

Reference Guide

for

North Carolina Municipal Clerks

Published By
The North Carolina League of Municipalities
and The North Carolina Association of Municipal Clerks

Report #200

First Published June, 1979
Revised December, 1988
Revised January, 1995
Revised August, 2008

Foreword

In cooperation with the North Carolina Association of Municipal Clerks, the League is pleased to present this 2008 edition of the Reference Guide for North Carolina Municipal Clerks. The guide is designed to be used by clerks in all North Carolina cities, towns and villages as they carry out the many and varied responsibilities of their offices. Wherever possible, the guide includes sample forms and references to other materials and sources of information for the clerk.

Research for this publication was performed by the League staff with the assistance of the Association of Municipal Clerks (an affiliate organization of the League). Questions regarding its contents should be addressed to the League office.

The original preparation of the guide in 1979 was financed in part through a Comprehensive Planning Grant from the U.S. Department of Housing and Urban Development, identified as Contract No. CPA-NC-04-00-1017. The contract award from the North Carolina Department of Natural Resources and Community Development, under the "701" program, was made to the League. The Department's assistance in the initial project is gratefully acknowledged. Subsequent revisions have been financed by the League and the Association of Municipal Clerks.

It is the hope of both the League and the Association of Municipal Clerks that this manual will assist all municipal clerks in performing their duties more efficiently. As new laws are enacted or existing laws are changed, the League will prepare and distribute supplemental pages.

*S. Ellis Hankins
Executive Director
N.C. League of Municipalities*

*Kimberly S. Hibbard
Associate General Counsel
N.C. League of Municipalities*

August, 2008

Reference Guide

for North Carolina Municipal Clerks

TABLE OF CONTENTS

	<u>PAGE</u>
FOREWORD	ii
TABLE OF CONTENTS	iii
CHAPTER 1 - GENERAL DUTIES AND RESPONSIBILITIES	1
A. Legal Duties	1
B. Meetings of the Governing Body	1
C. Record Keeping and Management	12
D. Publication of Notices and Legal Advertisements	19
E. Closing Out Sales	19
F. Other Resources	19
Form #1 - Oath of Office	21
Form #2 - Agenda Outline	22
Form #3 - Agenda Outline Using Consent Format	23
Form #4 - Format for Recording Minutes of Municipal Governing Body Meetings	25
Form #5 - Format for Recording Minutes of Governing Body Meetings Using Consent Agendas	27
Form #6 - Suggested Form for Ordinance to Appear in Minutes	28
Form #7 - Suggested Form for Resolution	30
Form #8 - Application for License to Conduct Closing-Out Sale	40
Form #9 - Clerk's Certificate of Approval and Licensure	42

Form #10 - Abstract of Application Submitted For Closing-Out Sale	43
Chart #1 - Calculating Quorum	31
Chart #2 - Calculating Number of Votes to Adopt an Ordinance	32
Chart #3 - Calculating Number of Votes for Day of Introduction	33
Chart #4 - Required Public Hearings	34
Appendix A - Americans with Disabilities Act	35
Appendix B - Closing-Out Sales Licensing	38
Appendix C - Public Notices at a Glance	44
CHAPTER 2 - BUDGET AND FISCAL CONTROL	53
A. Role of the Local Government Commission	53
B. Budget Officer	54
C. Finance Officer	55
D. Authorization, Issuance and Sale of Bonds; Financing Agreements	58
Form #11 - Public Notice of Budget Hearing	61
Form #12 - Resolution Establishing Check and Purchase Order Procedures	62
Appendix D - Local Government Debt Setoff Program	63
CHAPTER 3 - TAXATION	65
A. Tax Collector	65
B. Municipal Taxes	66
C. State Shared and Collected Taxes	71

CHAPTER 4 - PERSONNEL	77
A. Payroll and Personnel Policy Administration	77
B. Privacy of Employee Personnel Records	84
Form #13 - Employment Application	87
Form #14 - Employee Information Card	92
Form #15 - Request for Information From Employee Personnel Records	93
 CHAPTER 5 - PURCHASE AND SALE OF PROPERTY	 95
A. Purchase and Construction Contracts	95
B. Sale of Surplus Property	107
C. Other Disposition of Property	110
D. Conflict of Interest	112
Form #16 - Advertisement - Bids Wanted	117
Form #17 - Instructions to Bidders	118
Form #18 - Proposal	119
Form #19 - Ordinance Delegating Authority to Purchase Appartus, Supplies, Materials or Equipmet	120
Form #20 - Resolution Authorizing the Disposition of Certain Personal Property by Private Sale	122
Form #21 - Public Notice (Private Sale)	123
Form #22 - Resolution Authorizing the Advertisement for Sealed Bids for the Sale of Certain Property	124
Form #23 - Public Notice (Sale by Sealed Bids)	125
Form #24 - Resolution Authorizing the Advertisement of an Offer to Purchase Certain Property	126
Form #25 - Public Notice (Upset Bid)	127
Form #26 - Resolution Authorizing the Sale of Certain Real Property at Public Auction	128

Form #27 - Public Notice (Public Auction of Real Property)	129
Form #28 - Resolution Authorizing the Sale of Certain Personal Property at Public Auction	130
Form #29 - Public Notice (Public Auction of Personal Property)	131
Form #30 - Resolution of Intent to Exchange Property	132
Form #31 - Public Notice (Exchange)	133
Form #32 - Resolution Authorizing Exchange of Property	134
Form #33 - Ordinance Prescribing Procedures for Disposing of Personal Property Valued at Less than \$30,000	135
Form #34 - Resolution of Intent to Lease Property	137
Form #35 - Public Notice (Lease or Rental)	138
Form #36 - Resolution Authorizing Lease of Property	139
CHAPTER 6 - ELECTIONS	141
A. Regular Municipal Elections	141
B. Special Elections	143
C. Other Special Elections	147
D. Voting Rights Preclearance Requirements	147
E. Bond Elections	148
CHAPTER 7 - LAND USE AND ANNEXATION	151
A. Zoning and Subdivision Regulation	151
B. Annexation	160
Form #37 - Notice of Public Hearing, Proposed Amendment to the Zoning Ordinance	164

CHAPTER 8 - STATE AND FEDERAL REPORTS	165
A. Annexation and Boundary Surveys	165
B. Beer and Wine Data Form	166
C. Construction Reports	166
D. Financial Reports	167
E. Fire Department Reports	168
F. Gasoline/Motor Fuels Tax Refunds	169
G. Gender Equity Appointment Reports	170
H. Payroll/Personnel Reports	171
I. PEG Channel Certification	172
J. Powell Bill	172
K. Property Transactions	173
L. Sales and Use Tax Refund	173
M. Street Fiscal Data Report	174
N. Unclaimed Property	174
O. Unemployment Insurance	174
P. Utilities Commission Report	175
 CHAPTER 9 – STREETS AND ROADS	 177
A. Permissible Uses of Powell Bill Funds	177
B. Street Closing Procedures	182
C. Street Name/Property Numbering Changes	191
D. Special Assessments for Street Improvements	192
Form #38 - Resolution of Intent	184
Form #39 - Letter of Notification	186
Form #40 - Notice - For Posting	187

Form #41 - Street Closing Order	188
CHAPTER 10 - RESOURCES	193
A. North Carolina League of Municipalities	193
B. UNC School of Government	194
C. Clerks' Listserv	194
D. N.C. Association of Municipal Clerks	195
E. International Institute of Municipal Clerks	195
CHAPTER 11 - INDEX	197
A. Subject Matter Index	197
B. General Statutes Index	215

CHAPTER 1

General Duties and Responsibilities

A. Legal Duties

G.S. 160A-171 provides that "[t]here 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." G.S. 160A-172 further states that "[t]he 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." Other specific duties and responsibilities of a municipal clerk are found throughout the General Statutes and will be discussed in later portions of this manual.

In addition to the provisions of general law, any person appointed to act as a municipal clerk should obtain a copy of the city, town or village charter because duties and responsibilities unique to that municipality are often imposed on the clerk by this document. In some cases the charter may also contain variations from general law. The code of ordinances should also be consulted, as many additional duties are imposed on the clerk by local ordinance or resolution. From even a quick review of general law, the municipal charter, and municipal ordinances and resolutions, it is apparent that few municipal employees become involved in as wide a scope of activities and have as many responsibilities as the municipal clerk.

The Attorney General of North Carolina has consistently ruled that the office of municipal clerk is a "public office" within the meaning of Article VI, Section 7 of the North Carolina Constitution. Therefore, prior to assuming the duties of municipal clerk, the person appointed to this office should take an oath of office before the mayor, judge, clerk of court, notary public, register of deeds, or other person authorized to administer an oath (G.S. 160A-61; see G.S. 11-7.1 for a list of persons so authorized). The proper oath of office, as contained in the North Carolina Constitution, is set forth in Form #1. A copy of this oath must be signed by the person being sworn and filed with the permanent records of the municipality. A duly sworn municipal clerk is also authorized to administer the oath of office to an elected official, and to any appointed official or employee for whom an oath is required (G.S. 11-7.1).

B. Meetings of the Governing Body

Foremost among the duties of a municipal clerk are the responsibilities of preparing for and recording actions taken at meetings of the governing body.

Notice of Meetings.

Regular Meeting. A regular meeting is a meeting held at a fixed time and place according to an adopted schedule. G.S. 160A-71 requires that every municipality fix the time and place for its regular meetings. A provision of the Open Meetings Law, G.S. 143-318.12(a), requires that a schedule showing the time and place of regular meetings be kept on file with the clerk. If this schedule is changed, a revised schedule must also be filed with the clerk at least seven calendar days before the first meeting held according to the revised schedule. If a schedule is duly adopted and filed, no further notice of regular meetings is necessary. To avoid confusion, the municipality may wish to provide in the scheduling ordinance some method for the rescheduling of regular meetings in the event that they fall on a holiday.

Special Meeting. A special meeting is a meeting held at a time and place other than shown on the regular meeting schedule. For special meetings, additional public notice must be given. G.S. 143-318.12(b) requires that written notice of a special meeting stating its purpose must be posted on the principal bulletin board of the governing body or, if there is no such bulletin board, at the door of the governing body's usual meeting room. Written notice of the special meeting must also be mailed or delivered to each person, newspaper, wire service, radio station and television station that has filed a written request for notice with the clerk (this is sometimes called the "sunshine list"). Notice must be posted and mailed or delivered at least 48 hours before the time of the meeting. The municipality may require interested news media to renew their request for notice annually, but may not charge the media a fee for notice. On the other hand, the law provides that a municipality shall charge a fee of \$10.00 per calendar year to persons other than the media who request notice, and may require them to renew requests quarterly [G.S. 143-318.12(b)(2)].

Notice to Governing Body of Special Meeting. The clerk may also be called upon to give notice to members of the governing body in the event of a special meeting. G.S. 160A-71(b) authorizes the mayor, the mayor pro tem, or any two members of the governing body to call a special meeting at any time, by signing a written notice stating the time and place of the meeting, and the subjects to be considered. This notice must be delivered to the mayor and each governing board member or left at his or her usual dwelling place at least six hours before the meeting. At a special meeting called according to this procedure, only those items of business specified in the notice may be transacted, unless all members are present or have signed a written waiver of notice. However, the 48-hour public notice provisions of the Open Meetings Law must still be satisfied (see *Special Meeting* above). Note that special meetings can also be called by announcing the time and place of the special meeting during another regular or special meeting. In that case, delivery of written notice to governing body members is not required and the subject matter of the special meeting is not limited by a written notice.

Emergency Meeting. An emergency meeting is a meeting called because of generally unexpected circumstances that require immediate consideration. Such meetings should only be called in situations that are truly emergencies; if the matter can wait 48 hours, a special meeting should be called instead. For an emergency meeting, notice must be given to each local newspaper, wire service, radio station and television station (but not to individual persons) that has filed a written request for emergency notice with the clerk (the request must include a telephone number). Notice shall be given either by telephone or by the same method used to notify the members of the municipal governing body and shall be given immediately after notice has been given to those members. This notice shall be given at the expense of the party notified. Only business connected with the emergency may be considered at an emergency meeting [G.S. 143-318.12(b)(3)].

Recessed Meeting. When the public body recesses a regular, special or emergency meeting for which public notice has been properly given, and the time and place at which the meeting will be continued is announced in open session, no further notice is required [G.S. 143-318.12(b)(1)].

Agenda. Although not specified in any state statute, the task of preparing an agenda for the governing body's consideration may also fall to the clerk. An agenda expedites the conduct of business and enables governing body members to know in advance the subjects that are to be discussed. Agendas vary from municipality to municipality in their appearance, structure and content. For a basic outline of an agenda, see Form #2. For a more detailed discussion of agendas, consult your MORE Manual.

Consent Agenda. The consent agenda is another form of agenda used in many governmental units for items that are routine in nature. This type of agenda allows several noncontroversial items to be handled by the governing body with a single motion and vote. The clerk, using guidelines established by the governing body for items that can be included on the consent agenda, prepares and presents all items so classified in one section of the agenda, with as much information and explanatory material as deemed sufficient to allow the governing body to make a decision on the items. If any member of the governing body has any question on an item included in the consent agenda or wishes to discuss an item separately, that item may be removed before the motion to approve the consent agenda is made. For a basic outline of an agenda using the consent format, see Form #3 and the MORE Manual.

Open Meetings Law.

The Open Meetings Law generally provides that all "official meetings" of "public bodies" shall be open to the public. Those terms are broadly defined in G.S. 143-318.10. A "public body" is any elected or appointed board of the state or of one or more cities, counties or other political subdivisions, that has at least two members and exercises a legislative, policy-making, quasi-

judicial, administrative or advisory function. In addition to the city council, there may be numerous other public bodies associated with a municipality, such as the planning board, the board of adjustment, and various advisory boards reporting to the council. A committee of a public body is also itself a public body (such as the finance committee of the city council). However, the definition of public body does not include a meeting solely among the public body's professional staff. An "official meeting" is defined as a meeting or gathering together (or simultaneous communication by electronic means) of a majority of the members of a public body in order to conduct hearings, participate in deliberations, and vote upon or otherwise transact public business. A purely social gathering is not an official meeting, although it could become one if a majority of the members of the public body begin to discuss an item of public business.

Closed Sessions. In addition to the public notice requirements described above, the statutes prohibit closed sessions of official meetings of public bodies, except in a small number of circumstances specified in the statute (G.S. 143-318.11). The permitted purposes for closed sessions, listed by the subsection numbers as they appear in G.S. 143-318.11(a), are:

- (1) Information Made Confidential By Law. To prevent the disclosure of information that is privileged or confidential under state or federal law or is not considered a public record under the Public Records Law. The motion to enter closed session must state the name or citation of the law protecting the information.
- (2) Honors and Awards. To prevent the premature disclosure of scholarships, prizes or other awards.
- (3) Attorney Client Privilege. To consult with an attorney employed or retained by the public body in order to preserve the attorney-client privilege between the attorney and the public body. (Discussion of general policy matters is prohibited, and the public body may not close a meeting that would otherwise be open merely because the attorney is a participant.)

Legal Claims. To consider and give instructions to an attorney concerning the handling or settlement of a claim, judicial action, or administrative procedure. If there is an existing lawsuit on which the public body expects to receive advice, the motion to enter closed session must identify the parties to the lawsuit. If a settlement is approved or considered in closed session, the terms of the settlement must be entered into the minutes as soon as possible within a reasonable time after the settlement is concluded.

- (4) Location/Expansion of Business or Industry. To discuss the location or expansion of industries or other businesses in the area served by the public body. (This may include agreement on a tentative list of economic development incentives that may be offered.) Action to approve an economic development contract or commitment or

payment of economic development expenditures must be in open session.

- (5) Property Acquisition. To establish or instruct staff or agents regarding negotiating position on the price and other material terms of a real property acquisition contract.

Employment Contracts. To establish or instruct staff or agents regarding negotiating position on the amount of compensation and other material terms of an employment contract.

- (6) Personnel Matters. To consider the qualifications, competence, performance, character, fitness, conditions of appointment, or conditions of initial employment of an individual officer, employee or applicant. Final action making an appointment or removal by the public body must be in an open meeting.

To hear or investigate a complaint, charge or grievance by or against an individual officer or employee.

Note that general personnel policy issues may not be considered in a closed session. The public body also may not consider the qualifications, competence, performance, character, fitness, appointment or removal of any of its own members or members of another body in closed session. The public body may not fill a vacancy among its own membership in closed session.

- (7) Criminal Investigations. To plan, conduct or hear reports concerning investigations of alleged criminal misconduct.
- (8) [Applies to school boards only.]
- (9) Terrorism Response. To discuss and take action regarding plans to protect public safety as it relates to existing or potential terrorist activity and to receive briefings by staff, legal counsel, law enforcement or emergency service officials concerning actions taken or to be taken to respond to such activity.

