a protest against such change, signed by the owners of twenty percent (20%) or more either of the area of the lots included in a proposed change, or of those immediately adjacent thereto either in the rear thereof or on either side thereof, extending 100 feet therefrom, or of those directly opposite thereto extending 100 feet from the street frontage of the opposite lots, an amendment shall not become effective except by favorable vote of three-fourths of all the members of the city council.

"§ 160A-386. **Protest petition; form; requirements; time for filing.** — No protest against any change in or amendment to a zoning ordinance or zoning map shall be valid or effective for the purposes of G.S. 160A-385 unless it be in the form of a written petition actually bearing the signatures of the requisite number of property owners and stating that the signers do protest the proposed change or amendment, and unless it shall have been received by the city clerk in sufficient time to allow the city at least two normal work days, excluding Saturdays, Sundays and legal holidays, before the date established for a public hearing on the proposed change or amendment to determine the sufficiency and accuracy of the petition. The city council may by ordinance require that all protest petitions be on a form prescribed and furnished by the city, and such form may prescribe any reasonable information deemed necessary to permit the city to determine the sufficiency and accuracy of the petition.

"§ 160A-387. **Planning agency; zoning plan; certification to city council.** — In order to exercise the powers conferred by this Article, a city council shall create or designate a planning agency under the provisions of this article or of a special act of the General Assembly. The planning agency shall prepare a zoning plan, including both the full text of a zoning ordinance and maps showing proposed district boundaries. The planning agency may hold public hearings in the course of preparing the plan. Upon completion, the planning agency shall certify the plan to the city council. The city council shall not hold its required public hearing or take action until it has received a certified plan from the planning agency. Following its required public hearing, the city council may refer the plan back to the planning agency for any further recommendations that the agency may wish to make prior to final action by the city council in adopting, modifying and adopting, or rejecting the ordinance.

"§ 160A-388. **Board of adjustment.** — (a) The city council may provide for the appointment and compensation of a board of adjustment consisting of five members, each to be appointed for three years. In appointing the original members of such board, or in the filling of vacancies caused by the expiration of the terms of existing members, the council may appoint certain members for less than three years to the end that thereafter the terms of all members shall not expire at the same time. The council may, in its discretion, appoint and provide compensation for alternate members to serve on the board in the absence of any regular member. Alternate members shall be appointed for the same term, at the same time, and in the same manner as regular members. Each alternate member, while attending any regular or special meeting of the board and serving in the absence of any regular member, shall have and may exercise all the powers and duties of a regular member.

(b) The board of adjustment shall hear and decide appeals from and review any order, requirement, decision, or determination made by an administrative official charged with the enforcement of any ordinance adopted pursuant to this Part. An appeal may be taken by any person aggrieved or by an officer, department, board, or bureau of the city. Appeals shall be taken within times prescribed by the board of adjustment by general rule, by filing with the officer from whom the appeal is taken and with the board of adjustment 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 stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the board of adjustment, after notice of

appeal has been filed with him, that because of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property. In that case proceedings shall not be stayed except by a restraining order, which may be granted by the board of adjustment or by a court of record on application, on notice to the officer from whom the appeal is taken and on due cause shown. The board of adjustment shall fix a reasonable time for the hearing of the appeal, give due notice thereof to the parties, and decide it within a reasonable time. The board of adjustment may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from, and shall make any order, requirement, decision, or determination that in its opinion ought to be made in the premises. To this end the board shall have all the powers of the officer from whom the appeal is taken.

(c) The zoning ordinance may provide that the board of adjustment may permit special exceptions to the zoning regulations in classes of cases or situations and in accordance with the principles, conditions, safeguards, and procedures specified in the ordinance. The ordinance may also authorize the board to interpret zoning maps and pass upon disputed questions of lot lines or district boundary lines and similar questions as they arise in the administration of the ordinance. The board shall hear and decide all matters referred to it or upon which it is required to pass under any zoning ordinance.

(d) When practical difficulties or unnecessary hardships would result from carrying out the strict letter of a zoning ordinance, the board of adjustment shall have the power, in passing upon appeals, to vary or modify any of the regulations or provisions of the ordinance relating to the use, construction or alteration of buildings or structures or the use of land, so that the spirit of the ordinance shall be observed, public safety and welfare secured, and substantial justice done.

(e) The concurring vote of four-fifths 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 an ordinance adopted pursuant to this Article, or to decide in favor of the applicant any matter upon which it is required to pass under any ordinance, or to grant a variance from the provisions of the ordinance. Every decision of the board shall be subject to review by the superior court by proceedings in the nature of certiorari.

(f) The chairman of the board of adjustment or any member temporarily acting as chairman, is authorized in his official capacity to administer oaths to witnesses in any matter coming before the board.

"§ 160A-389. Remedies. — If a building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained, or any building, structure or land is used in violation of this Part or of any ordinance or other regulation made under authority conferred thereby, the city, in addition to other remedies, may institute any appropriate action or proceedings to prevent the unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use, to restrain, correct or abate the violation, to prevent occupancy of the building, structure or land, or to prevent any illegal act, conduct, business or use in or about the premises.

"§ 160A-390. Conflict with other laws. — When regulations made under authority of this Part require a greater width or size of yards or courts, or require a lower height of a building or fewer number of stories, or require a greater percentage of a lot to be left unoccupied, or impose other higher standards than are required in any other statute or local ordinance or regulation, regulations made under authority of this Part shall govern. When the provisions of any other statute or local ordinance or regulation require a greater width or size of yards or courts, or require a lower height of a building or a fewer number of stories, or require a greater percentage of a lot to be left unoccupied, or impose other higher standards than are required by the regulations made under authority of this Part, the provisions of that statute or local ordinance or regulation shall govern.

"§ 160A-391. **Other statutes not repealed.** — This Part shall not repeal any zoning act or city planning act, local or general, now in force, except those that are repugnant to or inconsistent herewith. This Part shall be construed to be an enlargement of the duties, powers, and authority contained in other laws authorizing the appointment and proper functioning of city planning commissions or zoning commissions by any city or town in the State of North Carolina.

"§ 160A-392. **Part applicable to buildings constructed by State and its subdivisions.** — All of the provisions of this Part are hereby made applicable to the erection, construction, and use of buildings by the State of North Carolina and its political subdivisions.

