

AN ORDINANCE ENABLING THE ESTABLISHMENT OF WATER AND SEWER
SERVICE AREAS AND ASSOCIATED SERVICE AREA FEES

WHEREAS, the City of Durham provides water supply, water treatment, and wastewater treatment facilities for use by water and sewer customers; and

WHEREAS, the City of Durham has reviewed and analyzed the costs of constructing new water supply, water treatment, and wastewater treatment facilities and expansions to serve proposed new development that is currently outside the City's corporate limits; and

Whereas, it is appropriate for new development to reimburse the cost to the City to construct new water supply, water treatment, and wastewater treatment facilities and expansions that are constructed to serve proposed new development that is currently outside the City's corporate limits; now, therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DURHAM:

Section 1. Article I of Chapter 70 of the Durham City Code is amended by removing existing section 70-19 in its entirety and replacing it with the following new section 70-19:

Sec. 70-19. - Authority to contract to provide reimbursement for the cost of certain water and sewer facilities and to require payment by future developers for such facilities as a precondition of connection.

The city may enter into agreements that provide for the reimbursement of a portion of the construction costs of certain water and sanitary sewer facilities ("developer and/or City - constructed facilities") when the facilities have been designed at the city's direction to take into account city determined needs regarding future development and, in addition, when the scale, scope, or size of the developer and/or City-constructed facilities are atypical and substantially larger than what is needed for a specific development, or other unique circumstances apply. Without limiting the city's authority under general law or ordinance, only sewer outfalls ten inches in diameter or larger, force mains, sewer pumping stations, water mains larger than 16 inches, booster stations, flow control valves, aboveground storage, and applicable engineering costs shall be eligible for reimbursement in agreements authorized under this section. Reimbursement shall be limited to payments from future users that benefit from the developer and/or City-constructed facilities. Future users include developers of future projects. In addition to any other fees provided by law or ordinance, the city may require such future users to pay a fair portion of the cost of the developer and/or City constructed facilities as a precondition of extension of water and/or sewer infrastructure to a proposed development. If such fees are imposed on future developments, a fee ordinance enacting such fees shall be required.

For developer constructed facilities only, the city shall reimburse a developer who constructs developer constructed facilities pursuant to the terms of a written agreement made under this section and approved by city council, but only after future users of the developer constructed facilities make payment to the city. The city shall develop written policies consistent

with this section that apportion the original documented costs of developer constructed facilities subject to agreements amongst future users in a fair and equitable manner, as determined in the sole discretion of the city. Agreements under this section shall, among other things, specify the time period for which reimbursements shall apply. In addition, agreements shall provide for a reasonable administrative charge to be retained by the city for the city's expense in administering a reimbursement program. No agreement shall obligate the city to reimburse costs of developer constructed facilities if payments are not received for any reason, nor shall any agreement limit the city's authority to modify this section. This section shall not limit the city's authority under any other section of this chapter.

(Code 1982, § 23-18.2; Ord. No. 12501, § 1, 2-4-2002; Ord. No. 13147, 6-20-2005)

Section 2. Article II of Chapter 70 of the Durham City Code is amended by removing existing section 70-50 in its entirety and replacing it with the following new section 70-50:

Sec. 70-50. - Capital facility and service area fees for water and sewer connections.

- (a) Capital facilities fees for all new connections to the city's water and/or sewer system shall be as set by city council. The fees for one-inch meter connections to the water and sewer system shall be the same as for 5/8-inch meter connections to the water and sewer system where the larger meter is necessary not because of any additional needed capacity of volume of service but rather, solely to ensure adequate water pressure. The fees for replacement of an existing meter with a meter of larger size shall be determined by subtracting the fees chargeable for the old meter size from the fees chargeable for the new meter size. Meters used to provide a second water-only service to single-family residential customers for outdoor/irrigation purposes shall be exempted from capital facility fees.

Properties adjoining water or sewer extensions that were approved by the city council as of July 1, 2008 and which were not assessed by March 1, 2008 may pay the capital facilities fee rate in effect at the time of city council approval of the extension provided that a completed application for service under subsection (b) or (c) is received by November 1, 2008.