The statute should be examined in each particular case to determine whether a closed session is authorized, ideally with the benefit of legal counsel.

Procedure to Enter Closed Session. No closed session may be held unless a motion is made and adopted in an open meeting [G.S. 143-318.11(c)]. The motion must cite one or more of the permissible purposes listed in the statute. In some circumstances the motion must include additional information—see subsections (1) and (3) above. Minutes of the closed session must be kept, as discussed below.

Enforcement of Open Meetings Law. The statutes provide for injunctive relief against threatened, past or continuing violations. In addition, the court may invalidate actions by the governing body where there has been a violation of the Open Meetings Law and may award attorneys' fees to the prevailing party in a lawsuit. The court can order the individual members of the public body to personally pay attorneys' fees to the prevailing party if the court finds that they knowingly or intentionally violated the Open Meetings Law. However, personal payment cannot be ordered if the public body or the individual member in question sought and followed the advice of an attorney [G.S. 143-318.16 through 143-318.16B].

Resources. *Open Meetings and Local Governments in North Carolina* is an excellent reference in question and answer format available from the School of Government. Clerks should seek guidance from the municipal attorney, the League, or the SOG on open meetings issues.

Minutes. G.S. 160A-171 requires the city clerk to keep a record or journal of the proceedings of the governing body. G.S. 160A-72 requires that:

Full and accurate minutes of the council proceedings shall be kept, and shall be open to the inspection of the public. The results of each vote shall be recorded in the minutes, and upon the request of any member of the council, the ayes and noes upon any question shall be taken.

The keeping of full and accurate minutes, including recording and authenticating ordinances and other documents that are part of the proceedings, is perhaps the single most important responsibility of the clerk. Minutes are the official record of what was done by the governing body—all actions, and the existence of conditions needed to take actions, must be included. A separate, permanent book should be utilized for this purpose, and the proceedings of each meeting inserted in chronological order. There is no required form for preparing minutes, but certain essential facts should be recorded:

- (1) The date, time and place of the meeting;
- (2) The names of the governing body members present and absent;
- (3) The names of any persons appearing before the governing body and a statement regarding the nature of their appearance;
- (4) When a motion is made, it should be recorded verbatim along with the name of the person making the motion and the person making the second, if any;

- (5) The results of each vote should be clearly recorded. If requested by any member of the governing body, the ayes and noes [indicating which persons voted yes and which voted no] should be recorded;
- (6) Any ordinances, resolutions, petitions, contracts or other written documents that are part of the proceedings should be incorporated into the minutes with an adequate identifying reference;
- (7) A statement that the meeting was adjourned.

Approval of minutes. Minutes should be read, corrected and approved by the governing body at the first meeting following that for which the minutes were prepared. After approval, it is recommended that the minutes be authenticated by the signature of the clerk and the mayor, attesting that the minutes reflect a true and accurate account of the proceedings. For a sample outline for recording minutes, see Form #4 attached (or Form #5 if the consent format is used).

Unless the governing body directs otherwise, tapes used in the preparation of minutes may be discarded after the written minutes are completed and approved. The *MORE Manual* contains further discussion, examples, and practical tips on minutes.

Closed session minutes. Full and accurate minutes of all closed sessions are also required [G.S. 143-318.10(e)]. However, "full and accurate" does not mean that a verbatim account of the discussions must be prepared. The statute provides that there must be "a general account of the closed session so that a person not in attendance would have a reasonable understanding of what transpired." Closed session minutes may follow the same format as those for open sessions, taking care to provide sufficient information to satisfy the "general account" requirement.

Approving closed session minutes. One way to handle the approval of closed session minutes is to prepare them "on the spot" and have the governing body vote to approve them before ending the closed session. Or closed session minutes could be approved at a later closed session--in such a case, the motion to enter closed session should state as one of its purposes "to prevent the disclosure of information that is made privileged or confidential by G.S. 143-318.10(e)." Closed session minutes can be approved in open session, but this sometimes poses a risk of disclosing their contents.

Sealing minutes. One question that often arises concerns the status of minutes taken at a closed session of the governing body. Are such minutes open to public inspection? G.S. 143-318.10(e) clearly states that minutes of a closed session may be withheld from public inspection so long as such inspection would frustrate the purpose of the closed session. Minutes must be made available to the public when confidentiality is no longer necessary.

The governing body should consider adopting a procedure for the sealing and unsealing of closed session minutes. Some governing bodies vote to seal the minutes before ending each closed session, while others have a policy that closed session minutes are automatically sealed. One method that is growing in popularity is to authorize designated persons (such as the municipal attorney and clerk) to periodically review the minutes and determine when they can be unsealed.

Quasi-judicial proceedings. Although the general rule is that minutes need not be verbatim, if the public body is sitting in a quasi-judicial capacity it may be necessary to prepare a full transcript of the proceedings if so requested. Quasi-judicial proceedings include issuance of special and conditional use permits and the granting of variances. See Chapter 7 for additional information.

Quorum. G.S. 160A-74 provides that "A majority of the actual membership of the council plus the mayor, excluding vacant seats, shall constitute a quorum." This statute also states that a council member who has withdrawn from a meeting without being excused by a majority vote of the remaining members present is counted as present for purposes of determining a quorum. To calculate the number needed for a quorum in your municipality, see Chart #1 at the end of this chapter. Some municipal charters may have variations on the quorum provisions.

Parliamentary Procedure. State law establishes several procedural rules for the conduct of governing body meetings, but municipalities are generally free to adopt their own rules of parliamentary procedure. In order to establish a system of general parliamentary rules, some cities and towns have adopted Robert's Rules of Order. Robert's Rules, however, were designed for use by large legislative bodies (such as the North Carolina General Assembly) and are not usually suitable for use by small municipal governing bodies. Therefore, it is recommended that municipalities develop their own simplified rules of parliamentary procedure. To assist you in that effort, we recommend *Suggested Rules of Procedure for a City Council*, available from the School of Government. This publication may be used as a basis for developing procedural rules for your municipality.

Vacancies. G.S. 160A-63 provides the general rule for the filling of vacancies on the governing board. A vacancy in the position of mayor or councilmember is filled by appointment of the governing body. For those officials with four-year terms, another provision may come into play. If the term of office expires immediately following the next regular city election, or if the next regular city election will be held within 90 days after the vacancy occurs, the person appointed fills the remainder of the unexpired term. Otherwise, a successor is to be elected at the next regular city election (and the person appointed to fill the vacancy must run in the election if he or she

wishes to continue in that seat). Some charters have special provisions that may override these rules.

G.S. 128-41 specifies a procedure for an elected or appointed official's leave of absence in the case of protracted illness or other reason satisfactory to the governing body. If necessary, the governing body can appoint a temporary replacement who will have the same duties and authorities as the official on leave. G.S. 128-42 makes similar provision for leave of absence and temporary replacement of an official called to active duty in the United States armed forces or national guard.

Voting.

Abstention/excuse from voting. State law creates a general duty to vote under most circumstances, and members of the governing body do not have an unrestricted right to abstain from voting. G.S. 160A-75 provides that no governing body member may be excused from voting except upon matters involving consideration of the member's own financial interest or official conduct, or on matters on which the member is prohibited from voting by other specified statutes. [The other statutes that may prevent a member from voting are G.S. 14-234 (conflict of interest, see Chapter 5, Section D of this manual); G.S. 160A-381 (zoning map or text amendments); and G.S. 160A-388 (land use quasi-judicial matters)]. In all other cases, failure to vote by a member who is physically present, or who has withdrawn without being properly excused, is recorded as an affirmative vote.

General rule for voting on ordinances. G.S. 160A-75 provides that an affirmative vote equal to a majority of all members of the governing body not excused from voting on the question in issue (including the mayor's vote in case of a tie) is necessary to adopt an ordinance, take any action having the effect of an ordinance, authorize or commit the expenditure of public funds, or contract on behalf of the city. To calculate the number of votes needed, see Chart #2. Some municipal charters may have variations on the voting provisions.

Day of Introduction. No 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 membership of the governing body, excluding vacant seats. The mayor is not included in this calculation unless he or she has the right to vote on all questions before the council. An ordinance is "introduced" on the date the subject matter is first voted on (G.S. 160A-75). To calculate the number of votes needed on the day of introduction, see Chart #3.

Budget Ordinances. Budget ordinances and amendments can be adopted at any regular or special meeting by a simple majority of those present and voting, so long as a quorum is present (G.S. 159-17).

Franchise Ordinances. No ordinance making a grant, renewal, extension, or amendment of any franchise may be finally adopted until it has been passed at two regular meetings, and such action must be taken by means of an ordinance (G.S. 160A-76). This includes utility, taxicab and all other franchises. Solid waste collection or disposal franchises are limited to 30 years, and other franchises may not exceed 60 years (G.S. 160A-319). The governing body may grant franchises for shorter periods, in its discretion. The statutes do not require that a public hearing be held. As of January 1, 2007, local governments may no longer award or renew cable television (video programming services) franchises (G.S. 66-351).

Technical Ordinances. If the governing body wishes to adopt a published technical code or any standards or regulations promulgated by a public agency, such as the State Building Code or a fire prevention code, these may be adopted in an ordinance by reference. A copy of the standards or regulations must then be maintained on file by the clerk. This should avoid cluttering the city code with technical materials [G.S. 160A-76(b)].

Secret or Written Ballots. If a municipal public body decides to vote by written ballot, each member so voting must sign his or her ballot. The ballots must be available for public inspection in the clerk's office immediately following the meeting and until the minutes of the meeting are approved, at which time the ballots may be destroyed. The minutes must show how each member voted [G.S. 143-318.13(b)].

Vote in Telephone/Electronic Meeting. Although the Open Meetings Law provides procedures for holding meetings by telephone or other electronic means, there is no clear authorization in the general statutes to vote in such a meeting. G.S. 160A-75 appears to presume that members of the governing body are physically present at the meeting place.

Voting by Proxy. Local governments in North Carolina are not currently authorized to have proxy votes.

Organizational Meeting of Council. One particular meeting that may prompt a number of questions for the clerk is the organizational meeting of the governing body, usually the first meeting held after the municipal election. G.S. 160A-68 provides that the governing body may fix the date and the time of its organizational meeting, as long as the meeting is held after the results of the election have been certified, but not later than the date and time of the first regularly scheduled governing body meeting in December.

At the organizational meeting, the newly elected mayor and governing body members, including those beginning new terms, take their oaths of office (G.S. 160A-61; see Form #1). The governing body then elects from among its members a mayor pro tempore to serve at its pleasure, unless the charter sets a specific term (G.S. 160A-70). If the charter provides that the mayor is

elected by and from the members of the council, rather than by direct vote of the people, then the council must elect the mayor at this meeting.

The conduct of an organizational meeting varies, but one popular procedure begins by the newly elected mayor taking an oath of office before the municipal clerk, a judge, clerk of court, notary public, or other person authorized to administer an oath (G.S. 11-7.1). After being sworn in, the mayor then administers the oath of office to each newly elected governing body member. A copy of the oath should be signed by the person being sworn and filed with the permanent records of the municipality.

Public Hearings. A public hearing may be required before the governing body can act on certain matters. See Chart #4 for a list of the required public hearings and consult the specified statute for details on the necessary notice. Although the list is relatively limited, some governing bodies voluntarily schedule public hearings on other matters as a means of informing and involving their citizens. G.S. 160A-81 sets some general rules for conducting public hearings. The hearing can be held at any place within the municipality or the county in which the municipality is located. The governing body can continue a public hearing without further advertisement. However, if a quorum of the governing body is not present for the public hearing, it is automatically continued until the next regular meeting. The governing body may adopt reasonable rules for the public hearing including, but not limited to, fixing the maximum time allotted to each speaker, providing for the designation of a spokesperson for groups supporting or opposing the same positions, providing for the selection of delegates from groups supporting or opposing the same positions when the number of people wishing to attend the meeting exceeds the capacity of the meeting space, and providing for the maintenance of order and decorum.

Public Comment. In addition to any public hearings that may be held, state law requires municipalities to provide at least one public comment period per month at a regular meeting of the governing body. The statute does not specify where the comment period must be placed on the agenda. If the governing body has no regular meeting during a particular month, no public comment period is required for that month. The governing body may adopt reasonable rules for the comment period similar to those allowed for public hearings. [G.S. 160A-81.1].

Disruption of Official Meetings. State law provides that any person who willfully interrupts, disturbs, or disrupts an official meeting may be directed to leave the meeting by the presiding officer. Any person who willfully refuses to leave when so instructed is guilty of a misdemeanor. [G.S. 143-318.17].

Access to Meetings and Services. The Americans with Disabilities Act may require that accommodations be made so that disabled individuals are not prevented from participating in the municipality's services, programs, and activities. See Appendix A of this chapter for additional discussion of the ADA.

C. Record Keeping and Management

Managing and preserving the permanent records of the municipality is one of the critical functions of the clerk. The type and volume of records will depend on the size of the municipality and the services provided, but some of the most important municipal documents and records that must be maintained are listed here.

Minutes. As discussed in the preceding section, it is the responsibility of the clerk to keep full and accurate minutes. Minutes are normally kept in a permanent minute book or journal and are open to public inspection (except for closed session minutes, see above). Some clerks have devised a system for indexing minutes to enable interested persons to locate more easily any governing body action on various subjects. Software is also available for this purpose, as are professional indexing services.

Ordinances. Ordinances are municipal laws enacted by the governing body. A copy of each adopted ordinance should be recorded in the minutes of the appropriate meeting. For a sample ordinance form, see Form #6. In addition, G.S. 160A-78 provides that a true copy of each ordinance adopted on or after January 1, 1972 must be filed in an ordinance book separate and apart from the minute book. The statute also requires that the ordinance book be appropriately indexed and maintained for public inspection in the office of the clerk.

G.S. 160A-77 requires that each city having a population of 5,000 or more adopt and issue a code of ordinances. In a city that has adopted a code, new ordinances should be filed and indexed in the ordinance book until they are codified. If the city is contracting with a codification company, the clerk should supply the company with any ordinance changes as well as any local acts affecting the city that were adopted by the General Assembly.

No ordinance may be enforced or admitted into evidence in any court unless it has been filed and indexed in an ordinance book pursuant to G.S. 160A-78 or codified pursuant to G.S. 160A-77. (See G.S. 160A-79).

Resolutions. A resolution is an expression of opinion, statement of policy, request, or directive of the governing body. There is no requirement as to the form a resolution must follow, but all resolutions should clearly express their intent and be accurately recorded in the minutes in the same manner as an ordinance. For a sample resolution form, see Form #7. The MORE Manual also includes sample resolutions.

Charter. Almost without exception, the municipalities in North Carolina were incorporated by action of the General Assembly. (A few were incorporated by action of the now defunct State Municipal Board of Control). The original act of incorporation and all subsequent amendments, or a revised charter act, constitute the charter of a municipality. G.S. 160A-1(1). A current copy of the charter should be maintained in the office of the clerk.

If your municipality does not have an up-to-date copy of its charter, there are several methods for obtaining one. (1) The municipal attorney can research the session laws and other acts of the General Assembly to locate charter provisions. Session laws from 1959 to present can be searched online on the General Assembly's website, www.ncleg.net, and other years may be added in the future. (2) The Land Records Management Section of the Department of the Secretary of State in Raleigh, (919) 807-2206, may be able to provide a copy of the original charter and amendments if they are on file. (3) The League of Municipalities offers a charter revision service that includes the assembling of all local acts applicable to the municipality into one document, analyzing them for consistency with current state laws, recommending the repeal of existing acts or portions of acts that are obsolete or superseded, and drafting a modern and up-to-date charter that will supersede all earlier acts. The League's fee for the service is based on the municipality's population.

Clerks should be aware of any local legislation that the municipality is seeking in the General Assembly. Once a local bill affecting the municipality is enacted, the clerk should obtain a copy of it to keep on file with the charter. Bill copies may be obtained from the General Assembly Printed Bills Office, (919) 733-5648, downloaded from the General Assembly's website, www.ncleg.net, or requested from the League of Municipalities.

State law also allows municipalities to make certain limited charter amendments by ordinance, such as the number of council members, the mode of election, and the form of government (mayor-council or council-manager). See G.S. 160A-101 and page 141 for further information. Other than the items listed in the statute, all charter amendments must be enacted by the General Assembly.

Amendments to the charter, whether adopted by ordinance or enacted by the General Assembly, should be submitted to the Secretary of State's office and the Legislative Library.