"Part 4. Acquisition of Open Space

"§ 160A-401. **Legislative intent.** — It is the intent of the General Assembly in enacting this Part to provide a means whereby any county or city may acquire, by purchase, gift, grant, bequest, devise, lease, or otherwise, and through the expenditure of public funds, the fee or any lesser interest or right in real property in order to preserve, through limitation of their future use, open spaces and areas for public use and enjoyment.

"§ 160A-402. **Finding of necessity.** — The General Assembly finds that the rapid growth and spread of urban development in the State is encroaching upon, or eliminating, many open areas and spaces of varied size and character, including many having significant scenic or esthetic values, which areas and spaces if preserved and maintained in their present open state would constitute important physical, social, esthetic, or economic assets to existing and impending urban development. The General Assembly declares that it is necessary for sound and proper urban development and in the public interest of the people of this State for any county or city to expend or advance public funds for, or to accept by purchase, gift, grant, bequest, devise, lease, or otherwise, the fee or any lesser interest or right in real property so as to acquire, maintain, improve, protect, limit the future use of, or otherwise conserve open spaces and areas within their respective jurisdictions as defined by this Article.

The General Assembly declares that the acquisition of interests or rights in real property for the preservation of open spaces and areas constitutes a public purpose for which public funds may be expended or advanced.

"§ 160A-403. **Counties or cities authorized to acquire and reconvey real property.** — Any county or city in the State may acquire by purchase, gift, grant, bequest, devise, lease, or otherwise, the fee or any lesser interest, development right, easement, covenant, or other contractual right of or to real property within its respective jurisdiction, when it finds that the acquisition is necessary to achieve the purposes of this Part. Any county or city may also acquire the fee to any property for the purpose of conveying or leasing the property back to its original owner or other person under covenants or other contractual arrangements that will limit the future use of the property in accordance with the purposes of this Part, but when this is done, the property may be conveyed back to its original owner but to no other person by private sale.

"§ 160A-404. **Joint action by governing bodies.** — Any county or city may enter into any agreement with any other county or city for the purpose of jointly exercising the authority granted by this Part.

"§ 160A-405. **Powers of governing bodies.** — Any county or city, in order to exercise the authority granted by this Part, may:

- (1) enter into and carry out contracts with the State or Federal government or any agencies thereof under which grants or other assistance are made to the county or city;
- (2) accept any assistance or funds that may be granted by the State or federal government with or without a contract;
- (3) agree to and comply with any reasonable conditions imposed upon grants;
- (4) make expenditures from any funds so granted.

"§ 160A-406. **Appropriations and taxes authorized; special tax elections.** — For the purposes set forth in this Article any county or city governing body may appropriate any nontax funds, and in addition may make appropriations and levy annually taxes therefor as a special purpose, in addition to any allowed by the Constitution. No tax shall be levied for the purposes of this Article unless it shall have first been approved by the qualified voters of the county or city in a special election called by the governing body for that purpose.

"§ 160A-407. **Definitions.** — For the purpose of this Part an 'open space' or 'open area' is any space or area (i) characterized by great natural scenic beauty or (ii) whose existing openness, natural condition, or present state of use, if retained, would enhance the present or potential value of abutting or surrounding urban development, or would maintain or enhance the conservation of natural or scenic resources.

For the purposes of this Part 'open space' or 'open area' and the 'public use and enjoyment' of interests or rights in real property shall also include open space land and open space uses. The term 'open space land' means any undeveloped or predominantly undeveloped land in an urban area that has value for one or more of the following purposes: (i) park and recreational purposes, (ii) conservation of land and other natural resources, or (iii) historic or scenic purposes. The term 'open space uses' means any use of open space land for (i) park and recreational purposes, (ii) conservation of land and other natural resources, or (iii) historic or scenic purposes.

"Part 5. Building Inspection

"§ 160A-411. **Inspection department.** — Every city in the State is hereby authorized to create an inspection department, and shall appoint one or more inspectors who may be given the titles of building inspector, electrical inspector, plumbing inspector, housing inspector, zoning inspector, heating and air-conditioning inspector, fire prevention inspector, or deputy or assistant inspector, or such other titles as may be generally descriptive of the duties assigned. The department may be headed by a superintendent or director of inspections.

"§ 160A-412. **Duties and responsibilities.** — The duties and responsibilities of an inspection department and of the inspectors therein shall be to enforce within their territorial jurisdiction State and local laws relating to

- (1) the construction of buildings and other structures;
- (2) the installation of such facilities as plumbing systems, electrical systems, heating systems, refrigeration systems, and air-conditioning systems;
- (3) the maintenance of buildings and other structures in a safe, sanitary, and healthful condition;
- (4) other matters that may be specified by the city council.

These duties shall include the receipt of applications for permits and the issuance or denial of permits, the making of any necessary inspections, the issuance or denial of certificates of compliance, the issuance of orders to correct violations, the bringing of judicial actions against actual or threatened violations, the keeping of adequate records, and any other actions that may be required in order adequately to enforce those laws. The city council shall have the authority to enact reasonable and appropriate provisions governing the enforcement of those laws.

"§ 160A-413. **Joint inspection department; other arrangements.** — A city council may enter into and carry out contracts with another city, county, or combination thereof under which the parties agree to create and support a joint inspection department for the enforcement of State and local laws specified in the agreement. The governing boards of the contracting parties are authorized to make any necessary appropriations for this purpose.

In lieu of a joint inspection department, a city council may designate an inspector from any other city or county to serve as a member of its inspection department with the approval of the governing body of the other city or county. The inspector shall, while exercising the duties of the position, be considered a municipal employee.

The city council of any city may request the board of county commissioners of the county in which the city is located to direct one or more county building inspectors to exercise their powers within part or all of the city's jurisdiction, and they shall thereupon be empowered to do so until the city council officially withdraws its request.

"§ 160A-414. Financial support. — The city council may appropriate for the support of the inspection department any funds that it deems necessary. It may provide for paying inspectors fixed salaries or it may reimburse them for their services by paying over part or all of any fees collected. It shall have power to fix reasonable fees for issuance of permits, inspections, and other services of the inspection department.

"§ 160A-415. Conflicts of interest. — No member of an inspection department shall be financially interested in the furnishing of labor, material, or appliances for the construction, alteration, or maintenance of any building within the city's jurisdiction or any part or system thereof, or in the making of plans or specifications therefor, unless he is the owner of the building. No member of an inspection department shall engage in any work that is inconsistent with his duties or with the interest of the city.