City council may also establish future water and sewer service areas ("service areas") that are outside the City's corporate limits at the time of establishment. Service areas may be established when it is anticipated by the City that infrastructure (for example, gravity sewer outfalls, lift stations, or force mains) will need to be constructed by the City in order to provide water and sewer service to new development within the service area. Based upon the anticipated cost to the City to construct the required infrastructure, City council may establish fees ("service area fees") that will be charged to new residential and commercial development within the service area that will make use of the infrastructure.

- (b) The fees, other than service area fees, may be paid in installments where the city council determines that the property being connected to the city's water or sewer system meets all of the following qualifications:
 - (1) Service must be obtained from existing lines or outfalls without the extension of street water or sewer mains;

- (2) The property is being served by on-site or private water or sewer facilities at the time that the request for service is made;
 - (3) The service connection includes:
 - a. The installation of a three-fourths-inch water service, a five-eighths-inch water meter, or one-inch water meter where the larger meter is necessary not because of any additional needed capacity or volume of service but rather solely to ensure adequate water pressure; or
 - b. The installation of a four-inch sewer service; and
 - (4) The city has received and completed application for payment of fees in installments. Fees under this subsection (b) shall be payable in eight equal annual installments. The first installment is due and payable 50 days from the date when the city approves payment of the facilities fee in installments. Subsequent installments are due and payable each succeeding year thereafter on the anniversary of the date when the city approves payment of the facilities fee in installments. Installments shall bear interest at an interest rate set by the city council, not to exceed nine percent per annum, from the date when the city approves payment of the facilities fee in installments. From and after the date that the city approves payment of the facilities fee in installments, the fees shall be a lien on the property as provided in section 115.6(c) of the Charter of the city. The provisions of section 115.6(d) of the Charter of the city shall apply where any installment, with accrued interest, is not paid when due.
- (c) Except as otherwise provided in subsection (b) of this section, the fees, other than service area fees, shall be payable at a time an application for service connection is filed. If for any reason, connection is made or occurs prior to payment of the fees and the city has not previously approved payment of the fees in installments as provided in subsection (b) of this section, then the city shall bill the full amount of the fees on a combined utility bill for one or more public enterprise services including water and/or sewer service. In the event the customer does not pay the full amount of the combined utility bill, the partial payment will be applied to the respective charges as provided in section 70-654(a) and water and/or sewer service to the property may be terminated as provided in sections 70-57, 70-58 and 70-59.
- Service area fees are due to the City at the time of construction drawing permitting. When a project does not require construction drawing approval, service area fees are due upon the submittal of a connection fee application (for meters, sewer taps, etc.).
- (d) The fees collected shall be earmarked for and applied to the costs of constructing new water supply, water treatment and wastewater treatment facilities and expansions to existing facilities. Service area fees shall be reimbursement to the City for costs incurred by the City to construct the infrastructure necessary to provide water or sewer service to the associated service area.

(Code 1982, § 23-40.1; Ord. No. 6837, § 1, 12-2-1985; Ord. No. 7845, § 1, 6-28-1989; Ord. No. 9003, § 1, 6-28-1990; Ord. No. 9508, §§ 1, 2, 3-16-1992; Ord. No. 9578, § 1, 6-29-1992; Ord. No. 9676, § 1, 8-17-1992; Ord. No. 10087, § 1, 3-7-1994; Ord. No. 10308, § 1, 10-24-1994; Ord. No. 11280, § 1, 10-20-1997; Ord. No. 11307, § 1, 12-1-1997; Ord. No.

12585, § 1, 9-1-2002; Ord. No. 12967, § 1, 6-21-2004; Ord. No. 13270, § 1, 6-19-2006; Ord. No. 13427, § 1, 6-18-2007; Ord. No. 13594, § 1, 5-5-2008; Ord. No. 14097, § 1, 2-21-2011)

Section 3. This ordinance shall be in full force and effect upon approval by City Council.

Section 4. If any section, subsection, sentence, clause or provision of this ordinance is held invalid, the remainder of this ordinance shall not be affected by such invalidity.