N.C. Department of the Secretary of State
Land Records Management Division
P.O. Box 29622
Raleigh, N.C. 27626-0622
Phone: (919) 807-2206
Fax: (919) 807-2210
www.secstate.state.nc.us/

Legislative Library
300 N. Salisbury Street
Raleigh, N.C. 27603-5925
Phone: (919) 733-9390
Fax: (919) 715-5460
www.ncleg.net/LegLibrary

Map of Corporate Limits/Ward Boundaries. G.S. 160A-22 requires that the current municipal boundaries be retained permanently in the office of the clerk. The boundaries may be drawn on a map, set out in a written description, or shown by a combination of these techniques. If the municipality is divided into wards or electoral districts, the official map or description must also show the boundaries of these wards or districts (G.S. 160A-23). After an annexation is completed, a map showing the boundaries of the annexed area must also be recorded in the office of the register of deeds, filed in the office of the Secretary of State, and delivered to the municipal or county board of elections [G.S. 160A-29, 160A-39, 163-288.1(a)]. See page 158. For those municipalities subject to the federal Voting Rights Act preclearance requirements, information regarding boundary changes will also have to be submitted to the U.S. Department of Justice. See page 143.

Fire Limits Description. G.S. 160A-435 requires that each municipality establish and define primary fire limits within the principal business district of the city and authorizes the governing body, if necessary, to establish secondary fire limits in separate areas within the city. Although not specifically required by state law, the map or description of these fire limits may also be maintained in the office of the clerk.

Records Management and Disposition. Municipalities large and small share the problem of storing, preserving and disposing of municipal records. The clerk is the custodian of municipal records (G.S. 160A-171, G.S. 132-2). Important municipal records must be kept in a safe place at all times (G.S. 132-7). If possible, these documents should be kept in a vault or safe that is fire-proof and moisture-proof. The vault or safe should be locked when not in use.

The Department of Cultural Resources is the official archival agency of the state in relation to public records, including municipal records. No official municipal records may be destroyed until the clerk certifies to the Department that the records have no further use or value for official business. If the Department certifies that the records appear to have no further use or value for research or reference, they may be destroyed upon adoption of an authorizing resolution by the governing body. A person who disposes of a public record without the consent of the Department, or who unlawfully destroys, alters or mutilates a public record, is guilty of a misdemeanor [G.S. 121-5(b); G.S. 132-3].

In cooperation with the League, the state Office of Archives and History within the Department of Cultural Resources has published the *Municipal*

Records Retention and Disposition Schedule to serve as a guide for municipal officials in retaining and disposing of public records in their custody. A copy of the Schedule is posted on the Office of Archives and History's website (see below). In addition, Archives and History offers a program for microfilming the permanently valuable records of local governments in North Carolina [G.S. 121-5(d)]. Specific information about this service may be obtained from:

Office of Archives and History
4610 Mail Service Center
Raleigh, N.C. 27699-4610
Phone: (919) 733-7305
Fax: (919) 733-8807
Physical Location: 109 East Jones Street, Raleigh
www.ah.dcr.state.nc.us/sections/archives/rec/default.htm

Access to Public Records. Questions frequently arise concerning access to records and information by the public. The federal Freedom of Information Act does not apply to municipalities—rather, the state's Public Records Act governs these issues. Under state law, the term "public records" is broadly defined by G.S. 132-1 to include:

all documents, papers, letters, maps, books, photographs, films, sound recording, magnetic or other tapes, electronic data-processing records, artifacts, or other documentary material, regardless of physical form or characteristics, made or received pursuant to law or ordinance in connection with the transaction of public business by any agency of North Carolina government or its subdivisions.

"Agency of North Carolina government or its subdivisions" includes every public office, public officer or official (state or local, elected or appointed), board, commission, council, department, authority, or other unit of state or local government.

Examination and Copying. The law provides that any person must be allowed to inspect and examine all public records at reasonable times under reasonable supervision and to obtain copies thereof. G.S. 132-6(a). The person requesting the records cannot be required to disclose the reason or motive for the request. G.S. 132-6(b). A request cannot be denied on the grounds that there is confidential information commingled with the requested non-confidential information. Instead, the public agency is required to bear the cost of separating the information so that the record can be examined or copied. G.S. 132-6(c). Persons requesting copies of public records can choose to obtain them in any media in which the agency is capable of providing them, including electronically. However the law does not require the municipality to put into an electronic medium a record that is not kept in an electronic medium. Nor does it require the municipality to create or compile a record that does not otherwise exist. The custodian of records must respond to public records requests as promptly as possible—if

the request is granted, the copies must be provided as soon as reasonably possible; if the request is denied, the denial must be accompanied by an explanation of the reason for denial. (If requested, the reasons for denial must be given in writing.) G.S. 132-6.2.

Electronic Records. After June 30, 1996, a municipality may not acquire an electronic data-processing system for the storage, manipulation or retrieval of public records unless it first determines that the system will not impair the ability to permit public inspection and to provide electronic copies of records. Municipalities must also maintain an index of computer databases. G.S. 132-6.1. Persons requesting copies of computer databases may be required to submit the request in writing. G.S. 132-6.2.

Fees. Certified copies must be provided if requested, upon payment of fees "as prescribed by law." There is currently no state law that prescribes such fees, so the municipality is free to set a reasonable rate. The maximum fees allowed to be charged by the register of deeds are often used as a guideline: those fees are \$5.00 for the first page, plus \$2.00 for each additional page [G.S. 161-10(a)(9)]. For uncertified copies, the clerk may only charge fees that do not exceed the actual direct cost of making the copy. G.S. 132-6.2(b). The schedule of copying fees should be posted.

Exceptions. If the municipality wishes to deny access to a document, it must be under a specific statutory provision stating that the type of document is not a public record or is not open to public access. Here are some major categories of records to which public access is restricted by state law:

- Minutes of Closed Sessions - G.S. 143-318.10(e)
Closed session minutes may be withheld only so long as public inspection would frustrate the purpose of the closed session.
- Personnel Records - G.S. 160A-168
The Personnel Privacy Act protects most information contained in the personnel file from disclosure. Some basic information is made public, including name, age, date of original employment, position title, office to which assigned, salary (pay, benefits, incentives, bonuses, deferred and all other forms of compensation), date and amount of most recent increase or decrease in salary, date of most recent promotion, demotion, transfer, suspension, separation or other change in position classification. The terms of any employment contract are also public record.
- Criminal Investigation Records - G.S. 132-1.4
Records of criminal investigations conducted by law enforcement agencies are generally not public. Some basic information regarding the type of alleged violation, the person arrested, the circumstances of the arrest, etc. is made public.

- 911 and Reverse 911 Information - G.S. 132-1.5
Names, addresses, telephone numbers, and e-mail addresses contained in a municipal 911 database or electronic emergency notification “reverse 911” system are confidential.
- Tax Records - G.S. 132-1.1(b); G.S. 160A-208.1
Local tax records that show the taxpayer’s income or receipts are not public record.
- Trade Secrets - G.S. 132-1.2
Business or industry trade secrets that may be contained in contracts, bid documents, or other records furnished to the municipality are protected from disclosure.
- Public Enterprise Billing Information - G.S. 132-1.1(c)
Information compiled or maintained with respect to individual customers by the owner or operator of a public enterprise, relating to the services provided, is not public record. The municipality may adopt a policy to disclose the information under certain circumstances. See the list of public enterprises in G.S. 160A-311.
- Child’s Parks and Recreation Identifying Information - G.S. 132-1.12
Certain identifying information of minors participating in local government parks and recreation programs is not a public record. The following need not be released: the minor’s name, address, age, date of birth, telephone number, parent or guardian’s name or address, or any other identifying information on an application to participate. However, the county, municipality, and zip code of residence of each participating minor is considered a public record.
- Social Security Numbers/Personal Identifying Information - G.S. 132-1.2; G.S. 132-1.10
Social security numbers and other personal identifying information such as bank account and credit card account numbers are protected from disclosure. G.S. 132-1.10 specifies the circumstances under which social security numbers can be collected from an individual and the procedures to be followed in doing so. The presence of identifying information does not change the nature of a public record. The municipality must respond to the public records request as promptly as possible by providing the public record with the identifying information removed or redacted.

If a municipality experiences a security breach, it must comply with the provisions of G.S. 75-65 regarding notice to

persons affected by the breach. "Security breach" is defined as unauthorized access to and acquisition of unencrypted and unredacted records or data containing personal information, where illegal use of the personal information has occurred or is reasonably likely to occur or that creates a material risk of harm to the consumer. Good faith acquisition of personal information by a municipal employee or agent for a legitimate purpose is not a security breach as long as it is used for a lawful purpose and is not subject to further unauthorized disclosure.

- Address Confidentiality Program - G.S. 132-1.1(d)
The actual address and telephone number of a person participating in the address confidentiality program is not a public record. This is a program run by the Attorney General's Office to protect victims of domestic violence, stalking or sexual assault.
- Public Security Information - G.S. 132-1.7
Public security plans and detailed plans and drawings of public buildings and infrastructure facilities are not public record.
- Economic Development Records - G.S. 132-6(d); G.S. 132-1.11
Records relating to the proposed expansion or location of a business or industry may be temporarily withheld but must be disclosed within 25 business days once the business or industry has committed to expand or locate and the specific location has been determined.
- Attorney-Client Communications - G.S. 132-1.1(a)
Certain written communications to a governmental body by an attorney that are within the scope of the attorney-client relationship are protected. However, these become public three years from the date received.
- Trial Preparation Material - G.S. 132-1.9
Under certain circumstances the records custodian may deny access to a public record that is also trial preparation material. Material may be subject to release upon conclusion of the legal proceedings.

Enforcement of Public Records Law. Persons denied access to public records or copies of such records may apply to a court for an order compelling disclosure or copying. G.S. 132-9(a). The court can award attorneys' fees to the prevailing party if it finds that the public agency acted without substantial justification in denying access to the records and there are no special circumstances to make the award unjust. The court can order the individual public official or employee to personally pay attorneys' fees to

the prevailing party if the court finds that that individual knowingly or intentionally violated the Public Records Law. However, personal payment cannot be ordered if the individual in question sought and followed the advice of an attorney [G.S. 132-9(c)].

Resources. Public Records Law for North Carolina Local Governments is an excellent reference available from the School of Government. Clerks should seek guidance from the municipal attorney, the League, or the School of Government when non-routine requests are presented.

D. Publication of Notices and Legal Advertisements

The responsibility for mailing or publishing notices and advertisements often falls to the clerk. The requirements for providing notice of hearings, meetings, and actions differ according to the subject matter and are set forth in individual statutes. Some of these requirements are discussed in the text of this manual under the appropriate subject headings.

Appendix C to this chapter contains a chart detailing the publication requirements (where, when and how often) for the types of notices most often encountered by the municipal clerk. It is based on a chart published in the MORE Manual but has been revised and updated.

When publication of notice in a newspaper is required, G.S. 1-597 specifies the criteria for eligible newspapers. This usually means a newspaper of general circulation to actual paid subscribers in the area that is published at least once a week for at least 25 of the 26 weeks immediately preceding the notice.

E. Closing Out Sales

One of the more unusual duties of the municipal clerk has to do with the licensing of certain types of “going out of business” sales. G.S. 66-77 prohibits the advertisement or offering of goods for sale under the description of closing-out sale, distress sale, fire sale, etc. without first obtaining a license from the clerk. See Appendix B of this chapter for more detail on this requirement and several related forms.

F. Other Resources

MORE Manual. Minutes, Ordinances, Resolutions, Etc., also known as the MORE Manual, is a common sense guide produced by the North Carolina Association of Municipal Clerks. It contains additional information on agendas, certification of documents, correspondence, minutes, public notices, ordinances, resolutions and other topics, along with samples and forms. Copies are available from the League of Municipalities.

NCAMC Website. The North Carolina Association of Municipal Clerks maintains a website at www.ncamc.com. Various reference materials will be made available there.

Clerk-Net. Clerk-Net is a website hosted by the School of Government: www.sog.unc.edu/organizations/clerks/index.html. It includes information on joining the clerks' listserv, an electronic mailing list that allows clerks throughout the state to communicate with each other and share information and ideas.

Popular Government. This magazine, published by the School of Government, has had several articles on the clerk's position, including "City and County Clerks: What They Do and How They Do It" (Summer 1996) and "The Hub of the Wheel: Clerks Keep Government Running Smoothly" (Spring 1990). Reprints are available from the publications office, (919) 966-4119 or www.sogpubs.unc.edu.

FORM #1

Oath of Office (General)

"I, _____, do solemnly swear (or affirm) that I will support and maintain the Constitution and laws of the United States, and the Constitution and laws of North Carolina not inconsistent therewith, and that I will faithfully discharge the duties of my office as (Clerk) (Mayor) (Councilman) (Commissioner) (Alderman), so help me God."
(North Carolina Constitution, Article VI, Section 7).

(Signature of official sworn in)

(Name of official administering the oath)*

(Title)

(Date)

*See G.S. 11-7.1 for the list of officials authorized to administer the oath.

FORM #2

Agenda Outline

1. Meeting Called to Order
2. Adjust and Approve Agenda
3. Approve Minutes of Previous Meeting

(Correction of Minutes)
4. Public Comment Period

(May wish to include general information here on rules for the public comment period, such as the time limitation for each speaker, the total time limit for the comment period, and how individuals sign up to speak.)
5. Unfinished Business
 - a. _____
 - b. _____
6. New Business
 - a. Presentation of petitions, notices, claims
 - b. Committee reports
 - c. Departmental reports
 - d. Other reports
7. Legislative Action
 - a. Consideration of ordinances
 - b. Consideration of resolutions
8. Other Business
9. Announcements
10. Adjournment

FORM #3

Agenda Outline Using Consent Format

- I. Meeting Called to Order
- II. Adjust and Approve Agenda
- III. Consent Agenda
 - 1. Approval of Minutes of Previous Meeting

ACTION RECOMMENDED: Approval
 - 2. Tax Collector's Report

(Descriptive information attached)

ACTION RECOMMENDED: Accept report for record
 - 3. Ordinance Amending FY 2xxx-xx Budget

(Descriptive information attached)

ACTION RECOMMENDED: Adopt Ordinance No. _____
- IV. Public Comment Period

(May wish to include general information here on rules for the public comment period, such as the time limitation for each speaker, the total time limit for the comment period, and how individuals sign up to speak.)
- V. Public Hearings
 - 1. Rezoning Application
 - 2. Resolution of Intent to Annex
- VI. Regular Agenda (Includes new business and items removed from consent agenda)
 - 1. Discussion of Wastewater Disposal Alternatives
 - 2. Committee Reports
- VII. Report from Manager

- VIII. Reports from Mayor and Board, or Committees
- IX. Other Business
- X. Announcements
- XI. Adjournment

FORM #4

Format For Recording Minutes of Municipal Governing Body Meetings

(1) The (regular) (special) meeting of the (Governing Body) was held in the _____ Room of the _____ at _____ (a.m.) (p.m.) on _____, 2____.

The following members of the (Governing Body) were present: (list).

The following members of the (Governing Body) were absent: (list).

(2) (Mayor) (Mayor Pro Tem) _____ called the meeting to order and the Clerk presented the minutes of the (regular) (special) meeting held on _____, 2____. The minutes were approved as presented. (The minutes were corrected as follows: In line _____ the words " _____ " were stricken out and the following words were inserted in lieu thereof: " _____ ".)

(3) (Mayor) (Mayor Pro Tem) _____ opened the meeting for further discussion on the subject of _____, which was tabled at the last meeting. After discussion by (Alderman) (Commissioner) (Councilmember) _____ and by (Alderman) (Commissioner) (Councilmember) _____, (Alderman) (Commissioner) (Councilmember) _____ moved that the subject of _____ be tabled indefinitely.

The motion was seconded by (Alderman) (Commissioner) (Councilmember) _____. (Mayor) (Mayor Pro Tem) _____ called for a vote on the question. The following (Aldermen) (Commissioners) (Councilmembers) voted in the affirmative: _____. The following (Aldermen) (Commissioners) (Councilmembers) voted in the negative: _____. The subject was tabled indefinitely (or other result).

(4) The following citizens were present to be heard at the meeting:

Mr. John Doe of (address). Mr. Doe requested that a traffic signal be installed at the corner of _____ and _____ streets. At the conclusion of a short discussion, the request was referred to the _____ Committee.

(5) (Alderman) (Commissioner) (Councilmember) _____ presented a street paving petition from the property owners of _____ Street who had agreed to pay in advance _____ percent of the street paving costs, less the costs of the intersections. The petition was referred to the Clerk for certification with instructions to report to the (Governing Body) at its next regular meeting.

(6) (Mayor) (Mayor Pro Tem) _____ called for a report from the various committees. (Alderman) (Commissioner) (Councilmember) _____, Chairman of the _____ Committee, submitted a report requesting the (Governing Body) to approve the purchase of a (make) (size) (type) (item) to cost \$_____, plus freight charges, to be used for (insert), and for which an appropriation of \$_____ has been made in the annual budget. (Alderman) (Commissioner) (Councilmember) _____ requested that the _____ Committee withhold its request until he could secure a quotation on a (make) (size) (type) (item). (Alderman) (Commissioner) (Councilmember) _____ agreed, and the request was withdrawn.

(7) No special or other reports were made.

(8) (For suggested form for ordinances and resolutions to appear in minutes, see Forms #6 and #7 attached.)