"§ 160A-416. Failure to perform duties. — If any member of an inspection department shall willfully fail to perform the duties required of him by law, or willfully shall improperly issue a permit, or shall give a certificate of compliance without first making the inspections required by law, or willfully shall improperly give a certificate of compliance, he shall be guilty of a misdemeanor.

"§ 160A-417. Permits. — No person shall commence or proceed with

- (1) the construction, reconstruction, alteration, repair, removal, or demolition of any building or structure,
- (2) the installation, extension, or general repair of any plumbing system,
- (3) the installation, extension, alteration, or general repair of any heating or cooling equipment system, or
- (4) the installation extension, alteration, or general repair of any electrical wiring, devices, appliances, or equipment,

without first securing from the inspection department with jurisdiction over the site of the work any and all permits required by the State Building Code and any other State or local laws applicable to the work. A permit shall be in writing and shall contain a provision that the work done shall comply with the State Building Code and all other applicable State and local laws. No permits shall be issued unless the plans and specifications are identified by the name and address of the author thereof, and if the General Statutes of North Carolina require that plans for certain types of work be prepared only by a registered architect or registered engineer, no permit shall be issued unless the plans and specifications bear the North Carolina seal of a registered architect or of a registered engineer. When any provision of the General Statutes of North Carolina or of any ordinance requires that work be done by a licensed specialty contractor of any kind, no permit for shall be issued unless the work is to be performed by such a duly licensed contractor. Violation of this section shall constitute a misdemeanor.

"§ 160A-418. Time limitations on validity of permits. — A permit issued pursuant to G.S. 160A-417 shall expire by limitation six months, or any lesser time fixed by ordinance of the city council, after the date of issuance if the work authorized by the permit has not been commenced. If after commencement the work is discontinued for a period of 12 months, the permit therefor shall immediately expire. No work authorized by any permit that has expired shall thereafter be performed until a new permit has been secured.

"§ 160A-419. Changes in work. — After a permit has been issued, no changes or deviations from the terms of the application, plans and specifications, or the permit, except where changes or deviations are clearly permissible under the State Building Code, shall be made until specific written approval of proposed changes or deviations has been obtained from the inspection department.

"§ 160A-420. **Inspections of work in progress.** — As the work pursuant to a permit progresses, local inspectors shall make as many inspections thereof as may be necessary to satisfy them that the work is being done according to the provisions of any applicable State and local laws and of the terms of the permit. In exercising this power, members of the inspection department shall have a right to enter on any premises within the jurisdiction of the department at all reasonable hours for the purposes of inspection or other enforcement action, upon presentation of proper credentials.

"§ 160A-421. **Stop orders.** — Whenever any building or structure or part thereof is being demolished, constructed, reconstructed, altered, or repaired in a hazardous manner, or in substantial violation of any State or local building law, or in a manner that endangers life or property, the appropriate inspector may order the specific part of the work that is in violation or presents such a hazard to be immediately stopped. The stop order shall be in writing, directed to the person doing the work, and shall state the specific work to be stopped, the specific reasons therefor, and the conditions under which the work may be resumed. The owner or builder may appeal from a stop order to the North Carolina Commissioner of Insurance within a period of five days after the order is issued. Notice of appeal shall be given in writing to the Commissioner of Insurance, with a copy to the local inspector. The Commissioner of Insurance shall promptly conduct a hearing at which the appellant and the inspector shall be permitted to submit relevant evidence, and shall rule on the appeal as expeditiously as possible. Pending the ruling by the Commissioner of Insurance on an appeal no further work shall take place in violation of a stop order. Violation of a stop order shall constitute a misdemeanor.

"§ 160A-422. **Revocation of permits.** — The appropriate inspector may revoke and require the return of any permit by notifying the permit holder in writing stating the reason for the revocation. Permits shall be revoked for any substantial departure from the approved application, plans, or specifications; for refusal or failure to comply with the requirements of any applicable State or local laws; or for false statements or misrepresentations made in securing the permit. Any permit mistakenly issued in violation of an applicable State or local law may also be revoked.

"§ 160A-423. **Certificates of 'compliance.** — At the conclusion of all work done under a permit, the appropriate inspector shall make a final inspection, and if he finds that the completed work complies with all applicable State and local laws and with the terms of the permit, he shall issue a certificate of compliance. No new building or part thereof shall be occupied, and no addition or enlargement of any existing building after being altered or moved shall be occupied, until the inspection department has issued a certificate of compliance. A temporary certificate of compliance may be issued permitting occupancy for a stated period of specified portions of the building that the inspector finds may safely be occupied prior to final completion of the entire building. Violation of this section shall constitute a misdemeanor.

"§ 160A-424. **Periodic inspections.** — The inspection department shall make periodic inspections, subject to the council's directions, for unsafe, unsanitary, or otherwise hazardous and unlawful conditions in structures within its territorial jurisdiction. In addition, it shall make inspections when it has reason to believe that such conditions may exist in a particular structure. In exercising this power, members of the department shall have a right to enter on any premises within the jurisdiction of the department at all reasonable hours for the purposes of inspection or other enforcement action, upon presentation of proper credentials.

"§ 160A-425. **Defects in buildings to be corrected.** — When a local inspector finds any defects in a building, or finds that the building has not been constructed in accordance with the applicable State and local laws, or that a building because of its condition is dangerous or contains fire hazardous conditions, it shall be his duty to notify the owner or occupant of the building of its defects, hazardous conditions, or failure to comply with law. The owner of the contents shall immediately remedy the defects, hazardous conditions, or violations of law in the property he owns.

"§ 160A-426. **Unsafe buildings condemned.** — Every building which shall appear to the inspector to be especially dangerous to life because of 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, shall be held to be unsafe, and the inspector shall affix a notice of the dangerous character of the structure to a conspicuous place on the exterior wall of said building.

"§ 160A-427. **Removing notice from condemned building.** — If any person shall remove any notice that has been affixed to any building or structure by a local inspector of any municipality and that states the dangerous character of the building or structure, he shall be guilty of a misdemeanor.

