

GENERAL ASSEMBLY OF NORTH CAROLINA
1987 SESSION

CHAPTER 802
HOUSE BILL 923

AN ACT AUTHORIZING THE CITY OF DURHAM TO ESTABLISH, IMPOSE
AND COLLECT FACILITIES FEES ON NEW CONSTRUCTION WITHIN THE
CITY AND THE CITY'S EXTRATERRITORIAL JURISDICTION AREA.

The General Assembly of North Carolina enacts:

Section 1. **Purpose.** The General Assembly finds that the City of Durham has experienced rapid growth in recent years. Large numbers of new residents and businesses have moved into the City and its surrounding extraterritorial area, and it appears that such rapid growth will continue into the foreseeable future. The influx of new residents and businesses into the City and its surrounding area creates a demand and need for additional capital facilities. The cost of such capital facilities is high and places a financial burden upon the City and its existing citizens at a time when other sources of financial aid to the City, particularly aid from the federal government, is being reduced thus creating a potential threat to the City's economy and its quality of life. The purpose of this act is to authorize the City under its police power authority to impose and collect fees from developers in order to provide capital facilities, the need for which arises in whole or in part from development of new projects (whether residential or nonresidential) in the City and the City's extraterritorial jurisdiction.

Sec. 2. The Charter of the City of Durham, being Chapter 671, 1975 Session Laws, as amended, is hereby further amended by adding to Chapter VI the following new Article:

"ARTICLE 15. Capital Facilities Fees.

"Sec. 115.1. **Definitions.** The following words in this Article shall have the following meanings unless a different meaning clearly appears from the context:

- (1) 'Capital costs' has the meaning set forth in G.S. 159-48(h). The term 'purpose authorized', as used in G.S. 159-48(h), shall, for purposes of this Article 15, be deemed to refer to the purposes authorized by Section 115.3 hereof. 'Capital costs' includes payment of the principal and interest on any debt or other financial obligation incurred by the City with respect to a purpose authorized by Section 115.3 of this Article.
- (2) 'Developer' means any person, firm, corporation or other legal entity, including but not limited to political subdivisions of the State, who or which constructs or creates new construction.
- (3) 'Facilities fee' means the fee authorized by this Article.

- (4) 'New construction' means any new development, construction, or installation that results in real property improvement or for which a building permit is required. This term shall include the installation of a mobile home and factory built and modular housing. This term shall not include fences, billboards, poles, pipelines, transmission lines, advertising signs, or similar structures and improvements, or renovations and repairs, which do not generate the need for additional or expanded projects of the kind described in Section 115.3 upon completion of the new construction.

"Sec. 115.2. **Fees Authorized.** (a) The City Council is authorized to establish, impose and collect facilities fees for the purposes authorized in Section 115.3, on all new construction located within the City's corporate limits and/or within the boundaries of any extraterritorial jurisdiction established by the City pursuant to G.S. 160A-360 or any other law. Before establishing or amending any fee authorized by this Article, the City Council shall hold a public hearing and shall give notice of such public hearing in a manner consistent with Section 94 of this Charter.

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

"Sec. 115.3. **Purposes; Limitation on Use of Facilities Fees Hereunder.** (a) Facilities fees may be imposed for the following purposes:

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

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

"Sec. 115.4. **Setting of Fees.** (a) In establishing facilities fees to be imposed pursuant to this Article, the City Council shall consider the following:

- (1) The estimated cost of providing the facilities and land described in Section 115.3(a)(1) through (4) for the area within the City and its extraterritorial jurisdiction during a reasonably foreseeable period of time (not exceeding 20 years), and
- (2) The percentage of such costs (determined under (1) above) which is estimated to be attributable to the need for such facilities and land caused by the new construction upon which the facilities fees are to be imposed.

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

(c) In establishing the facilities fees to be imposed under this Article, the City Council may divide the City and its extraterritorial jurisdiction area into two or more zones in order to determine the estimated costs of providing any or all of the facilities and/or land described in Section 115.3 of this Charter.

(d) The City Council may establish reasonable classifications of facilities fees and such fees shall be uniformly applied within each class, provided, however, said fees may vary between zones established under subsection (c) of this section. Facilities fees collected within any zone created pursuant to subsection (c) of this section, shall be spent for the capital costs of providing facilities or projects authorized under Section 115.3 which serve such zone.

"Sec. 115.5. **Credits for Dedicated Facilities.** In establishing the facilities fees authorized by this Article, the City Council may provide for credits against any applicable facilities fee when a developer constructs or otherwise provides any facility and/or land described in Section 115.3(a) of this Charter for public use. The City Council may prescribe the circumstances under which a developer may provide such facilities and/or land and receive such credit.

"Sec. 115.6. **Payment of Facilities Fees.** The City Council may prescribe when and by whom a facilities fee authorized by this Article shall be paid. By way of illustration and not limitation, the City Council may require the payment of any applicable facilities fee by a developer as a condition precedent to the issuance of a building permit for the developer's new construction, or any part thereof.

"Sec. 115.7. **Construction of Facilities Outside City Limits.** In addition to any other authority conferred upon the City by law, and not in derogation thereof, the City Council may provide for the construction of any facility described in Section 115.3 outside of the corporate limits of the City and may appropriate money for such purpose or purposes. The City may acquire any interest in real or personal property for any of the purposes described in said Section 115.3. Such acquisition may be pursuant to this Charter and/or the provisions of general law, including but not limited to the provisions of Chapter 40A of the General Statutes.

"Sec. 115.8. **Administrative Appeal Procedures.** The City Council may provide a procedure for hearing and deciding appeals concerning the amount of a facilities fee or the amount of any applicable credit. Such procedure, if established, may provide for a final decision to be made either by the City Council or by the Board of Adjustment.

Every such decision of the City Council or the Board of Adjustment shall be subject to review by the superior court by proceedings in the nature of **certiorari**. Any petition for review by the superior court shall be filed with the clerk of superior court within 30 days after the decision of City Council or the Board of Adjustment is delivered to the appealing party. Such delivery may be by personal service or by registered mail or certified mail return receipt requested. No petition for review by the superior court of the amount of a facilities fee shall lie to the court unless the appealing party shall first pay the amount of the facilities fee to the City with such amount clearly marked as paid under protest.

"Sec. 115.9. **Limitations on Actions.** Any action contesting the validity of any ordinance or resolution adopted, or any action taken, pursuant to this Article shall be commenced not later than nine months after the effective date of such ordinance or resolution or date of such action. Provided, however, if a procedure for hearing and deciding appeals concerning the amount of a facilities fee or the amount of any applicable credit is established pursuant to Section 115.8, then such procedure shall be exclusive and the time limitations prescribed by said Section 115.8 shall apply."

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 12th day of August, 1987.