(9) There being no further business (and no other persons to be heard), the meeting adjourned at (time).

_____ (signed)
Clerk

_____ (signed)
Mayor

FORM #5

Format for Recording Minutes of Governing Body Meetings Using Consent Agendas

(1) The (regular) (special) meeting of the (Governing Body) was held in the _____ Room of the _____ at _____ (a.m.) (p.m.) on _____, 2____.

The following members of the (Governing Body) were present: (list Mayor, along with members).

The following members of the (Governing Body) were absent: (list).

(2) (Mayor) (Mayor Pro Tem) _____ presented the consent agenda and asked if any item should be removed before calling for action. There being no requests for removal, (Alderman) (Commissioner) (Councilmember) _____ made a motion to approve the consent agenda and each item as presented. After a second from (Alderman) (Commissioner) (Councilmember) _____, the consent agenda and following items were unanimously approved:

- a. Minutes of _____ meeting.
- b. Tax collector's report accepted for record.

(Insert descriptive information)

- c. Adopted Ordinance No. _____, amending 2xxx-xx budget.

(Insert descriptive information)

End of Consent Agenda

(3) NOTE: Continue minutes using format in Form #4 attached, beginning with paragraph (3).

FORM #6

Suggested Form for Ordinance to Appear in Minutes

(Alderman) (Commissioner) (Councilmember) _____ introduced the following proposed ordinance, which was read at length:

AN ORDINANCE TO (title to set forth content of ordinance.

BE IT ORDAINED by the (Board of Aldermen) (Board of Commissioners) (City Council) of the _____ of _____ that:

Section 1. (Insert body of ordinance in this and subsequent sections.)

Section _____. (If ordinance is to be enforced by criminal penalties, add this or similar section.) Any person, firm or corporation violating the provisions of this ordinance shall upon conviction be guilty of a misdemeanor and shall be punished in accordance with the provisions of Section 14-4 of the General Statutes.

Section _____. (If ordinance is to be enforced by a civil penalty, add this or similar section.) Any person, firm or corporation violating the provisions of this ordinance shall pay a civil penalty in the amount of \$_____ to the (City) (Town) (Village) Clerk within 72 hours (or other period) after receiving a citation for violation. Any unpaid civil penalties shall be collected by means of a civil action in the nature of debt. Violation of this ordinance shall not constitute a misdemeanor or infraction punishable under North Carolina General Statutes section 14-4.

Section _____. This ordinance shall be in full force and effect upon its adoption (or provide other effective date).

Mayor

ATTEST:

Clerk

Approved as to form:

Attorney

After a discussion, the foregoing ordinance was adopted.

The following (Aldermen) (Commissioners) (Councilmembers) voted in the affirmative:

The following (Aldermen) (Commissioners) (Councilmembers) voted in the negative:

FORM #7

Suggested Form for Resolution

(Alderman) (Commissioner) (Councilmember) _____ moved that the following resolution be adopted:

WHEREAS, (list reason or reasons for adopting the resolution in this and subsequent "WHEREAS" clauses).

WHEREAS,

NOW, THEREFORE, BE IT RESOLVED that _____

BE IT FURTHER RESOLVED that _____.

This the _____ day of _____, 2xxx.

Mayor

ATTEST:

Clerk

After discussion, the foregoing was adopted.

The following (Aldermen) (Commissioners) (Councilmembers) voted in the affirmative:

The following (Aldermen) (Commissioners) (Councilmembers) voted in the negative:

CHART #1

Calculating Quorum

(G.S. 160A-74)*

To determine the number needed for a quorum in your municipality under general state law, do the following:

1. Start with the total number of seats on the council not including the mayor.
2. Add the mayor.
3. Subtract the number of seats (council and/or mayor) that are currently vacant.
4. Using the resulting number, consult the chart below.

If the resulting number is

Number needed for quorum is

2	2
3	2
4	3
5	3
6	4
7	4
8	5
9	5
10	6
11	6
12	7
13	7

*Be sure to check the municipal charter for any special rules on calculating quorum.

CHART #2

Calculating Number of Votes to Adopt an Ordinance

(G.S. 160A-75)*

To determine the number of affirmative votes needed 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 municipality, do the following:

1. Start with the total number of seats on the council. (Do not count the mayor if he or she votes only in the case of a tie. Do not subtract vacant seats.)
2. Subtract the number of members who have been excused from voting on the question under consideration.
3. Using the resulting number, consult the chart below.

<u>If the resulting number is</u>	<u>Number of affirmative votes needed (counting mayor's vote if he or she breaks a tie by voting yes)</u>
2	2
3	2
4	3
5	3
6	4
7	4
8	5
9	5
10	6
11	6
12	7
13	7

Note that these rules do not apply to votes on the budget ordinance or budget amendments. See G.S. 159-17.

*Be sure to check the municipal charter for any special rules on voting.

CHART #3

Calculating Number of Votes for Day of Introduction

(G.S. 160A-75)*

To determine the number of affirmative votes needed to adopt an ordinance or action having the effect of an ordinance on the day of introduction, do the following:

1. Start with the total number of seats on the council. (Do not include the mayor if he or she votes only in the case of a tie.)
2. Subtract the number of vacant council seats.
3. Using the resulting number, consult the chart below.

<u>If the resulting number is</u>	<u>Number of affirmative votes needed is</u>
2	2
3	2
4	3
5	4
6	4
7	5
8	6
9	6
10	7
11	8
12	9
13	9

Note that these rules do not apply to votes on the budget ordinance or budget amendments. See G.S. 159-17.

*Be sure to check the municipal charter for any special rules on voting.

CHART #4

Required Public Hearings

Annexation

- Voluntary contiguous G.S. 160A-31
- Voluntary satellite G.S. 160A-58.2
- City-Initiated (city under 5,000) G.S. 160A-37
- City-Initiated (city of 5,000 or more) G.S. 160A-49
- Annexation agreements G.S. 160A-58.24

Bonds

- Bond orders G.S. 159-57

Budget

- Annual budget ordinance G.S. 159-12

Business Regulations

- Sunday-closing ordinance G.S. 160A-191

Charter Amendments

- Charter amendments by ordinance G.S. 160A-102

Finance and Tax

- Purchase of real property with installment contract creating a security interest in the property G.S. 160A-20
- Project development financing G.S. 158-7.3; 160A-515.1
- Expenditures for certain economic development activities; conveyance or lease of real property for those activities G.S. 158-7.1
- Transfer of real property in a community development project area G.S. 160A-457(4)

Land Use/Planning and Zoning

- Adopting, amending or repealing an ordinance regulating land use and development (or any other ordinance authorized under Article 19 of G.S. Chapter 160A) G.S. 160A-364

Services

- Ordinance regulating ambulance services G.S. 153A-250(c)
- Resolution establishing municipal service district G.S. 160A-537
- Award of franchise for sanitary landfill G.S. 130A-294(b1)(3)

Special Assessments

- Assessment resolution G.S. 160A-225
- Confirmation of assessment roll G.S. 160A-228

Stormwater

- Establishing/revising stormwater fees G.S. 160A-314(a1)

Streets

- Closing public streets or alleys G.S. 160A-299
- Resolution establishing city parking authority G.S. 160A-552

APPENDIX A

Americans with Disabilities Act

The Americans with Disabilities Act is a comprehensive federal civil rights statute that affords broad protections for persons with disabilities. Under the ADA, a disability is a physical or mental impairment that substantially limits a major life activity such as hearing, seeing, speaking, walking, breathing, performing manual tasks, caring for oneself, learning or working.

Employment. Title I of the Act ensures equal employment opportunity for qualified individuals with disabilities. Although Title I has a small employer exception (less than 15 employees), since Title II has been interpreted to also cover employment practices of local governments, and since there is no population or small employer exception to Title II, all local governments are affected by the employment provisions.

A person with a disability must be qualified to perform the essential functions or duties of a job, with or without reasonable accommodation, in order to be protected from job discrimination by the ADA. A reasonable accommodation is any change or adjustment to a job or work environment that permits a qualified applicant or employee with a disability to participate in the job application process, to perform the essential functions of a job, or to enjoy benefits and privileges of employment equal to those enjoyed by employees without disabilities. For example, a reasonable accommodation could include providing or modifying equipment or devices; job restructuring; part-time or modified work schedules; providing readers and interpreters; or making the workplace readily accessible to and usable by people with disabilities. An employer is required to provide a reasonable accommodation to a qualified applicant or employee with a disability unless the employer can show that the accommodation would be an undue hardship.

An employer may not ask an applicant if he or she is disabled or ask about the nature or severity of a disability. An employer can ask if the individual can perform the duties of the job with or without reasonable accommodation. An employer cannot require an applicant to take a medical examination before making a job offer. Following a job offer, an employer can condition the offer on passing a required medical examination, but only if all entering employees for that job category have to take the examination. An employer cannot reject the applicant based on information about a disability revealed by the medical examination, unless the reasons for rejection are job-related and necessary for the conduct of the employer's business.

Government Services. Title II prohibits discrimination on the basis of disability in state and local government services. The essence of Title II is to prohibit the exclusion of a qualified individual with a disability, by reason of the disability, from participation in the services, programs, or activities of a public entity, or from being subjected to discrimination by any such entity.

This broad protection covers all activities of a public entity, including physical access to public meetings.

One subpart of Title II deals with communications. Local governments must take steps to ensure that communications with applicants, participants and members of the public with disabilities are as effective as communications with others. The furnishing of appropriate auxiliary aids and services where necessary is required unless compliance with such a request would result in a fundamental alteration of the service, program or activity or if compliance would create an undue financial or administrative burden. Auxiliary aids and services could include provision of large print or Braille documents, audio-recordings of written documents, sign language interpreters and amplification systems.

Public Meeting Notice. While there is no "magic" language that is required to be included in notices of public meetings, you may want to consider including the following notice:

"In accordance with Title II of the Americans With Disabilities Act (ADA), the (City)(Town)(Village) of _____ does not discriminate on the basis of disability in conducting its meetings. Individuals with disabilities who require auxiliary aids or services or other accommodations for effective communication and participation in a meeting may contact the (manager)(clerk)(ADA coordinator) at (phone number). Requests should be made at least ____ (hours)(days) prior to the meeting."

Be sure to adjust the time frame for the request if the meeting is being held on short notice, such as a called special meeting.

Resources and Assistance.

Websites. The U.S. Department of Justice, the enforcement agency for the ADA, has an assortment of useful information on its ADA homepage, www.ada.gov. The Southeast Disability & Business Technical Assistance Center also provides information on ADA compliance at www.sedbtac.org. The Equal Employment Opportunities Commission site is also helpful and easy to navigate at www.eeoc.gov.

Tool Kit. The U.S. Department of Justice has a new technical assistance document designed to assist state and local governments in complying with the ADA requirements regarding access to programs, services, activities and facilities. The ADA Best Practices Tool Kit for State and Local Governments is available online at www.usdoj.gov/crt/ada/pcatoolkit/toolkitmain.htm.

Information Line. The U.S. Department of Justice provides information about the ADA through a toll-free ADA Information Line. This service permits businesses, state and local governments, and others to call and ask questions about general or specific ADA requirements. ADA specialists are available Monday through Friday from 9:30 a.m. until 5:30 p.m. except on

Thursday when the hours are 12:30 p.m. until 5:30 p.m. Call 1-(800) 514-0301 (voice) or 1-(800) 514-0383 (TTY).

Other Publications/Technical Assistance Manuals. Free publications about the requirements of the ADA are available by calling the information line (see numbers above). Many can also be downloaded from the website. A listing of publications is available at www.usdoj.gov/crt/ada/publicat.htm. Some of the titles of interest include:

- ADA Guide for Small Towns
- ADA Guide for Law Enforcement Officers
- Model Policy for Law Enforcement
- ADA Checklist for Polling Places
- ADA and City Government: Common Problems
- Making Community Emergency Preparedness and Response Programs Accessible to People with Disabilities
- Emergency Preparedness Guide
- Accessible Websites
- Accessible Stadiums
- Readily Achievable Barrier Removal and Van-Accessible Parking
- Commonly Asked Questions about the ADA and Law Enforcement
- Questions and Answers: The ADA and Hiring Police Officers
- Commonly Asked Questions About Title II of the ADA
- Questions and Answers: the ADA and Persons with HIV/AIDS.
- Common ADA Errors and Omissions in New Construction and Alterations
- Access for 911 and Telephone Emergency Services

Interpreters. The North Carolina Department of Health and Human Services, Division of Services for the Deaf and Hard of Hearing, has information on what is required and resources for finding interpreters in all areas of the state. See <http://dsdhh.dhhs.state.nc.us/> or call (919) 874-2212.

APPENDIX B

Closing-Out Sales Licensing

Definitions. A “closing out sale” is defined as all sales advertised, represented or held forth as “going out of business,” “discontinuance of business,” “selling out,” “liquidation,” “lost our lease,” “must vacate,” “forced out,” “removal” or similar designation. A “distress sale” includes all sales in which it is represented or implied that going out of business is possible or anticipated, in which closing out is referred to in any way, or in which it is implied that business conditions are so difficult that the seller is forced to conduct the sale. G.S. 66-76.

License required. G.S. 66-77 provides that no person may advertise or offer for sale a stock of goods, wares or merchandise under the description of closing-out sale, or a sale of goods, wares or merchandise damaged by fire, smoke, water or otherwise, or hold a distress sale, unless he or she first obtains a license to conduct the sale from the clerk of the municipality in which he or she proposes to conduct the sale. Notice of these requirements can be mailed along with annual billing for privilege licenses.

Application. Application for the license must be submitted to the clerk, in writing and under oath, at least seven days prior to the opening date of the sale. The application must show all facts relating to the reasons and character of such sale, including the opening and terminating dates of the proposed sale, the dates of any previous closing-out or distress sales in the county in the last 12 months, a complete inventory of the goods, wares or merchandise actually on hand at the place where the sale is to be conducted, and all details necessary to locate exactly and fully the goods, wares or merchandise to be sold. However, the seller in a distress sale need not file an inventory. G.S. 66-77(a). For a sample application, see Form #8.

Fee and Bond. If the clerk is satisfied from the application that the proposed sale is of the character that the applicant desires to advertise and conduct, the clerk shall issue a license, upon payment of a \$50.00 fee, together with a bond payable to the city or town in the penal sum of \$500.00, conditioned upon compliance with the requirements of statute. G.S. 66-77(b). For a sample license form, see Form #9.

The following persons are exempted from payment of the fees and filing of the bond, but not from the application and license requirements:

- (1) Merchants who have conducted business for at least one year prior to the date of the sale, in the same location where the proposed sale is to be held;
- (2) Merchants who have conducted business in the same location for at least one year, but who are forced to hold the proposed sale at another location because the building

at his or her business location is untenable or he or she has no existing lease or ownership of the building.

Duration and Renewal. The license is good for a period of 30 days. If the sale is not conducted within that 30 day period, the applicant will be required to obtain a second license good for an additional 30 days, and pay a \$50.00 fee for it. A second 30-day extension may be acquired for an additional \$50.00, but no additional bond shall be required for these extensions. The clerk may not grant an extension if the applicant conducted a distress sale immediately preceding the current sale, and the period of the proposed extension, when added to the period of the preceding sale and the current sale, would exceed 120 days. G.S. 66-77(b).

Restrictions on Restocking. Merchants in contemplation of a closing-out sale may not order new merchandise for the purpose of selling it at the sale. Any unusual purchase or additions to stock within 60 days prior to the filing of an application for the sale is presumptive evidence that the purchases or additions were in contemplation of the sale. G.S. 66-78. Merchants conducting a closing-out sale or a sale of merchandise damaged by fire, smoke or water may not add to the damaged stock that was inventoried in the original application.

Restrictions on Continuing in Business. Upon concluding a closing-out sale, a merchant cannot continue that business in the same town or county for a period of 12 months. A merchant cannot avoid this prohibition by going into business with new or different partners. G.S. 66-80.

Records. The clerk must endorse upon the application the date of its filing, retain it with the official records, make an abstract of the facts set forth in the application, and indicate whether the license was granted or refused. G.S. 66-77(c). For a sample endorsement, see Form #10.

Enforcement. These statutes are difficult to construe, and may be very difficult to enforce. Clerks should bear in mind, however, that the requirements are mandatory, and must be enforced. Available enforcement remedies include injunctive relief, actions on the bond, and criminal prosecution.

FORM #8

Application for License to Conduct Closing-Out Sale, Distress Sale, or Sale of
Goods Damaged by Fire, Smoke or Otherwise Pursuant to G.S. 66-77
In the (City) (Town) (Village) of _____

(Name of applicant), hereinafter referred to as applicant, being first duly sworn,
deposes and says that:

(1) The applicant is the (title) of (name of business) which on the _____ day of _____, 2____ [at least seven (7) days after the filing of this application] intends to conduct a

_____ closing out sale

_____ sale of goods or merchandise damaged by fire, smoke, water or
otherwise

_____ distress sale

as defined in G.S. 66-76. The reasons for such sale are as follows:

(2) The sale shall begin on the _____ day of _____, 2____, and terminate on the _____ day of _____, 2____ [should be within 30 days of the beginning date].