"§ 160A-428. **Action in event of failure to take corrective action.** — If the owner of a building or structure that has been condemned as unsafe pursuant to G.S. 160A-426 shall fail to take prompt corrective action, the local inspector shall give him written notice, by certified or registered mail to his last known address or by personal service,

- (1) that the building or structure is in a condition that appears to constitute a fire or safety hazard or to be dangerous to life, health, or other property;
- (2) that a hearing will be held before the inspector at a designated place and time, not later than 10 days after the date of the notice, at which time the owner shall be entitled to be heard in person or by counsel and to present arguments and evidence pertaining to the matter; and
- (3) that following the hearing, the inspector may issue such order to repair, close, vacate, or demolish the building or structure as appears appropriate.

If the name or whereabouts of the owner cannot after due diligence be discovered, the notice shall be considered properly and adequately served if a copy thereof is posted on the outside of the building or structure in question at least 10 days prior to the hearing and a notice of the hearing is published in a newspaper having general circulation in the city at least once not later than one week prior to the hearing.

"§ 160A-429. **Order to take corrective action.** — If, upon a hearing held pursuant to the notice prescribed in G.S. 160A-428, the inspector shall find that the building or structure is in condition that constitutes a fire or safety hazard or renders it dangerous to life, health, or other property, he shall make an order in writing, directed to the owner of such building or structure, requiring the owner to remedy the defective conditions by repairing, closing, vacating, or demolishing the building or structure or taking other necessary steps, within such period, not less than 60 days, as the inspector may prescribe.

"§ 160A-430. **Appeal; finality of order if not appealed.** — Any owner who has received an order under G.S. 160A-429 may appeal from the order to the city council by giving notice of appeal in writing to the inspector and to the city clerk within 10 days following issuance of the order. In the absence of an appeal, the order of the inspector shall be final. The city council shall hear an appeal within a reasonable time and may modify and affirm, or revoke the order.

"§ 160A-431. **Failure to comply with order.** — If the owner of a building or structure fails to comply with an order issued pursuant to G.S. 160A-429 from which no appeal has been taken, or fails to comply with an order of the city council following an appeal, he shall be guilty of a misdemeanor and shall be punished in the discretion of the court.

"§ 160A-432. **Equitable enforcement.** — Whenever any violation is denominated a misdemeanor under the provisions of this Part, the city, either in addition to or in lieu of other remedies, may initiate any appropriate action or proceedings to prevent, restrain, correct, or abate the violation or to prevent the occupancy of the building or structure involved.

"§ 160A-433. **Records and reports.** — The inspection department shall keep complete, permanent, and accurate records in convenient form of all applications received, permits issued, inspections and reinspections made, defects found, certificates of compliance granted, and all other work and activities of the department. Periodic reports shall be submitted to the city

council and to the Commissioner of Insurance as they shall by ordinance, rule, or regulation require.

"§ 160A-434. **Appeals in general.** — Unless otherwise provided by law, appeals from any order, decision, or determination by a member of a local inspection department pertaining to the State Building Code or other State building laws shall be taken to the Commissioner of Insurance or other official specified in G.S. 143-139, by filing a written notice with him and with the inspection department within a period of 10 days after the order, decision, or determination. Further appeals may be taken to the State Building Code Council or to the courts as provided by law.

"§ 160A-435. **Establishment of fire limits.** — The city council of every incorporated city shall pass one or more ordinances establishing and defining fire limits, which shall include the principal business portions of the city and which shall be known as primary fire limits. In addition, the council may, in its discretion, establish and define one or more separate areas within the city as secondary fire limits.

"§ 160A-436. **Restrictions within primary fire limits.** — Within the primary fire limits of any city, as established and defined by ordinance, no frame or wooden building or structure or addition thereto shall hereafter be erected, altered, repaired, or moved (either into the limits or from one place to another within the limits), except upon the permit of the local inspection department approved by the Commissioner of Insurance. The city council may make additional regulations for the prevention, extinguishment, or mitigation of fires within the primary fire limits.

"§ 160A-437. **Restriction within secondary fire limits.** — Within any secondary fire limits of any city or town, as established and defined by ordinance, no frame or wooden building or structure or addition thereto shall be erected, altered, repaired, or moved except in accordance with any rules and regulations established by ordinance of the areas.

"§ 160A-438. **Failure to establish primary fire limits.** — If the council of any city shall fail or refuse to establish and define the primary fire limits of the city as required by law, after having such failure or refusal called to their attention in writing by the State Commissioner of Insurance, the Commissioner shall have the power to establish the limits upon making a determination that they are necessary and in the public interest.

"Part 6. Minimum Housing Standards

"§ 160A-441. **Exercise of police power authorized.** — It is hereby found and declared that the existence and occupation of dwellings in this State that are unfit for human habitation are inimical to the welfare and dangerous and injurious to the health, safety and morals of the people of this State, and that a public necessity exists for the repair, closing or demolition of such dwellings. Whenever any city or county of this State finds that there exists in the city or county dwellings that are unfit for human habitation due to dilapidation, defects increasing the hazards of fire, accidents or other calamities, lack of ventilation, light or sanitary facilities, or due to other conditions rendering the dwellings unsafe or unsanitary, or dangerous or detrimental to the health, safety, morals, or otherwise inimical to the welfare of the residents of the city or county, power is hereby conferred upon the city or county to exercise its police powers to repair, close or demolish the dwellings in the manner herein provided. No ordinance enacted by the governing body of a county pursuant to this article shall be applicable within the corporate limits of any city unless the city council of the city has by resolution expressly given its approval thereto.

"§ 160A-442. **Definitions.** — The following terms shall have the meanings whenever used or referred to as indicated when used in this Part unless a different meaning clearly appears from the context:

- (1) 'Dwelling' means any building, or structure, or part thereof, used and occupied for human habitation or intended to be so used, and includes any outhouses and appurtenances belonging thereto or usually enjoyed therewith.

- (2) 'Governing body' means the council, board of commissioners, or other legislative body, charged with governing a city or county.
- (3) 'City' means any incorporated city or any county.
- (4) 'Owner' means the holder of the title in fee simple and every mortgagee of record.
- (5) 'Parties in interest' means all individuals, associations and corporations who have interests of record in a dwelling and any who are in possession thereof.
- (6) 'Public authority' means any housing authority or any officer who is in charge of any department or branch of the government of the city, county, or State relating to health, fire, building regulations, or other activities concerning dwellings in the city.
- (7) 'Public officer' means the officer or officers who are authorized by ordinances adopted hereunder to exercise the powers prescribed by the ordinances and by this Article.

"§ 160A-443. Ordinance authorized as to repair, closing and demolition; order of public officer. — Upon the adoption of an ordinance finding that dwelling conditions of the character described in G.S. 160A-441 exist within a city, the governing body of the city is hereby authorized to adopt and enforce ordinances relating to dwellings within the city's territorial jurisdiction that are unfit for human habitation. These ordinances shall include the following provisions:

- (1) That a public officer be designated or appointed to exercise the powers prescribed by the ordinance.
- (2) That whenever a petition is filed with the public officer by a public authority or by at least five residents of the city charging that any dwelling is unfit for human habitation or whenever it appears to the public officer (on his own motion) that any dwelling is unfit for human habitation, the public officer shall, if his preliminary investigation discloses a basis for such charges, issue and cause to be served upon the owner of and parties in interest in such dwellings a complaint stating the charges in that respect and containing a notice that a hearing will be held before the public officer (or his designated agent) at a place within the county in which the property is located fixed not less than 10 days nor more than 30 days after the serving of the complaint; that the owner and parties in interest shall be given the right to file an answer to the complaint and to appear in person, or otherwise, and give testimony at the place and time fixed in the complaint; and that the rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the public officer.
- (3) That if, after notice and hearing, the public officer determines that the dwelling under consideration is unfit for human habitation, he shall state in writing his findings of fact in support of that determination and shall issue and cause to be served upon the owner thereof an order,
 - a. if the repair, alteration or improvement of the dwelling can be made at a reasonable cost in relation to the value of the dwelling (the ordinance of the city may fix a certain percentage of this cost as being reasonable), requiring the owner, within the time specified, to repair, alter or improve the dwelling in order to render it fit for human habitation or to vacate and close the dwelling as a human habitation; or
 - b. if the repair, alteration or improvement of the dwelling cannot be made at a reasonable cost in relation to the value of the dwelling (the ordinance of the city may fix a certain percentage of this cost as

- being reasonable), requiring the owner, within the time specified in the order, to remove or demolish such dwelling.
- (4) That, if the owner fails to comply with an order to repair, alter or improve or to vacate and close the dwelling, the public officer may cause the dwelling to be repaired, altered or improved or to be vacated and closed; that the public officer may cause to be posted on the main entrance of any dwelling so closed, a placard with the following words: 'This building is unfit for human habitation; the use or occupation of this building for human habitation is prohibited and unlawful.' Occupation of a building so posted shall constitute a misdemeanor.
 - (5) That, if the owner fails to comply with an order to remove or demolish the dwelling, the public officer may cause such dwelling to be removed or demolished. The duties of the public officer set forth in subdivisions (4) and (5) shall not be exercised until the governing body shall have by ordinance ordered the public officer to proceed to effectuate the purpose of this Article with respect to the particular property or properties which the public officer shall have found to be unfit for human habitation and which property or properties shall be described in the ordinance. No such ordinance shall be adopted to require demolition of a dwelling until the owner has first been given a reasonable opportunity to bring it into conformity with the housing code. This ordinance shall be recorded in the office of the register of deeds in the county wherein the property or properties are located and shall be indexed in the name of the property owner in the grantor index.
 - (6) That the amount of the cost of repairs, alterations or improvements, or vacating and closing, or removal or demolition by the public officer shall be a lien against the real property upon which the cost was incurred, which lien shall be filed, have the same priority, and be collected as the lien for special assessment provided in Article 10 of this Chapter. If the dwelling is removed or demolished by the public officer, he shall sell the materials of the dwelling and shall credit the proceeds of the sale against the cost of the removal or demolition and any balance remaining shall be deposited in the superior court by the public officer, shall be secured in a manner- directed by the court, and shall be disbursed by the court to the persons found to be entitled thereto by final order or decree of the court. Nothing in this section shall be construed to impair or limit in any way the power of the city to define and declare nuisances and to cause their removal or abatement by summary proceedings, or otherwise.

"§ 160A-444. Standards. — An ordinance adopted by a city under this article shall provide that the public officer may determine that a dwelling is unfit for human habitation if he finds that conditions exist in the dwelling that render it dangerous or injurious to the health, safety or morals of the occupants of the dwelling, the occupants of neighboring dwellings, or other residents of the city. Defective conditions may include the following (without limiting the generality of the foregoing): defects therein increasing the hazards of fire, accident, or other calamities; lack of adequate ventilation, light, or sanitary facilities; dilapidation; disrepair; structural defects; uncleanliness. The ordinances may provide additional standards to guide the public officers, or his agents, in determining the fitness of a dwelling for human habitation.

"§ 160A-445. Service of complaints and orders. — Complaints or orders issued by a public officer pursuant to an ordinance adopted under this Article shall be served upon persons either personally or by registered or certified mail. If the whereabouts of persons is unknown and cannot be ascertained by the public officer in the exercise of reasonable diligence, and the public officer makes an affidavit to that effect, then the serving of the complaint or order upon

the persons may be made by publication in the manner prescribed in the Rules of Civil Procedure. When service is made by publication, a notice of the pending proceedings shall be posted in a conspicuous place on the premises thereby affected.

"§ 160A-446. **Remedies.** — (a) The governing body may provide for the creation and organization of a housing appeals board to which appeals may be taken from any decision or order of the public officer, or may provide for such appeals to be heard and determined by its zoning board of adjustment.

(b) The housing appeals board, if created, shall consist of five members to serve for three-year staggered terms. It shall have the power to elect its own officers, to fix the times and places for its meetings, to adopt necessary rules of procedure, and to adopt other rules and regulations for the proper discharge of its duties. It shall keep an accurate record of all its proceedings.

(c) An appeal from any decision or order of the public officer may be taken by any person aggrieved thereby or by any officer, board or commission of the city. Any appeal from the public officer shall be taken within 10 days from the rendering of the decision or service of the order by filing with the public officer and with the board a notice of appeal which shall specify the grounds upon which the appeal is based. Upon the filing of any notice of appeal, the public officer shall forthwith transmit to the board all the papers constituting the record upon which the decision appealed from was made. When an appeal is from a decision of the public officer refusing to allow the person aggrieved thereby to do any act, his decision shall remain in force until modified or reversed. When any appeal is from a decision of the public officer requiring the person aggrieved to do any act, the appeal shall have the effect of suspending the requirement until the hearing by the board, unless the public officer certifies to the board, after the notice of appeal is filed with him, that because of facts stated in the certificate (a copy of which shall be furnished the appellant), a suspension of his requirement would cause imminent peril to life or property. In that case the requirement shall not be suspended except by a restraining order, which may be granted for due cause shown upon not less than one day's written notice to the public officer, by the board, or by a court of record upon petition made pursuant to subsection (f) of this section.