(3) A complete inventory of the goods, wares or merchandise actually on hand at the location where such sale is to be conducted is attached and marked "Exhibit A". (The seller in a "distress sale," as defined in G.S. 66-76, need not file an inventory.)

(4) The attached "Exhibit A" (if applicable) contains all details necessary to locate exactly and identify fully the full inventory of goods, wares or merchandise to be sold at said sale.

(5) The applicant held the following previous distress sale(s) or closing-out sale(s) within the county during the preceding 12 months:

Opening Date _____

Terminating Date _____

Opening Date _____

Terminating Date _____

Opening Date _____

Terminating Date _____

(6) The applicant hereby certifies that in contemplation of conducting a closing out sale, no goods, wares or merchandise have been ordered for the purpose of selling or

disposing of the same at the proposed sale within sixty (60) days prior to the filing of the application for the license herein requested. (Not applicable to distress sale.)

(7) The applicant further acknowledges the requirements of Article 17 of North Carolina General Statutes Chapter 66, and certifies that the proposed sale will be conducted only as permitted and required by law.

(8) If applicant is a corporation or partnership, list names of all individuals who are principals in the business venture:

(9) The applicant makes this statement under oath, being aware that any false statement set forth in this application may subject the applicant to prosecution for perjury, as provided in G.S. 66-77(d).

This _____ day of _____, 2____.

Applicant

Sworn to and subscribed before me
this _____ day of _____, 2____.

Notary Public

My Commission Expires: _____

FORM #9

Clerk's Certificate of Approval and License

The undersigned Clerk of the (City) (Town) (Village) of _____ finds that the application by (name), dated _____, 2____, a copy of which must remain attached to this license at all times, was submitted in contemplation of a bona fide closing out or distress sale. [Payment of the required fee of fifty dollars (\$50.00) and a sufficient bond in the penal sum of five hundred dollars (\$500.00) is acknowledged] [applicant is exempted from the payment of fees and the filing of a bond by G.S. 66-77(b)] [choose one], and the requested license is hereby granted, subject to the time and other limitations set out in the attached application, the requirements of Article 17 of G.S. Chapter 66, and the following additional conditions:

(Fill in if applicable)

This the _____ day of _____, 2_____.

(City) (Town) (Village) Clerk

FORM #10

Abstract of Application Submitted for Closing-Out Sale, Distress Sale, or
Sale of Goods Damaged by Fire, Smoke or Otherwise
in the (City) (Town) (Village) of _____

On the _____ day of _____, 2____, (applicant) filed the attached application, stating that the requested sale would begin on (date) and terminate on (date). The application (was) (was not) approved, and the undersigned clerk (granted) (refused) the license required by G.S. 66-77 on (date).

This the _____ day of _____ 2____.

(City) (Town) (Village) Clerk

APPENDIX C

Public Notices at a Glance

Meetings of the Governing Body

Event	Statute	Where, When and How Often	Format	Notes:
Regular meeting schedule	143-318.12	Schedule showing the time and place of regular meetings is kept on file with the City Clerk. If the schedule is changed, the revised schedule must be filed at least 7 calendar days before the first meeting held under the revised schedule.	Any	Other distribution, such as on a website, may be desirable as a public service.
Special meeting	143-318.12; 160A-71	1. If the meeting was called pursuant to G.S. 160A-71(b)(1), deliver written notice to the members of the governing body or leave at their homes at least 6 hours prior to the meeting. Although the statute only requires 6 hours notice to the governing body, notifying the governing body at least 48 hours before the meeting is preferable. [If the meeting was called by announcing it during another regular or special meeting, written notice to the governing body is not required.] 2. Mail or deliver notice to the sunshine list (media and individuals that have requested notice) at least 48 hours prior to meeting. 3. Post on governing body's bulletin board or meeting room door at least 48 hours prior to meeting.	Written	1. Notice includes time, date, place and purpose of special meeting. 2. Fax delivery is acceptable, but verify receipt.
Emergency meeting	143-318.12	1. Notify members of the governing body as soon as possible. 2. Notify all local news media that have requested notice immediately after notice to the members of the governing body. Notice can be by telephone or by the same method used to contact the governing body..	Any, including by telephone.	May want to post at City Hall.
Recessed meeting	143-318.12	Motion in an open session to recess to a specific time, date and place.	No further notice required	
Public hearing at a regular meeting	n/a	Unless a General Statute requires notice of the particular type of hearing, none is required.		It may be desirable to provide notice of all public hearings even if not required.
Public hearing at a special meeting	143-318.12	1. Unless a General Statute requires notice of the particular type of hearing, none is required 2. Public hearing and the topic should be listed as one of the purposes in the special meeting notice.	Written	Follow requirements for notice of special meetings.

Finance Matters

Event	Statute	Where, When and How Often	Format	Notes:
Advertising for formal bids [purchase contracts for \$90,000 or more and construction contracts for \$300,000 or more].	143-129(b)	Publish ad at least 7 full days prior to the day on which bids will be opened. Do not count the day of publication. Do not count the day bids are opened. Ad should state time and place where bids will be opened and where and when more information for the purchase or product can be obtained. The ad text should reserve the right of the city to reject any or all proposals. Ad or specifications must contain other statutory requirements for bid bonds, etc.	Legal ad and/or electronic posting	A decision to advertise solely by electronic means, whether for particular contracts or generally for all contracts, shall be approved by the governing board at a regular meeting of the board.
Advertising of Tax Liens	105-369	1. Notice by first-class mail to record owner of affected property at least 30 days before the date the advertisement of liens is published. 2. Publication of lien advertisement at least once during the period March 1 through June 30. 3. Post notice of the liens at city hall.	Mailed notice; Legal ad; Posting	See statute for more information on content.
Budget	159-12	Publish notice that proposed budget has been submitted to the governing body and is on file in the clerk's office and available for inspection. Notice should include time and date for a public hearing, published once a reasonable number of days prior to the public hearing (10 days recommended).	Legal ad	Additional means of letting the public know of the upcoming budget adoption, such as on the municipal website, are encouraged but not required.
Economic development activities (e.g. industrial park, shell building, extending water/sewer to industrial facility, lease or conveyance of real property for such purposes)	158-7.1	Notice of public hearing once at least 10 days before the hearing.	Legal ad	See statute for more information on content of notice.
Installment financing	160A-20	A public hearing is required and should be advertised 10 full days prior to the date of the hearing.	Legal ad	
Project development financing	158-7.3; 160A-515.1	1. Notice of public hearing no more than 30 and no less than 14 days before the hearing. 2. Notice by first-class mail to all property owners and mailing addresses in the proposed development financing district and to the governing body of any special district within which the development financing district is located.	Legal ad; First-class mail	See statute for more information on content of notice.

Annexation

Event	Statute	Where, When and How Often	Format	Notes:
Annexation by petition	160A-31; 160A-58	Notice for public hearings for voluntary contiguous or non-contiguous annexation requests should be published once at least 10 days prior to the day of the public hearing.	Legal ad	
City-initiated (involuntary) annexation	160A-37; 160A-49	1. Notice by first-class mail of the public informational meeting and public hearing (single combined notice) to affected property owners at least 4 weeks before the informational meeting. Certify mailing of the notice to the governing body. 2. Publish notice once a week for at least 2 successive weeks prior to informational meeting in newspaper of general circulation in the municipality. If the annexation area is in a county containing less than 50% of the land area of the municipality, also publish in newspaper of general circulation in the area of proposed annexation. The period from the date of first publication to the date of last publication (both dates inclusive) shall be not less than 8 days including Sundays, and the date of last publication shall be not more than 7 days before the public informational meeting. 3. If there is no qualifying newspaper or tax records are inadequate to identify owners, post notice in at least 5 public places within the municipality and 5 public places in the area proposed for annexation for 30 days prior to the public informational meeting. Certify posting of notice to the governing body.	Mailed notice and legal ad; possible posting	Include map and boundaries in the notice.
Annexation agreements	160A-58.24	Publish once at least 10 days prior to the day of the public hearing.	Legal ad	

Street Closings (Includes Alleys, Roads, Rights of Way)

Event	Statute	Where, When and How Often	Format	Notes:
Permanently closing streets and alleys	160A-299	1. Notice of public hearing is published once a week for 4 successive weeks prior to the hearing 2. Property owners abutting the street are mailed a copy of the resolution of intent by certified or registered mail. 3. Post notice of the closing and the public hearing in at least two places along the right of way. 4. If the street is under the authority and control of the NC Department of Transportation (DOT), a copy of the resolution must be mailed to NCDOT.	Legal ad; Mailed notice; Posting	
Intermittent road closing in watershed improvement project	160A-299.1	1. Publish notice at least 14 days before issuing a permit. 2. Mail notice to public utilities and common carriers having facilities in the rights of way at least 14 days before issuing a permit.	Legal ad; Mailed notice	

Special Assessments

Event	Statute	Where, When and How Often	Format	Notes:
Preliminary resolutions	160A-224	1. Publish at least 10 days before the date of the public hearing. Notice should state that a preliminary assessment resolution has been adopted and generally describe the nature and location of the improvement. 2. At least 10 days prior to the hearing, a copy of the preliminary resolution is sent by first-class mail to owners of the property that is to be subject to the assessment. Certify the mailing to the governing body.	Legal ad and mailed notice	
Preliminary assessment roll	160A-227; 160A-228	1. Publish at least 10 days before the date of public hearing on the assessment roll. 2. At least 10 days prior to the hearing, notice is sent by first-class mail to property owners. Certify the mailing to the governing body.	Legal ad and mailed notice	
Confirmation of assessment roll	160A-229	After the expiration of 20 days from confirmation of the assessment roll, notice is published that it has been confirmed. Notice shall also contain other information, which can be found in the statute.	Legal ad	

Sale of Property

Event	Statute	Where, When and How Often	Format	Notes:
Private sale, including to entities carrying out a public purpose	160A-267; 160A-279	Publish notice following adoption of resolution. Sale may be consummated 10 days after publication.	Legal ad	See statute for more information.
Advertise for sealed bids	160A-268	Publish notice at least 7 days prior to the date set for bid opening for personal property and 30 days prior to the bid opening for real property.	Legal ad	See statute for more information.
Negotiated offer, advertisement and upset bid	160A-269	Publish notice of the offer and specify that within 10 days any person may raise the bid.	Legal ad	See statute for more information.
Public auction – real property	160A-270(a) and (c)	1. Non-electronic auction: publish notice of sale at least once not less than 30 days before the date of the sale. 2. Electronic auction: notice may be published in a newspaper of general circulation in the municipality or by electronic means, or both. A decision to publish notice solely by electronic means for a particular auction or all auctions must be approved by the governing body.	Legal ad or electronic posting	See statute for more information.

Public auction – personal property	160A-270(b) and (c)	1. Non-electronic auction: publish resolution, order or summary at least once at least 10 days before the date of the auction. 2. Electronic auction: notice may be published in a newspaper of general circulation in the municipality or by electronic means, or both. A decision to publish notice solely by electronic means for a particular auction or all auctions must be approved by the governing body.	Legal ad or electronic posting	See statute for more information.
Exchange of property	160A-271	Publish notice 10 days prior to regular meeting where resolution is to be adopted.	Legal ad	See statute for more information.
Lease or rental of property	160A-272	Publish notice 10 days prior to regular meeting where resolution is to be adopted.	Legal ad	See statute for more information.
Sale of land to volunteer fire departments and rescue squads	160A-277	Publish notice 10 days prior to regular meeting where resolution is to be adopted.	Legal ad	See statute for more information.
Lease of land for housing	160A-278	Publish notice 10 days prior to regular meeting where resolution is to be adopted.	Legal ad	See statute for more information.
Donation of personal property to other governmental units	160A-280	Post public notice at least 5 days prior to adoption of a resolution approving the donation.	Posting	
Sale, exchange or transfer of property or interest in community development project area	160A-457(4)	Notice of public hearing once a week for 2 successive calendar weeks. The notice shall be published the first time not less than 10 days nor more than 25 days before the date of the hearing. Notice shall disclose the terms of the sale, exchange or transfer.	Legal ad	See statute for more information

Land Use, Zoning and Development Regulation

Event	Statute	Where, When and How Often	Format	Notes:
Extraterritorial jurisdiction extension	160A-360; 160A-364	1. Notice to affected property owners by first-class mail at least 4 weeks prior to the public hearing. Certification of mailing required. 2. Publish notice of public hearing once a week for 2 successive calendar weeks. The notice shall be published the first time not less than 10 days nor more than 25 days before the date of the hearing. 3. If changes would affect zoning map or permitted uses of land located 5 miles or less from the perimeter boundary of a military base, provide notice to the commander of the base by certified mail, return receipt requested, not less than 10 days nor more than 25 days before the hearing.	Legal ad and mailed notice	See statute for more information.

Adopting, amending, or repealing zoning and land use ordinances (and other ordinances under G.S. Chapter 160A, Article 19)	160A-364	1. Notice of public hearing once a week for 2 successive calendar weeks. The notice shall be published the first time not less than 10 days nor more than 25 days before the date of the hearing. 2. If changes would affect zoning map or permitted uses of land located 5 miles or less from the perimeter boundary of a military base, provide notice to the commander of the base by certified mail, return receipt requested, not less than 10 days nor more than 25 days before the hearing.	Legal ad; possible mailed notice	In computing such period, the day of publication is not to be included but the day of the hearing shall be included.
Zoning map amendment	160A-384	1. Owners of affected land and abutting land are mailed notice of public hearing by first-class mail at least 10 but not more than 25 days before the hearing. Certify to the governing body that notices have been mailed. If the map amendment directly affects more than 50 properties owned by a total of at least 50 different owners, the city may choose to either mail notice or publish it. 2. If publication is chosen, notice of public hearing in an advertisement at least one-half a newspaper page in size is published once a week for 2 successive calendar weeks. The notice shall be published the first time not less than 10 days nor more than 25 days before the date of the hearing. Property owners who reside outside the newspaper's circulation area are notified by mail. 3. Notice of public hearing is posted on the site proposed for rezoning or an adjacent public street right-of-way. For multiple parcels, post sufficient notices to provide reasonable notice. 4. If changes would affect zoning map or permitted uses of land located 5 miles or less from the perimeter boundary of a military base, provide notice to the commander of the base by certified mail, return receipt requested, not less than 10 days nor more than 25 days before the hearing.	Mailed notice or legal ad; posting	
Development agreement	160A-400.24	Notice of public hearing once a week for two successive calendar weeks. The notice shall be published the first time not less than 10 days nor more than 25 days before the date of the hearing.	Legal ad	Notice must specify location of property and the proposed development uses, and specify where copy of proposed agreement can be obtained.
Moratorium on development	160A-381(e)	1. Notice of public hearing once no less than 7 days before the hearing, If moratorium is 60 days or less. 2. If moratorium is 61 days or longer, notice of public hearing once a week for two successive calendar weeks. The notice shall be published the first time not less than 10 days nor more than 25 days before the date of the hearing.	Legal ad	There is an exception for imminent and substantial threat to public health or safety.

Historic districts and landmarks	160A-400.6	“Reasonable notice” of the public hearing(s) shall be given. While no specified time is given, suggested rule of thumb is 10 days prior to the date of each hearing	Legal ad	
Acquisition and disposition of property for redevelopment	160A-457(4)	Notice of public hearing once a week for 2 successive calendar weeks. The notice shall be published the first time not less than 10 days nor more than 25 days preceding the public hearing.	Legal ad	See statute for more information. In computing such period, the day of publication is not to be included but the day of the hearing shall be included.

Other Circumstances

Event	Statute	Where, When and How Often	Format	Notes:
Amend city charter by ordinance	160A-102	1. Publish notice of public hearing 10 days or more prior to the date of the public hearing. 2. After ordinance is adopted, publish notice within 10 days.	Legal ad	If ordinance is made effective subject to referendum, a notice of the election is published instead of notice of adoption of the ordinance.
Stormwater fees	160A-314(a1)	Notice is given once not less than seven days before the public hearing.	Legal ad	See statute for more information.
Municipal service districts	160A-537; 160A-538; 160A-539; 160A-540; 160A-541	Public hearing notices having to do with defining, extending, reducing, consolidating and abolishing service districts are all published at least once not less than one week before the date of the hearing.	Legal ad	See statutes for more information.
Limitations on enactment of Sunday-closing ordinances	160A-191	Notice published once a week for 4 consecutive weeks before the date of hearing.	Legal ad	
Abandoned and unclaimed property	116B-59	Notice is sent to the apparent owner of the affected property not more than 120 days nor less than 60 days prior to the date that the annual report of abandoned and unclaimed property is filed.	Written notice by first-class mail	
Solid waste collection firm displacement	160A-327	1. Notice of the first meeting where the proposed change in solid waste collection service will be discussed is published once a week for at least 4 consecutive weeks. The first notice shall be given no less than 30 days but no more than 60 days prior to the displacement issue being placed on the agenda at an official meeting of the governing body. 2. Written notice by certified mail, return receipt requested is also required to all companies that have filed notice of service with the clerk. Notice to be mailed at least 30 days prior to the displacement issue being placed on the agenda at an official meeting of the governing body.	Legal ad and mailed notice	See statute for more information. Solid waste firms providing collection service are required to file information with the clerk of all cities and counties located in the company’s collection area or within 5 miles thereof.