(d) The appeals board shall fix a reasonable time for hearing appeals, shall give due notice to the parties, and shall render its decision within a reasonable time. Any party may appear in person or by agent or attorney. The board may reverse or affirm, wholly or partly, or may modify the decision or order appealed from, and may make any decision and order that in its opinion ought to be made in the matter, and to that end it shall have all the powers of the public officer, but the concurring vote of four members of the board shall be necessary to reverse or modify any decision or order of the public officer. The board shall have power also in passing upon appeals, when practical difficulties or unnecessary hardships would result from carrying out the strict letter of the ordinance, to adapt the application of the ordinance to the necessities of the case to the end that the spirit of the ordinance shall be observed, public safety and welfare secured, and substantial justice done.

(e) Every decision of the board shall be subject to review by proceedings in the nature of certiorari instituted within 15 days of the decision of the board, but not otherwise.

(f) Any person aggrieved by an order issued by the public officer or a decision rendered by the board may petition the superior court for an injunction restraining the public officer from carrying out the order or decision and the court may, upon such petition, issue a temporary injunction restraining the public officer pending a final disposition of the cause. The petition shall be filed within 30 days after issuance of the order or rendering of the decision. Hearings shall be had by the court on a petition within 20 days, and shall be given preference over other matters on the court's calendar. The court shall hear and determine the issues raised and shall enter such final order or decree as law and justice may require. It shall not be necessary to file bond in any amount before obtaining a temporary injunction under this subsection.

(g) If any dwelling is erected, constructed, altered, repaired, converted, maintained, or used in violation of this Part or of any ordinance or code adopted under authority of this Part or any valid order or decision of the public officer or board made pursuant to any ordinance or code adopted under authority of this Part, the public officer or board may institute any appropriate action or proceedings to prevent the unlawful erection, construction, reconstruction, alteration or use, to restrain, correct or abate the violation, to prevent the occupancy of the dwelling, or to prevent any illegal act, conduct or use in or about the premises of the dwelling.

"§ 160A-447. Compensation to owners of condemned property. — Nothing in this Part shall be construed as preventing the owner or owners of any property from receiving just compensation for the taking of property by the power of eminent domain under the laws of this State, nor as permitting any property to be condemned or destroyed except in accordance with the police power of the State.

"§ 160A-448. Additional powers of public officer. — An ordinance adopted by the governing body of the city may authorize the public officer to exercise any powers necessary or convenient to carry out and effectuate the purpose and provisions of this article, including the following powers in addition to others herein granted:

- (1) to investigate the dwelling conditions in the city in order to determine which dwellings therein are unfit for human habitations;
- (2) to administer oaths, affirmations, examine witnesses and receive evidence;
- (3) to enter upon premises for the purpose of making examinations in a manner that will do the least possible inconvenience to the persons in possession;
- (4) to appoint and fix the duties of officers, agents and employees necessary to carry out the purposes of the ordinances; and
- (5) to delegate any of his functions and powers under the ordinance to other officers and other agents.

"§ 160A-449. Administration of ordinance. — The governing body of any city adopting an ordinance under this Part shall, as soon as possible thereafter, prepare an estimate of the annual expenses or costs to provide the equipment, personnel and supplies necessary for periodic examinations and investigations of the dwellings in the city for the purpose of determining the fitness of dwellings for human habitation, and for the enforcement and administration of its ordinances adopted under this Part. The city is authorized to make appropriations from its revenues necessary for this purpose and may accept and apply grants or donations to assist it in carrying out the provisions of the ordinances.

"§ 160A-450. Supplemental nature of Part. — Nothing in this Part shall be construed to abrogate or impair the powers of the courts or of any department of any city to enforce any provisions of its charter or its ordinances or regulations, nor to prevent or punish violations thereof; and the powers conferred by this part shall be in addition and supplemental to the powers conferred by any other law.

"ARTICLE 20.

"Interlocal Cooperation

"Part 1. Joint Exercise of Powers

"§ 160A-460. Definitions. — The words defined in this section shall have the meanings indicated when used in this Part:

- (1) 'Unit,' or 'unit of local government' means a county, city, consolidated city-county, sanitary district, or other local political subdivision, authority, or agency of local government.
- (2) 'Undertaking' means the joint exercise by two or more units of local government, or the contractual exercise by one unit for one or more other units, of any administrative or governmental power, function, right, privilege, or immunity of local government.

"§ 160A-461. **Interlocal cooperation authorized.** — Any unit of local government in this State and any one or more other units of local government in this State or any other state (to the extent permitted by the laws of the other state) may enter into contracts or agreements with each other in order to execute any undertaking. The contracts and agreements shall be of reasonable duration, as determined by the participating units, and shall be ratified by resolution of the governing board of each unit spread upon its minutes.

"§ 160A-462. **Joint agencies.** — (a) Units agreeing to an undertaking may establish a joint agency charged with any or all of the responsibility for the undertaking. The units may confer on the joint agency any power, duty, right, or function needed for the execution of the undertaking, except that legal title to all real property necessary to the undertaking shall be held by the participating units individually, or jointly as tenants in common, in such manner and proportion as they may determine.

(b) The participating units may appropriate funds to the joint agency on the basis of an annual budget recommended by the agency and submitted to the governing board of each unit for approval.

"§160A-463. **Personnel.** — (a) The units may agree that any joint agency established under G.S. 160A-462 shall appoint the officers, agents, and employees necessary to execute the undertaking, or that the units jointly shall appoint these personnel, or that one of the units shall appoint the personnel with their services contracted for by the other units or by the joint agency. If the units determine that one unit shall appoint the personnel, the agreement shall provide that the jurisdiction, authority, rights, privileges, and immunities (including coverage under the workmen's compensation laws) which the officers, agents, and employees of the appointing unit enjoy within the territory of that unit shall also be enjoyed by them outside its territory when they are acting pursuant to the agreement and within the scope of their authority or the course of their employment.

(b) When the subject of an undertaking is a sovereign function of government, the exercise of which has been delegated to an officer of each participating unit, the agreement may provide that one officer shall exercise the function for all the participating units, with all of the powers, duties, and obligations that an officer exercising the function in a single unit would have.