Urban redevelopment	160A-513(h)	Notice of public hearing published once a week for 2 successive weeks in a newspaper published in the municipality; or, if there is no newspaper published in the municipality, by posting such notice at 4 public places in the municipality. Said notice to be published the first time or posted not less than 15 days prior to the hearing date.	Legal ad or posting	Statute specifies that newspaper must be published in the municipality.
Regional natural gas district	160A-663	1. Publish notice of public hearing at least once not less than 10 days prior to the date of the hearing. 2. Mail copy of the notice no later than the first day of newspaper publication to the business office of any public utility that holds a franchise from the NC Utilities Commission to serve any part of the proposed district with natural gas service.	Legal ad and mailing	
Joinder of county or city to regional natural gas district	160A-672	Publish notice of public hearing at least once not less than 10 days prior to the date of the hearing.	Legal ad	
Authority to fix and enforce rates for regional natural gas district	160A-676	Publish notice of public hearing on establishment or revision of schedule of rents, rates, fees, charges or penalties at least once not less than 7 days before the hearing.	Legal ad	
Parking authorities	160A-552	Publish notice of hearing at least 10 days before the hearing date.	Legal ad	See statute for more information.

This page intentionally left blank.

CHAPTER 2

Budget and Fiscal Control

A. Role of the Local Government Commission

The Local Government Commission is an agency within state government that oversees the finances of municipalities, counties, and other local governmental entities. It is composed of the State Treasurer, State Auditor, Secretary of State, Secretary of Revenue, and five appointed members (one of whom must be a current or former city council member and one of whom must be a current or former county commissioner). The LGC has authority to issue rules and regulations concerning the fiscal operation of local government units.

The State and Local Government Finance Division within the Department of the State Treasurer serves as support staff for the LGC. The fiscal management section monitors the financial condition of local governments and public authorities, reviews audits, and provides technical assistance to local governments on accounting and financial reporting. This section also may be called upon to assist units that are experiencing financial difficulties. The debt management section reviews and monitors the sale and repayment of debt and deals with local governments on the issuance of bonds. The LGC is the only agency of its kind in the United States and has been instrumental in assuring the strong financial health of North Carolina's local governments.

Questions often arise over interpretations of requirements in the Local Government Budget and Fiscal Control Act [G.S. Chapter 159, Article 3] and the various rules and regulations of the LGC. Clerks should feel free to consult with the LGC staff, as well as the staff of the School of Government and the League, when faced with questions and problems of this type. The LGC staff administers the Local Government Budget and Fiscal Control Act on a daily basis and is prepared to advise and assist all municipal officials in developing sound financial practices. For smaller municipalities in particular, the LGC staff will assist in establishing a full accounting system and system of financial control.

Local Government Commission
Department of the State Treasurer
325 N. Salisbury Street
Raleigh, N.C. 27603-1385
(919) 807-2350
www.nctreasurer.com

The LGC has also developed a manual containing detailed information about the administration, control and reporting of typical municipal financial activities, as well as sample ordinances and other sample documents. See *Resources* at the end of this chapter for more information.

B. Budget Officer

Municipalities in North Carolina are governed by the Local Government Budget and Fiscal Control Act (G.S. Chapter 159, Article 3), which provides a uniform system of budget adoption, administration and monetary control. Under this uniform system, each municipality is required to appoint two officers whose duty it is to carry out the requirements of the Act--the budget officer and the finance officer. In municipalities with the council-manager form of government, state law requires that the city manager act as budget officer (G.S. 159-9). In all other towns and cities, however, the governing board may appoint any officer or employee as the budget officer. The duties of budget officer and/or finance officer will often fall to the clerk.

General Budget Requirements. G.S. 159-8 requires all local governments to operate under an annual balanced budget ordinance adopted and administered in accordance with the Local Government Budget and Fiscal Control Act. The budget is considered balanced when the estimated revenues plus the appropriated fund balance equals the amount of appropriations. There are a number of directions and limitations on the budget listed in G.S. 159-8, 159-13, 159-13.1 and 159-13.2. The LGC's policies manual (see *Resources* below) contains detailed information and guidance on the budgeting process as well as sample ordinances and worksheets.

Budget Requests and Revenue Estimates. By April 30 of each year, all department heads must file with the budget officer their budget requests and revenue estimates for the fiscal year beginning July 1 (G.S. 159-10). At the same time, the finance officer or the department heads must give to the budget officer the following information: (1) a statement of all expenditures for the immediately preceding fiscal year and an estimate of all monies that will be expended by the close of the current fiscal year; and (2) a statement of the amount of revenues received during the immediately preceding fiscal year and an estimate of all revenues that will be received by the close of the current fiscal year.

Budget and Budget Message. From the foregoing information, the budget officer must prepare a proposed municipal budget and submit it to the governing body no later than June 1 (G.S. 159-11). Along with the budget, the budget officer should submit a budget message explaining goals for the upcoming year and important features and activities in the proposed budget. In each year that a general reappraisal of real property has been conducted, the budget officer must include a statement of the revenue neutral tax rate. [This is the property tax rate estimated to produce the same amount of revenue as the prior year if no reappraisal had occurred.] The revenue neutral tax rate is included for comparison purposes and there is no requirement to adopt that tax rate. See G.S. 159-11(e) for information on how to calculate the rate. On the same day that the budget is submitted to the governing board, the budget officer must file a copy of the proposed budget in the office of the clerk to be available for public inspection, and the

clerk should make a copy of the budget available to all news media in the county (G.S. 159-12).

Notice and Public Hearing. The clerk must publish in a local newspaper a statement that the budget has been submitted to the governing board and is available for public inspection in the clerk's office. The statement must also provide notice of the time and place of the required public hearing on the budget (G.S. 159-12). The statute does not actually specify the timing for publication of this notice, but it is recommended that it be published as soon as possible after the budget is filed with the clerk and allow a reasonable number of days before the budget hearing is held. Many municipalities publish the notice at least 10 days before the hearing. For a sample public notice, see Form #11 attached. Although not required by statute, some municipalities include a brief budget summary in the public notice. At the public hearing, any persons who wish to be heard on the budget may appear.

Budget Workshops. During the time period beginning with the submission of the budget and ending with its adoption, the governing body can hold any number of special meetings to work on the budget (often designated as "budget workshops"). These sessions are subject to the Open Meetings Law (G.S. 159-17).

Budget Ordinance. The budget ordinance is the legal means by which property taxes are levied, revenues estimated, and appropriations made. Not earlier than ten days after the budget is presented to the governing body and not later than July 1, the governing body should adopt the budget (G.S. 159-13). Adoption may occur at any regular or special meeting and can be done by a simple majority of those present and voting so long as a quorum is present (G.S. 159-17). The budget ordinance must be entered into the minutes of the governing body and, within five days after adoption, copies must be filed with the finance officer, the budget officer, and the clerk [G.S. 159-13(d)]. If adoption of the budget is delayed after July 1, the governing body may make interim appropriations for the purpose of paying operating expenses (G.S. 159-16). The budget ordinance may be amended at any time after its adoption, as long as the amended ordinance continues to meet other requirements of state law. Local governments may increase or decrease the property tax levy before the January 1 following adoption of the budget, to account for "unanticipated increase or reduction in revenues" (G.S. 159-15).

C. Finance Officer

The Local Government Budget and Fiscal Control Act also requires that each municipality appoint a finance officer (G.S. 159-24). The finance officer may be called "accountant," "treasurer," "finance director," or any other similar title. The finance officer is responsible for maintaining accounting records; disbursing funds; preparing financial reports; receiving, depositing and investing funds; maintaining debt records; and other duties that may be assigned by the governing body (G.S. 159-25). The duties of the finance

officer may be imposed on the budget officer or on any other municipal officer or employee on whom the duties of budget officer may be imposed. As in the case of the budget officer, the duties of the finance officer will often fall to the clerk. The same person cannot serve as both finance officer and tax collector unless approved by the Local Government Commission. Some of the principal duties of the finance officer are highlighted below.

Maintenance of Accounts. The finance officer is required to maintain an accounting system for the municipality, in accordance with generally accepted principles of governmental accounting and the applicable rules and regulations of the Local Government Commission (G.S. 159-25).

Receipt and Deposit of Funds. The finance officer receives and deposits all money coming to the municipality and supervises the receipt and deposit of money by other officers and employees (G.S. 159-25). Funds collected by a municipality are required to be deposited daily, unless the governing body authorizes a delay of deposits until the money on hand amounts to as much as \$250. In any event, a deposit must be made on the last business day of the month (G.S. 159-32). Funds should be deposited in one or more banks, savings and loan associations or trust companies designated by the governing body as an official municipal depository. It is unlawful for funds to be deposited elsewhere (G.S. 159-31). The only exceptions are for money deposited as authorized investments of idle funds (G.S. 159-30).

Bad Check Charges. G.S. 25-3-506 specifies that a processing fee, not to exceed \$25.00, may be charged for a check on which the bank has refused payment because of insufficient funds.

Debt Setoff. See Appendix D at the end of this chapter for information about the debt setoff program.

Electronic Payments. G.S. 159-32.1 authorizes local governments to accept electronic payment in lieu of cash or check for any tax, assessment, fee, charge, rent, interest, penalty or other receivable owed. The unit of local government can pay any negotiated discount, processing or transaction fee, or other charge imposed by a bank or credit card company as a condition of contracting for the unit's acceptance of electronic payment, and the unit may pass this charge along to the person using electronic payment.

Disbursement of Funds. The finance officer has primary responsibility for the custody of municipal funds and has the authority to sign or countersign all checks of the municipality. Normally, all checks or drafts are signed by the finance officer or a properly designated deputy finance officer and countersigned by another official designated by the governing body (although the governing body may waive this dual signature requirement). See G.S. 159-25 (b). Facsimile signatures may be used for signing checks, contracts or purchase orders with governing board approval. The facsimile signature device must be in the custody of the finance officer or another bonded employee, and the bond of the employee with custody of the device is liable for misuse of the device. G.S. 159-28.1. See Form #12.

For all checks and drafts disbursing money, and for all contracts, purchase orders, and other instruments or documents obligating the disbursement of money, the finance officer must certify that funds have been appropriated in the budget for this purpose and that such funds are available to pay the obligation (G.S. 159-25, 159-28). The certification takes the form of a statement that should be printed on the municipality's checks, reading substantially as follows: "This disbursement has been approved as required by the Local Government Budget and Fiscal Control Act." For contracts, purchase orders and other obligations, the certificate should be written or stamped on the document and should read: "This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act." The certificate should be signed by the finance officer or any deputy finance officer approved for this purpose by the governing board. (No certificate is required on payroll checks or drafts on an imprest account in an official depository, if the check or draft depositing funds in the imprest account carried a signed certificate.) Obligations incurred in violation of this requirement are invalid and unenforceable.

Investment of Idle Funds. Municipalities are authorized to invest or deposit at interest all or part of the cash balance of any budgetary fund. State law enumerates the types of investments that are authorized, and the finance officer is charged with the duty to manage the investments of the municipality subject to state law, the rules and regulations of the Local Government Commission, and the directions of the governing body (G.S. 159-30).

Semi-Annual Financial Report. As often as may be requested by the governing body (or the manager in a council-manager municipality), the finance officer shall prepare and file with the board a statement of the municipality's financial condition (G.S. 159-25). State law also requires that the finance officer prepare and submit financial reports to the Local Government Commission, containing information about deposits, investments, and the general financial condition of the municipality. The specific form and content of the reports are prescribed by the Local Government Commission (G.S. 159-33, 159-33.1). See Chapter 8 for further information on the filing of these and other financial reports.

Audit. An annual audit by a certified public accountant, or by an accountant certified by the Local Government Commission to audit municipal accounts, is required of each municipality. The finance officer must file a copy of the annual independent audit with the LGC and must submit all bills or claims for audit fees to the LGC for approval (G.S. 159-34). See Chapter 8 for further information on the filing of audit documents.

Nonprofit Corporation Audit. If a municipality appropriates \$1,000 or more in any fiscal year to a nonprofit corporation or organization, state law (G.S. 159-40) authorizes the municipality to require the organization to submit to an audit and file a copy of the audit report with the municipality. The organization must also file a copy of the audit report in the office of the

State Auditor. A number of groups are exempted from this requirement, including volunteer fire departments, rescue squads and ambulance squads.

N.C. Office of the State Auditor
20601 Mail Service Center
Raleigh, N.C. 27699-0601
(919) 807-7500
www.ncauditor.net

Fidelity Bonds. The finance officer must give a true accounting and faithful performance bond in an amount to be fixed by the governing body, not less than \$50,000. State law requires that the premium on the bond be paid by the municipality. In addition to the finance officer, each officer or employee who handles or has custody of more than \$100 of municipal funds at any time must give a faithful performance bond in an amount determined by the governing body. Each bond, when approved by the governing board, must be deposited with the clerk. A municipality may adopt a system of blanket faithful performance bonding as an alternative to individual bonds, but an individual bond for the finance officer (as well as the tax collector and any elected official required to be bonded) is still required (G.S. 159-29). The finance officer, tax collector, and/or elected official can be included in the blanket bond if the blanket bond protects against risks not protected against by the individual bond.

D. Authorization, Issuance and Sale of Bonds; Financing Agreements

Bonds. The clerk, and the clerk acting as finance officer, will have several important duties to perform if a municipality borrows money through the issuance of bonds. Because long-term financing through bonds is a highly specialized field, and because the staff of the Local Government Commission supervises each step of the bond procedure, this manual will not attempt to set forth the various duties of a clerk or finance officer in this procedure.

The approval of the LGC is necessary for the issuance of bonds. If your municipality is considering borrowing money through bonds, early contact with the LGC staff is essential. Should the governing body decide to proceed with the issuance of bonds, the LGC, together with bond counsel, will guide your municipality through the various required steps and will assist the clerk and finance officer in complying with all statutory requirements.

Financing Agreements. Certain long-term contracts for the lease, acquisition, or construction of capital assets also require the approval of the Local Government Commission. A municipality must secure LGC approval if such a contract meets all of the following conditions:

- (1) Extends for five or more years from the date of the contract, including periods that may be added to the original term through the exercise of options to renew or extend, and

- (2) Obliges the municipality to pay sums of money to another without regard to whether the payee is a party to the contract, and
- (3) Obliges the municipality over the full term of the contract, including periods that may be added to the original term through the exercise of options to renew or extend, at least five hundred thousand dollars (\$500,000) or a sum equal to one tenth of one percent (1/10 of 1%) of the assessed value of property subject to taxation by the municipality, whichever is less, and
- (4) Obliges the municipality, expressly or by implication, to exercise its power to levy taxes either to make payments falling due under the contract, or to pay any judgment entered against it as a result of a breach of the contract (G.S. 159-148).

Grant or loan contracts with the state or federal government, contracts for the purchase or lease of motor vehicles or voting machines, and loan agreements entered into pursuant to the N.C. Solid Waste Management Loan Program do not require LGC approval.

If a proposed contract falls within the statutory criteria, then the municipality must follow procedures similar to those required in the bond process in order to obtain Local Government Commission approval. The finance officer will have certain duties in connection with applying for approval of such a financing agreement, and again the clerk should feel free to consult with the LGC staff for assistance in complying with the law.

Project Development Financing. Known as “tax increment financing” in other states, this financing tool was approved in North Carolina in 2004. See G.S. 158-7.3; G.S. 160A-515.1; and G.S. Chapter 159, Article 6. Project development financing allows local governments to issue “special development bonds” to fund public improvements that are needed for the development of designated districts. The bonds are secured and repaid from tax increment revenue (the additional property taxes resulting from the increased value of property in the district due to the new development). The financing can be used for many of the same purposes for which a city or county could issue general obligation bonds, as well as for any service or facility that is authorized to be provided in a municipal service district. These purposes include street improvements, water and sewer, transportation systems, parking facilities, low-income housing, and many others. The bonds must be approved by the Local Government Commission.