"§ 160A-464. **Provisions of the agreement.** — Any contract or agreement establishing an undertaking shall specify:

- (1) the purpose or purposes of the contract or agreement;
- (2) the duration of the agreement;
- (3) if a joint agency is established, its composition, organization, and nature, together with the powers conferred on it;
- (4) the manner of appointing the personnel necessary to the execution of the undertaking;
- (5) the method of financing the undertaking, including the apportionment of costs and revenues;
- (6) the formula for ownership of real property involved in the undertaking, and procedures for the disposition of such property when the contract or agreement expires or is terminated;
- (7) methods for amending the contract or agreement;
- (8) methods for terminating the contract or agreement;
- (9) any other necessary or proper matter.

"§ 160A-465. **Exceptions.** — This Part shall not apply to any undertaking any part of which is subject to approval by a department or agency of the State.

"Part 2. Regional Councils of Governments

"§ 160A-470. **Creation of regional councils.** — Any two or more units of local government may create a regional council of governments by adopting identical concurrent resolutions to

that effect in accordance with the provisions and procedures of this Part. To the extent permitted by the laws of its state, a local government in a state adjoining North Carolina may participate in regional councils of governments organized under this Part to the same extent as if it were located in this State. The concurrent resolutions creating a regional council of governments, and any amendments thereto, will be referred to in this Part as the 'charter' of the regional council.

"§ 160A-471. **Membership.** — Each unit of local government initially adopting a concurrent resolution under G.S. 160A-470 shall become a member of the regional council. Thereafter, any local government may join the regional council by ratifying its charter and by being admitted by unanimous vote of the existing members. All of the rights and privileges of membership in a regional council of governments shall be exercised on behalf of its member governments by their delegates to the council.

"§ 160A-472. **Contents of charter.** — The charter of a regional council of governments shall:

- (1) specify the name of the council;
- (2) establish the powers, duties, and functions that it may exercise and perform;
- (3) establish the number of delegates to represent the member governments, fix their terms of office, provide methods for filling vacancies, and prescribe the compensation and allowances, if any, to be paid to delegates;
- (4) set out the method of determining the financial support that will be given to the council by each member government;
- (5) establish a method for amending the charter, and for dissolving the council and liquidating its assets and liabilities.

In addition, the charter may, but need not, contain rules and regulations for the conduct of council business and any other matters pertaining to the organization, powers, and functioning of the council that the member governments deem appropriate.

"§ 160A-473. **Organization of council.** — Upon its creation, a regional council shall meet at a time and place agreed upon by its member governments and shall organize by electing a chairman and any other officers that the charter may specify or the ' delegates may deem advisable. The council shall then adopt by-laws for the conduct of its business. All meetings of the council shall be open to the public.

"§ 160A-474. **Withdrawal from council.** — Any member government may withdraw from a regional council at the end of any fiscal year by giving at least 60 days' written notice to each of the other members. Withdrawal of a member government shall not dissolve the council if at least two members remain.

"§ 160A-475. **Specific powers of council.** — The Charter may confer on the regional council any of the following powers:

- (1) to apply for, accept, receive, and disburse funds, grants, and services made available to it by the State of North Carolina or any agency thereof, the United States of America or any agency thereof, any unit of local government (whether or not a member of the council), and any private or civic agency;
- (2) to employ personnel;
- (3) to contract with consultants;
- (4) to contract with the State of North Carolina, any other state, the United States of America, or any agency thereof, for services;
- (5) to study regional governmental problems, including matters affecting health, safety, welfare, education, recreation, economic conditions, regional planning, and regional development;
- (6) to promote cooperative arrangements and coordinated action among its member governments;

- (7) to make recommendations for review and action to its member governments and other public agencies which perform functions within the region in which its member governments are located;
- (8) any other powers that are exercised or capable of exercise by its member governments and desirable for dealing with problems of mutual concern.

"§ 160A-476. Fiscal affairs. — Each city and county having membership in a regional council may appropriate funds to the council, and levy annual taxes for the payment of the appropriations as a special purpose, in addition to any allowed by the Constitution. The levy of taxes and the expenditure of the proceeds thereof for the purposes of this Part are hereby declared to be a necessary expense and a special purpose, and the special approval of the General Assembly is hereby given for the levy and expenditures of taxes for those purposes. If a court of competent jurisdiction should declare that the levy and expenditure are not for a necessary expense, any city or county shall have authority to call and conduct a referendum on the question of the levy of taxes or the expenditure of tax funds for such purposes. Services of personnel, use of equipment and office space, and other services may be made available to the council by its member governments as a part of their financial support.

"§ 160A-477. Reports. — Each regional council shall prepare and distribute to its member governments and to the public an annual report of its activities including a financial statement.

"§ 160A-478. Powers granted are supplementary. — The powers granted to cities and counties by this Article are supplementary to any powers heretofore or hereafter- granted by any other general law, local act, or city charter for the same or similar- purposes.

"ARTICLE 21.

"Miscellaneous.

"§ 160A-485. Liability for negligent operation of motor vehicles. — (a) A city is authorized and empowered, but not required, to waive its governmental immunity from liability for wrongful death or injury to person or property arising from the negligent operation of motor vehicles by its officers, agents, or employees when acting within the scope of their authority or within the course of their employment. Waiver of immunity shall be accomplished by purchasing liability insurance as provided in this section, and the immunity shall be waived only to the extent of the amount of insurance so obtained. No affirmative action of the council shall be required to retain immunity not waived by the purchase of insurance, and no affirmative action or resolution of the council beyond the act of purchasing liability insurance shall be required to accomplish waiver of immunity to extent of insurance coverage.

(b) Contracts of insurance purchased pursuant to this section must be issued by insurers duly licensed and authorized to execute insurance contracts in this State, and must by their terms adequately insure the city against any and all liability for wrongful death or injury to person or property proximately caused by the negligent operation of any motor vehicle by any officer, agent, or employee of the city when acting within the scope of his authority or within the course of his employment. Any company entering into a contract of insurance with a city pursuant to this section thereby waives any defense based on the governmental immunity of the city.

Cities are authorized to pay the lawful premiums of liability insurance policies out of the general tax revenues or other funds of the city.

(c) Any person sustaining damages, or in case of death, his personal representative, may sue a city that is insured as provided in this section, for the recovery of his damages in any court of competent jurisdiction in this State, and it shall be no defense to any such action that the operation of the motor vehicle was in pursuance of a governmental function of the city, to the extent that the city has insurance coverage as provided in this section.