Before adopting a plan for a development financing district, the municipality must mail notice of the plan by first-class mail to the county or counties in which the district is located. Unless a board of county commissioners disapproves the plan by resolution within the 28 days following the date the notice is mailed, the municipality may proceed to hold a public hearing and adopt the plan. The municipality must publish notice of the hearing in a newspaper of general circulation no more than 30 and no less than 14 days

before the hearing. Notice must also be sent by first-class mail to all property owners and mailing addresses in the proposed development financing district and to the governing body of any special district within which the development financing district is located. The notice must state the time and place of the hearing, specify its purpose, and state that a copy of the proposed plan is available for public inspection in the office of the clerk. The plan and district do not become effective until the Local Government Commission approves the issuance of project development financing bonds for the district. G.S. 158-7.3; G.S. 160A-515.1.

Resources

The Local Government Commission has developed a manual containing detailed information about municipal budgeting and financial activities. It also includes some samples and forms. The North Carolina Department of State Treasurer Policies Manual can be ordered by calling (919) 807-2350. Portions of the *Policies Manual* are also available online at: www.nctreasurer.com/DSTHome/StateAndLocalGov/AuditingAndReporting/policiesmanual.htm.

Local Government Finance in North Carolina and Financing Capital Projects in North Carolina, both available from the School of Government, provide comprehensive guidance on budgeting, accounting, cash management, financial reporting, capital finance, and other topics.

FORM #11

Public Notice of Budget Hearing

BUDGET PUBLIC HEARING

The proposed fiscal year 2xxx-xx budget for the (City) (Town) (Village) of _____ has been presented to the (Governing Body) and is available for public inspection in the office of the Clerk at the (City) (Town) (Village) Hall from 9:00 a.m. to 5:00 p.m. weekdays.

The (City) (Town) (Village) (Governing Body) will hold a public hearing on the proposed budget on (date and time) at (location), for the purpose of receiving comments on the proposed budget. Persons wishing to be heard are invited to make written or oral comments.

Sample Budget Summary (Optional)

Public Safety	\$
Administration	\$
Utilities	\$
<u>Other</u>	<u>\$</u>
Total	\$

[See Chapter 1, Appendix A for sample ADA language that may be added to this notice.]

FORM #12

Resolution Establishing Check and Purchase Order Procedures

WHEREAS, it is necessary to have checks and balances on the financial dealings of the (City)(Town)(Village) of _____; and

WHEREAS, the (governing body) of the (City)(Town)(Village) wishes to define its check and purchase order signing procedures; and

WHEREAS, NC General Statutes 159-25, 159-28, and 159-28.1 establish legal requirements and responsibilities for financial disbursement procedures and outline methods for expediting check signing procedures;

NOW, THEREFORE BE IT RESOLVED, by the (governing body) of the (City)(Town)(Village) of _____ that the following procedures are hereby adopted:

1. Two signatures will be required on each (City)(Town)(Village) check or draft on an official depository. All checks or drafts on an official depository shall be signed by the finance officer or properly designated deputy finance officer and countersigned by (designated official). The use of facsimile signatures on checks and drafts is hereby authorized for these officials.
2. Preaudit certificates on purchase orders shall be signed by the finance officer or deputy finance officer. The use of facsimile signatures on preaudit certificates on purchase orders is hereby authorized for these officials.
3. The facsimile signature devices are to be kept under security by the (titles of bonded officials designated to have custody), who shall be bonded and, along with the sureties of the official bond, are liable for any illegal, improper, or unauthorized use of the devices.

Adopted this ____ day of _____, 2xxx.

(Mayor)

ATTEST:

(Clerk)

APPENDIX D

Local Government Debt Setoff Program

North Carolina local governments have collected millions in overdue debt through the N.C. Local Government Debt Setoff Clearinghouse. This service is a joint project of the N.C. League of Municipalities and the N.C. Association of County Commissioners, made possible by legislation enacted at their request (see G.S. 105A-1 through 105A-16).

Participating local governments submit outstanding delinquent debts of \$50.00 or more to the clearinghouse. The debt can be any type of debt owed to the local government, such as water bills, sewer bills, parking tickets, fines, or taxes. If the debtor is due a personal income tax refund from the N.C. Department of Revenue, the debt, along with a fee, will be withheld from the refund. The money due the local government is then distributed through the N.C. Capital Management Trust Fund.

There are requirements to notify the individual that the debt setoff process will be started and of the available appeals process. The local government will also need to have an account with the trust fund. For more information about the program, forms, etc. please contact the clearinghouse or visit the website below.

NC Local Government Debt Setoff Clearinghouse
6316 St. Andrews Road, Suite C
Columbia, SC 29212-3126
(866) 265-1668 (Toll free) or (803) 561-0056
www.ncsetoff.org

This page intentionally left blank.

CHAPTER 3

Taxes and Assessments

A. Tax Collector

Appointment and duties. State law requires the governing body of each municipality to appoint a tax collector and one or more deputy tax collectors (G.S. 105-349) although some municipal charters authorize the manager to do so. A member of the governing body may not serve as tax collector. The duties of the tax collector may be assigned to the clerk; however, if the clerk also functions as the finance officer of the municipality, written permission from the Local Government Commission is necessary for the assignment, in order to ensure that proper internal control procedures for the handling of public funds are in place. The tax collector's principal duty is to collect the property taxes levied by the governing body. The procedures for levy and collection of property taxes are set out in lengthy provisions of state law known as the Machinery Act (Articles 11 through 30, Subchapter II, G.S. Chapter 105).

Oath and bond. The tax collector and any deputy tax collectors must take the oath of office prescribed in the Constitution (see Form #1) with the following phrase added to it: "that I will not allow my actions as tax collector to be influenced by personal or political friendships or obligations." State law requires a separate bond for the tax collector, even if the tax collector is covered by a blanket fidelity bond. The bond must be in such amount as the governing body may prescribe [G.S. 105-349(c)]. There is no minimum amount. As a practical matter, however, it should be no less than the \$50,000 bond required for the finance officer (G.S. 159-29). A good rule of thumb is that the bond should cover the maximum amount of money likely to be in the hands of the tax collector at any one time, plus a reasonable allowance for cumulative losses.

Advertising of tax liens. By the second Monday in February of each year, the tax collector must report to the governing body the amount of unpaid taxes for the current fiscal year that are liens on real property. The governing body then orders the advertisement of tax liens. The tax collector must give notice of the tax liens and the pending advertisement to the record owner of the affected property at least 30 days prior to the publication date. Publication must be made at least once during the period of March 1 through June 30. The tax collector is to post notice of the liens at city hall in addition to publishing them. (G.S. 105-369).

Resources. There are reference books available outlining and explaining in detail the various duties of the tax collector with regard to property taxes, so this manual will not attempt to duplicate them. For a comprehensive reference book dealing with all of the technical questions that may arise in property tax collection efforts, Property Tax Collection in North Carolina may be obtained from the School of Government. Property Tax Lien Foreclosure

Forms and Procedures is also available from the SOG. In addition, the staff of the School of Government, the League, and the Ad Valorem Tax Division of the N.C. Department of Revenue are all available to assist in solving tax collection problems.

North Carolina Department of Revenue
Ad Valorem Tax Division
P. O. Box 25000
Raleigh, N. C. 27640-0640
(919) 733-7711
www.dornc.com

B. Municipal Taxes

The taxes that a municipality is authorized to impose and collect locally include the following:

- (1) **Property Tax.** Each municipality is authorized to impose an ad valorem ("on the value") tax on real and personal property located within its corporate limits. In order to pay for debt service, unforeseen budget deficits and civil disorders, a municipality may levy property taxes without restriction as to rate or amount. For certain specified statutory purposes (the typical municipal operating expenses), a municipality may levy property taxes at a rate not to exceed \$1.50 for each \$100 of appraised value of property. Finally, with an approving vote of the people, a municipality may levy an additional property tax for any other purpose for which it is authorized by its charter or general law to appropriate money (G.S. 160A-209).

The statutes provide several remedies or procedures for collection of unpaid property taxes, including levy on personal property (G.S. 105-366, 105-367), attachment and garnishment (G.S. 105-368), and foreclosure on real property (G.S. 105-374, 105-375). The 1983 amendments simplified the foreclosure procedures by eliminating the sale of tax liens. Cities are required to run tax lien advertisements at least once during the period March 1 through June 30, followed by foreclosure proceedings. In addition, the 2000 amendments require that the tax collector send notice of the tax lien to the property owner(s) at least 30 days prior to publication of the advertisement (G.S. 105-369).

The property tax rate is set as part of the adoption of the annual budget. See Chapter 2 of this manual. The local government may increase or decrease the levy before January 1 following adoption of the budget to account for unanticipated increase or reduction in revenues. G.S. 159-15.

Listing and Payment for Military Personnel. Session Law 2001-508 allows certain deployed military personnel 90 days after the end of the

deployment to pay property taxes at par, for any property taxes that became due or delinquent during the term of the deployment. Deployed military personnel required to list property for taxation while deployed are also allowed 90 days after the end of the deployment to list the property.

Special property tax classifications and benefits. There are a number of property tax exemptions and exclusions in the state constitution and in G.S. Chapter 105, as well as types of property that are appraised differently or taxed at a reduced rate. Several with which municipal clerks should be familiar are:

- Government property: G.S. 105-278.1 provides that real and personal property owned by the United States, the state, counties and municipalities is exempt from property tax.
- Homestead exclusion: G.S. 105-277.1. Provides a partial exclusion from property tax to income-eligible elderly or disabled individuals. Allows exclusion of the greater of \$25,000 or 50% of the appraised value of the permanent residence owned or occupied by a taxpayer who is a North Carolina resident, at least 65 or totally and permanently disabled, and with an income no greater than the limit. For tax years beginning on or after July 1, 2008 the income limit is \$25,000; for each subsequent tax year the limit is adjusted by the same percentage as the social security cost of living adjustment.
- Disabled veterans' homestead exclusion: G.S. 105-277.1C. Provides an exclusion of the first \$45,000 of appraised value of the permanent residence of a qualifying disabled veteran and spouse. Effective for tax years beginning on or after July 1, 2009.
- Circuit breaker: G.S. 105-277.1B. Allows a property tax deferral benefit for North Carolina residents who have owned and occupied property located in the state as a permanent residence for at least five years and are either 65 or older or totally and permanently disabled. The taxpayer can choose between the homestead exclusion and the circuit breaker. Under the circuit breaker, the amount of taxes deferred is based upon the same income eligibility limit as the homestead exclusion. An owner who meets the eligibility requirements and made less than the income eligibility limit can elect to defer the portion of taxes imposed on the permanent residence that exceeds 4% of the owner's income. An owner who meets the eligibility requirements and made between the income eligibility limit and one and one-half times the income eligibility limit could elect to defer the portion of taxes imposed on the permanent residence that exceeds 5% of the owner's income.

Taxes deferred via the circuit breaker benefit accrue interest and become a lien on the real property of the taxpayer. The general rule is that these deferred taxes are carried forward until the death of the owner or until the owner transfers the property, at which time the amount of taxes for that year with no circuit breaker benefit plus those taxes deferred for the preceding three fiscal years, together with interest, become due and payable within nine months after the date of death or transfer. An exception to this rule allows the deferral to continue when the residence is transferred to the owner's spouse, if the spouse qualifies for the circuit breaker benefit, occupies the property as a permanent residence, and elects to continue deferral. The circuit breaker provisions are effective July 1, 2009.

- Use value: G.S. 105-277.2 through 105-277.7. Property that meets the definition of agricultural land, horticultural land, or forestland is appraised at its present-use value rather than its true value. Effective July 1, 2010, wildlife conservation land managed under a habitat conservation agreement will also qualify for use value taxation (G.S. 105-277.15).

Motor vehicle property tax. G.S. 105-330.2 provides for a new combined system for collecting motor vehicle property taxes when vehicle registrations are renewed. The system will become effective July 1, 2010 or when the Division of Motor Vehicles and Department of Revenue certify that the necessary integrated computer system is operational, whichever comes first.

- (2) **Privilege License Tax.** Prior to 1996, municipalities were authorized by law to levy annual privilege license taxes on most trades, occupations, professions and businesses carried on within their corporate limits [G.S. 160A-211; G.S. Chapter 105, Schedule B]. The legislature in 1996 repealed many of the privilege license statutes in Schedule B, but still allowed for municipalities to continue taxing those professions to the same extent possible prior to the repeal. You can find a link to the repealed Schedule B statutes on the School of Government website. This is a useful reference in determining if municipalities are limited on charging privilege license taxes for particular activities: www.sog.unc.edu/programs/ncptca/plt.html.

An ordinance levying and setting forth the various privilege license taxes should be adopted by the governing body, and a current schedule maintained by the tax collector. This tax is authorized only as a revenue source. Other means should be used to regulate businesses. For detailed information regarding the levy and collection of privilege license taxes, please refer to the School of Government publication entitled North Carolina City and County Privilege License Taxes. This book contains complete information, including a sample ordinance for administration of this tax.

- (3) **Motor Vehicle License Tax.** Each city and town has authority to levy a general motor vehicle tax in any amount up to \$5.00 per year upon all vehicles resident within the corporate limits, and up to \$15.00 per year on each vehicle operated as a taxicab. [G.S. 20-97(b) and (d)]. Some municipalities have obtained special legislation allowing the levy of motor vehicle taxes in higher amounts. Proceeds may be used for any lawful purpose.

A municipality that operates a public transportation system may levy an additional tax up to \$5.00 per year on any vehicle resident within the corporate limits, with proceeds to be used only for public transportation purposes. The total amount of tax cannot exceed \$30.00 per year when the vehicle tax for public transportation is added to the general motor vehicle tax levied by that municipality. This authorization does not apply to municipalities in Gaston County or to the City of Durham. [G.S. 20-97(c)].

Upon payment of the motor vehicle tax, some municipalities issue a license tag or decal to be displayed on the vehicle, but this is not required. A city may provide by ordinance that the tax may be waived for individuals serving as firefighters or as members of emergency medical teams. A city may also provide such individuals with tags or decals with distinctive coloring, or other means, to identify the individual as a firefighter or a member of an emergency medical team. [G.S. 160A-213].

- (4) **Rental Car Tax.** G.S. 160A-215.1 replaced the property tax on short-term rental vehicles with a local option gross receipts tax. A municipality may levy up to a one and one-half percent (1.5%) gross receipts tax on short-term lease or rental of vehicles at retail to the general public. The tax is collected where the vehicle is rented. The League has a memorandum and model ordinance for implementing this tax. These items, together with a number of very useful forms developed by the N.C. Department of Revenue, such as a sample tax return, sample instructions and a tax and penalty calculation example, are on the League's web site at www.nclm.org.
- (5) **Heavy Equipment Rental Tax.** G.S. 160A-215.2 provides an alternative to the property tax on short-term heavy equipment rentals. Heavy equipment refers to certain earthmoving, construction and industrial equipment. A municipality may levy a tax at the rate of eight-tenths percent (0.8%) on the gross receipts from the short-term lease or rental of heavy equipment by a person whose principal business is the short-term lease or rental of heavy equipment at retail, and the place of business from which the equipment is delivered is located in the municipality. The equipment subject to the gross receipts tax is exempt from property tax. A tax imposed under this authority may not become effective before January 1, 2009.

- (6) **Animal Tax.** Each municipality is authorized to levy an annual license tax for the privilege of keeping any domestic animal, including dogs and cats, within the corporate limits (G.S. 160A-212).
- (7) **Special Assessments.**
- (A) State law authorizes a municipality to levy assessments against benefited property for the following improvements: streets, sidewalks, curb and gutter, water system improvements, sewer system improvements (including septic tank systems or other on-site collection or disposal facilities), and storm sewer and drainage improvements. See G.S. Chapter 160A, Article 10. The statutory procedures must be strictly followed. Often, a municipal charter will authorize additional improvements or require additional procedures to be followed in making such improvements. State law provides that assessments for street or sidewalk projects may be begun only after a sufficient petition is received (G.S. 160A-217), although individual charter provisions relieve some cities of that requirement. Most special assessments are imposed to finance street improvement projects and water and sewer system extensions. Overdue special assessments may be collected in the same manner as delinquent property taxes. The governing body is authorized to establish a schedule of discounts for assessments paid early, up to 30% (G.S. 160A-226.1). For detailed information concerning the procedures for levying and collecting special assessments, please refer to two League publications: *Special Assessments for Street Improvements--Procedures and Forms* and *Special Assessments for Water and Sewer Extensions--Procedures and Forms*.
- (B) Effective August 3, 2008, there is an additional option for special assessments. Under G.S. 160A, Article 10A, cities can issue revenue bonds for construction projects using the revenue from special assessments to repay the bonds. The bonds may be used for sanitary sewer systems, storm sewers and flood control facilities, water systems, public transportation facilities, streets and sidewalks, and school facilities. This authority differs from the authority for traditional assessments in several ways: (1) an assessment may be imposed before the costs are incurred, based on the estimated cost, which may include costs associated with the revenue bonds; (2) the city may use any cost allocation method for the assessment that is designed to allocate the costs based on the benefits conferred; (3) assessments may be paid in up to 30 years of installments; (4) the city council must receive a petition signed by at least a majority of the owners of real property to be assessed who must represent at least 66% of the assessed value of all real property to be assessed; (5) the purposes for which assessments may be levied are expanded. The bonds may be repaid solely from the assessments or from a

combination of financing sources that include the revenue bonds. The authority expires July 1, 2013.