Except as expressly provided herein, nothing in this section shall be construed to deprive any city of any defense whatsoever to any action for damages, or to restrict, limit, or otherwise affect any defense that the city may have at common law or by virtue of any statute (whether

general, special, private, or local); and nothing in this section shall be construed to relieve any person sustaining damages, or any personal representative of any decedent, from any duty to give notice of his claim to the city or to begin his action within the time prescribed by the applicable statute of limitations.

(d) A city may incur liability pursuant to this section only with respect to a claim arising after the city has procured liability insurance pursuant to this section and during the time that the insurance is in effect.

(e) No part of the pleadings that relates to or alleges facts as to the city's insurance against liability shall be read or mentioned in the presence of the trial jury in any action brought pursuant to this section. No liability shall attach in any case unless the plaintiff waives the right to have all issues of law or fact relating to insurance in the action determined by a jury, and such issues shall be heard and determined by the judge without resort to a jury. The jury shall be absent during any motions, arguments, testimony, or announcement of findings of fact or conclusions of law with respect to insurance unless the city asks for a jury trial thereon.

No plaintiff in an action brought pursuant to this section, nor counsel, nor witness therefor, shall make any statement, ask any question, read any pleadings, or do any other act in the presence of the trial jury that indicates to any member of the jury that the city's liability would be covered by insurance. If any such act is done, the judge shall immediately order a mistrial of the action.

"§ 160A-486. Estimates of population. — When a city is not included in the most recent federal census of population, it shall be entitled to participate in all State-collected funds allocated to local governments wholly or partially on the basis of population by filing an estimate of the population of the city with the department or agency charged with the responsibility of distributing the funds. The estimate shall be approved by the city council and by the board of commissioners of the county or counties in which the city is located. When so approved, the estimate of population shall be deemed the official census of the city until the results of the next federal census of population are officially announced. All departments and agencies of the State charged with the responsibility of distributing funds to local governments are authorized and directed to accept estimates of population made pursuant to this section in distributing and allocating the funds.

"§ 160A-487. City and county financial support for rescue squads. — Each city and county is authorized to appropriate funds to rescue squads or teams to enable them to purchase and maintain rescue equipment and to finance the operation of the rescue squad either within or outside the boundaries of the city or county.

"§ 160A-488. Art galleries and museums. — (a) Any city or county is authorized to establish and support a public art gallery, museum, or art center, or it may support or assist in supporting any art gallery, museum, or art center located within its boundaries and owned or operated by a nonprofit corporation so long as the facility is open to the public. As used in this section, 'support' includes but is not limited to: acquisition, construction, and renovation of buildings, including acquisition of land and other property therefor; purchase of paintings and other works of art; purchase of materials and equipment; compensation of personnel; and all operating and maintenance expenses of the facility.

(b) Unless voter approval for the use of tax funds is secured, a city or county may appropriate only nontax revenues pursuant to this section. A city or county is authorized to submit to the voters the question of whether a special tax shall be levied for the support of art galleries, museums, and art centers. The proposition may be submitted at a special election called for that purpose, or at any other special, regular municipal, or general election. The maximum tax levy to be submitted to the voters shall be determined by the city or county governing board, not in excess of ten cents on the one hundred dollars (\$100.00) value of property. If a majority of the voters participating in the election favor the levy of the tax, the governing board may levy so much of the authorized tax as it deems advisable.

"§ 160A-489. **Auditoriums, coliseums, and convention centers.** — Any city is authorized to establish and support public auditoriums, coliseums, and convention centers. As used in this section, 'support' includes but is not limited to: acquisition, construction, and renovation of buildings and acquisition of the necessary land and other property therefor; purchase of equipment; compensation of personnel; and all operating and maintenance expenses of the facility. Unless voter approval for the use of property tax funds is secured, a city may appropriate only nontax revenues or sales tax revenues pursuant to this section. A city is authorized to submit to its voters the question of whether property taxes may be levied and (or) bonds issued for public auditoriums, coliseums, or convention centers.

"§ 160A-490. **Photographic reproduction of records.** — All cities shall be subject to the provisions of Article 2A of Chapter 153 of the General Statutes (G.S. 153-15.1 through 153-15.6). When a county officer is designated by title in that Article, the designation shall be construed to mean the appropriate city officer, and the city council shall perform powers and duties conferred and imposed on the board of county commissioners."

Sec. 2. The following portions of Chapter 160 of the General Statutes are repealed:

Subchapter I, comprising G.S. 160-1 through 160-191.11.

Subchapter II, comprising G.S. 160-192 through 160-366.

Subchapter IX, comprising G.S. 160-508 and 160-509.

Subchapter X, comprising G.S. 160-510 through 160-519.

Subchapter XI, comprising G.S. 160-520 and 160-521.

Sec. 3. Article 8 of Chapter 160 of the General Statutes, G.S. 160-65 through 160-77, is hereby re-enacted and transferred to Chapter 153 of the General Statutes as a new Article 19A, G.S. 153-250.1 through 153-250.13.

Sec. 4. Article 12B of Chapter 160 of the General Statutes, G.S. 160-166.3 through 160-166.17, is hereby re-enacted and transferred to Chapter 153 of the General Statutes as a new Article 28, G.S. 153-368 through 153-382.

Sec. 5. Nothing in this act is intended to affect in any way any rights or interests (whether public or private) (i) now vested or accrued, in whole or in part, the validity of which might be sustained or preserved by reference to any provisions of law repealed by this act, or (ii) derived from or which might be sustained or preserved in reliance upon, action heretofore taken (including the adoption of orders, ordinances, or resolutions) pursuant to or within the scope of any provision of law repealed by this act.

Sec. 6. No law heretofore repealed expressly or by implication and no law wanting authority which has been exhausted, shall be revived by (i) the repeal herein of any act, repealing such law, or (ii) any provision of this act that declaims an intention to repeal or affect enumerated, designated, or described laws.

Sec. 7. No action or proceeding of any nature (whether civil, criminal judicial administrative, or otherwise) pending at the effective date of this act shall be abated or otherwise affected by adoption of this act.

Sec. 8. If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or application of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

Sec. 9. All laws and clauses of laws in conflict with this act are repealed.

Sec. 10. This act shall become effective January 1, 1972.

In the General Assembly read three times and ratified, this the 30th day of June, 1971.