- (8) **Municipal Service District Tax.** In addition to the municipal property tax which is levied on property throughout the corporate limits, each municipality is authorized to impose an additional property tax within a special service district, in order to provide or maintain for the district a higher level of services than provided for the entire city. See G.S. Chapter 160A, Article 23. Under G.S. 160A-536, a municipal service district may be established for the following purposes. Note that some of the purposes are limited to certain municipalities (for example, by population criteria) as specified in the notes following the statute.

- beach erosion control and flood and hurricane protection works
- improvements to rights-of-way that generally preserve the character of an approved historic district
- downtown revitalization projects
- urban area revitalization projects
- transit-oriented development projects
- drainage projects
- sewage collection and disposal systems
- lighting at interstate highway interchange ramps
- off-street parking facilities
- watershed improvement projects

The combined tax rate within a municipal service district may not exceed \$1.50 per \$100 valuation unless the excess is approved by a majority of the qualified voters within the district. G.S. 160A-542.

- (9) **Miscellaneous Local Option Taxes.** Some municipalities have obtained special legislation to allow them to levy taxes for which there is currently no statewide authority, such as an occupancy tax, meals tax, or admissions tax. Note that the General Assembly has adopted uniform statutory provisions for the administration of occupancy taxes in G.S. 160A-215, and for local meals taxes in G.S. 160A-214.1.

C. State Shared and State Collected Taxes

Taxes that are collected by the state and shared with municipalities include the following. Please consult Chapter 8 of this manual and the League's *Municipal Calendar* for the distribution dates and deadlines for filing any necessary reports. The League's annual memos entitled *State Collected Local Taxes: Basis of Distribution* and *Municipal State-Collected Revenue Estimates* also provide more detail on these taxes. They are available on the League's website (www.nclm.org).

- (1) **Local Option Sales Taxes.** The state levies a 4.25% sales tax and allows counties to levy certain additional amounts as specified below.

The tax is collected by retailers, remitted to the state, and then distributed between the counties and the municipalities therein. The county has the option of providing for distribution to municipalities on the basis of population [per capita method] or on the basis of relative property tax levies [ad valorem method]. Distributions are made on or around the 15th of each month. Hold-harmless payments to eligible municipalities are made on or before August 15.

First One Cent (1%) Local Government Sales Tax (1971). G.S. Chapter 105, Article 39. Levied in all 100 counties. Distribution to the counties is on a point of delivery basis, with most sales delivered within the county (in the store) where the sale takes place. Distribution between the counties and the municipalities therein is according to the method chosen by the county (either per capita or ad valorem). The funds may be used for any authorized public purpose.

First One-Half Cent (½%) Local Government Sales Tax (1983). G.S. Chapter 105, Article 40. Levied in all 100 counties. Distribution to the counties is on a per capita basis. Distribution between the counties and the municipalities therein is according to the method chosen by the county (either per capita or ad valorem). The funds may be used for any authorized public purpose.

Second One-Half Cent (½%) Local Government Sales Tax (1986). G.S. Chapter 105, Article 42). Levied in all 100 counties. Distribution to the counties is on a per capita basis, but this changes to point of delivery effective October 1, 2009. [A municipal hold harmless formula is designed to ensure that cities will receive the amount they would have received if the switch to point of delivery was not made.] Distribution between the counties and the municipalities therein is according to the method chosen by the county (either per capita or ad valorem). The funds may be used for any authorized public purpose.

Third One-Half Cent (½%) Local Government Sales Tax (2001). G.S. Chapter 105, Article 44. Levied in all 100 counties. Half of the proceeds are distributed to the counties on a per capita basis and half on a point of delivery basis. Distribution between the counties and the municipalities therein is according to the method chosen by the county (either per capita or ad valorem). As part of the “Medicaid/sales tax swap” in 2007, authorization for counties to levy this tax was repealed and the tax is being phased out. The state will take over one quarter cent of the tax effective October 1, 2008 and the remaining one quarter cent effective October 1, 2009. Municipalities will receive hold harmless distributions from the Department of Revenue for their lost revenue, including growth. There is no expiration date on these hold harmless payments. See G.S. 105-522.

One-Quarter Cent (¼%) County Sales Tax (2007). G.S. Chapter 105, Article 46. Counties have authority to levy an additional one-quarter cent (0.25%) sales tax if approved by referendum. Voters in 8 counties

have approved the tax so far. Counties are not required to share the proceeds of this tax with municipalities.

Other Sales Taxes. Mecklenburg County is authorized to levy an additional one-half cent (½%) sales tax for public transportation purposes. Dare County is authorized to levy an additional one-cent (1%) sales tax for beach nourishment.

- (2) **Beer and Wine Excise Tax.** A portion of the state excise tax levied on malt beverages and both fortified and unfortified wine is shared on a per capita basis with the counties and municipalities permitting the legal sale of such beverages (G.S. 105-113.82). The annual distribution is within 60 days of March 31.
- (3) **Utility Franchise Tax (Electric Power).** A 3.22% state franchise tax is levied on the total gross receipts of all businesses within the state that furnish electricity. An amount equal to 3.09% of the total gross receipts of electricity derived from the sale within any municipality is distributed to the municipality in which these gross sales are made (G.S. 105-116.1). Distributions are made on September 15, December 15, March 15, and June 15.
- (4) **Piped Natural Gas Excise Tax.** Those in the business of supplying piped natural gas are taxed under G.S. Chapter 105, Article 5E. A portion of the proceeds is distributed to municipalities, with the amount of a city's distribution tied to the amount of tax attributable to natural gas customers within that city's boundaries (G.S. 105-187.44). Distributions are made on September 15, December 15, March 15, and June 15.
- (5) **Telecommunications/Video Programming Sales Tax.** A 6.75% sales tax is levied on the total gross receipts of the telecommunications companies in the state, with a percentage distributed to municipalities (G.S. 105-164.44F). An additional distribution, including a portion of the sales tax on video programming and satellite services, is intended to replace revenues lost when the state became the sole franchising authority for cable service (effective January 1, 2007) and local governments could no longer charge cable franchise fees (G.S. 105-164.44I). Distributions are made on September 15, December 15, March 15, and June 15.
- (6) **PEG Channel Funds.** Some municipalities may be eligible to receive supplemental funds for the support of public access, educational, and governmental (PEG) cable channels. Certification of channels must be made to the Department of Revenue. Funds are included in the distributions of other video programming and telecommunications taxes that are made on September 15, December 15, March 15, and June 15. [G.S. 105-164.44I(b)].

- (7) **Powell Bill Funds (Gasoline Tax).** State law appropriates one and three-fourths cents (1.75¢) per gallon of the state gasoline tax to municipalities. Under the present distribution formula, the funds are allocated as follows: 75% on the basis of population, and 25% on the basis of mileage of public streets not a part of the state highway system (G.S. 136-41.1 through 136-41.3). Distribution is made once a year, on or before October 1. There are strict limitations on the permissible uses of these funds (see page 173). A municipality that qualifies for a Powell Bill allocation has the option of accepting the funds or of having some or all of the allocation reprogrammed for any state Transportation Improvement Project that is currently on the approved project list within the municipality's limits or within the area of any metropolitan planning organization or rural planning organization. (G.S. 136-41.4).
- (8) **Reimbursements.** For many years the state reimbursed local governments for local revenues lost when the state repealed the intangibles property tax and the inventory property tax. Local governments also received reimbursement for revenues lost due to the homestead property tax exclusion for elderly and disabled homeowners, and the exemption of food stamp purchases from the sales tax. All of these reimbursements were terminated effective July 1, 2002 in exchange for authorization to levy a third one-half cent local sales tax. However those municipalities whose estimated revenue from the third one-half cent local sales tax is less than the value of their reimbursements receive a hold harmless distribution that is set to expire after 2012. See G.S. 105-521.
- (9) **911 Surcharge.** Prior to 2008, local governments were able to set a rate and collect a 911 service fee to pay eligible costs associated with providing public safety answering points (PSAPs) for 911 calls. Effective January 1, 2008, a single uniform 911 fee applies statewide, and all voice communications service providers are required to collect it and remit it to the State 911 Board. The State 911 Board distributes funds on a monthly basis to the eligible PSAPs, who must deposit it into a special revenue fund and spend it only for specified purposes. See G.S. 62A-46.
- (10) **Scrap Tire Tax and White Goods Tax.** A portion of the state scrap tire disposal tax and a portion of the state white goods disposal tax are distributed to counties on a per capita basis. If the county has an interlocal agreement under which the municipality provides solid waste disposal for the county, the county is to transfer the funds to the municipality. G.S. 105-187.19 (tires) and G.S. 105-187.24 (white goods).
- (11) **Solid Waste Disposal Tax (Tipping Tax).** Effective July 1, 2008 there is a state excise tax of \$2.00 per ton imposed on the disposal of certain solid waste in North Carolina landfills and on the transfer of solid waste to transfer stations for disposal outside the state. A portion of

the proceeds (18.75%) is distributed to municipalities on a per capita basis, to be used for solid waste management programs and services. Only those municipalities that provide some sort of solid waste management program or are served by a regional solid waste management authority are eligible for a distribution of the funds. Those served by a regional authority must transfer the distribution to the authority. G.S. 105-187.63. Distribution dates are expected to be November 15, February 15, May 15, and August 15.

Eligibility. Please note that municipalities incorporated on or after January 1, 2000 are not eligible for Powell Bill funds, local option sales tax proceeds, utility tax distributions, telecommunications tax distributions, or beer and wine tax distributions unless they have at least a 5 cent property tax rate and provide at least four services. A municipality incorporated on or after January 1, 2000 is also ineligible for these revenues unless a majority of its street miles are open to the public. (G.S. 136-41.2)

This page intentionally left blank.

CHAPTER 4

Personnel

A. Payroll and Personnel Policy Administration

Clerks often have the responsibility for supervising the day-to-day personnel practices and policies in a municipality. These policies may be formal or informal, depending on the municipality's size, but proper administration is important for employee productivity and morale. Listed below are some of the typical personnel administration issues and duties that the clerk might encounter.

Employment Discrimination. Various federal and state laws prohibit discrimination in hiring or employment based on age, sex, race, color, religion, national origin, pregnancy or disability. For example, the Americans with Disabilities Act prohibits discrimination against qualified individuals with disabilities in employment actions. A qualified individual is one who satisfies the requisite skill, experience, education and other job-related requirements and who can perform the essential functions of the job, with or without a reasonable accommodation. (For further resources on the ADA, see page 35). Other important statutes include Title VII of the Civil Rights Act of 1964 and the Age Discrimination in Employment Act. Employers are required to post information concerning many of these laws in the workplace (see *Workplace Posting* below). Any job advertisements, postings and applications should be worded so that they do not exclude applicants based on any impermissible factor. Many municipalities include a statement to the effect that the municipality is an equal opportunity employer and will not discriminate on these bases. More information on employment discrimination issues is available at:

U.S. Equal Employment Opportunities Commission (EEOC)
Charlotte District Office
129 West Trade Street
Suite 400
Charlotte, NC 28202
www.eeoc.gov
1 (800) 669-4000

Some additional state provisions that prohibit employment discrimination include:

G.S. 50B-5.5	employee taking reasonable time off to obtain relief from domestic violence
G.S. 95-28.1	sickle cell or hemoglobin C trait
G.S. 95-28.1A	genetic testing and information
G.S. 95-28.2	lawful use of lawful products (e.g. tobacco) during nonworking hours

- G.S. 95-241 no discrimination or retaliation for employee filing a claim or complaint, testifying or providing information as to the wage and hour act, workers' compensation, occupational safety and health, domestic violence, national guard discrimination, or genetic discrimination
- G.S. 127A-202.1 service in the state national guard

Immunity for Job References. G.S. 1-539.12 provides employers immunity from civil liability for disclosing information about a current or former employee's job history or job performance to a prospective employer upon request of the prospective employer or the current or former employee.

Criminal Background Checks. G.S. 160A-164.2 authorizes a city council to adopt a policy or ordinance requiring applicants for employment to be subject to a criminal history record check in accordance with procedures under G.S. 114-19.14.

Selective Service Registration. G.S. 143B-421.1 prohibits state agencies and local governments from employing any male between the ages of 18 and 26 who is required to register for military selective service but has failed to do so. Employers must require applicants to indicate on a form whether they are in compliance with the registration requirements. See sample application, Form #13.

Youth Work Permits. G.S. 95-25.5 prohibits the employment of individuals under the age of 18 without a youth employment certificate (work permit) issued by the county department of social services. The statute also contains restrictions on the hours that youth can work and the type of jobs they may perform. Forms and instructions for obtaining work permits are available at www.nclabor.com/wh/youth_instructions.htm.

Employment Eligibility Verification. As a means of controlling illegal immigration, the federal Immigration Reform and Control Act prohibits the hiring of any person unless the employer follows certain procedures to ensure that the individual is authorized to work in the United States. The employer must examine documents evidencing the applicant's identity and employment eligibility, and Form I-9, issued by the federal Citizenship and Immigration Service, must be completed and kept on file for each employee hired after November 6, 1986. The applicant attests on the form that he or she is authorized to work, and the employer attests that the necessary documentation has been examined.

Employers may also register to participate in E-Verify, an Internet based system operated by the Department of Homeland Security in partnership with the Social Security Administration that allows electronic verification of employment eligibility.

For information on forms or E-Verify, contact:

US Citizenship and Immigration Service
Verification Division tollfree: (888) 464-4218
www.uscis.gov

Employee Information Card. Most municipalities have some type of sheet or card on which is recorded the basic personnel information for each employee. The size of a card or sheet will vary, depending on the amount of information that the municipality wants to record. For a sample Employee Information Card, see Form #14.

Fair Labor Standards Act. The federal Fair Labor Standards Act (FLSA) establishes minimum wage, overtime pay, compensatory time, and record keeping standards that are applicable to local government employers. The law provides that all employees, except those categorized as "exempt," shall receive overtime pay at one and one-half times the regular rate of pay for all time worked in excess of 40 hours per week. There are special rules for calculating overtime for public safety employees: law enforcement officers qualify for overtime only for time worked in excess of 171 hours in a 28-day cycle, while firefighters qualify only for time worked in excess of 212 hours in a 28-day cycle. The determination of whether an individual is an executive, administrative or professional employee and therefore exempt from the overtime provisions is a crucial one, and the law provides various tests for classifying employees based upon their salary and the nature of their duties. Although the details of the FLSA requirements are beyond the scope of this manual, the League has available an [FLSA Self-Audit Checklist](#). Also see this webpage for more about how to determine if employees are exempt under the FLSA and other FLSA issues: www.dol.gov/esa/whd/.

Questions regarding the application of the FLSA tests should be directed to the League staff, the School of Government staff or the Department of Labor's Wage and Hour Division. The School of Government website has an employment law and human resources section that contains FAQs and articles pertaining to the FLSA as well as other topics. See www.sog.unc.edu/programs/hresources/index.php. Employers must display a poster explaining employees' rights and obligations under FLSA (see Workplace Posting Requirements below).

US Department of Labor
Wage and Hour Division
200 Constitution Avenue NW
Room S 3502
Washington, DC 20210
1-866-487-9243
www.dol.gov

NC Department of Labor
Wage and Hour Bureau
1101 Mail Service Center
Raleigh, NC 27699
1-800-625-2267
www.nclabor.com

Position Classification and Pay Plans. A municipal governing body is authorized to adopt a position classification and pay plan for its employees (G.S. 160A-162). If your municipality is interested in adopting such a plan, or revising an existing plan, technical assistance can be provided through the League.

State Income Tax Withholding. State law requires a municipality to withhold North Carolina income tax from the salary of all employees. Units withholding an average of less than \$500 per month must file returns quarterly, by the last day of April, July, October and January. Units withholding an average of at least \$500 but less than \$2,000 per month must file returns monthly. For these units, returns for the months of January through November are due by the 15th of the following month and returns for December are due by the following January 31. Units withholding an average of at least \$2,000 per month must file returns according to the Internal Revenue Code's schedule for payment of federal employment taxes (G.S. 105-163.6). Complete information is contained in the N.C. Department of Revenue's Booklet NC-30, entitled *Income Tax Withholding Tables and Instructions for Employers*. For a copy of Booklet NC-30 and the necessary withholding forms, contact the N.C. Department of Revenue toll-free at 1-877-252-3052 or online at www.dornrc.com.

Federal Income Tax Withholding. Federal law also requires a municipality to withhold federal income tax from the salary of an employee. Complete information is available from the Internal Revenue Service in Circular E, entitled *Employer's Tax Guide--Publication 15* which contains instructions for withholding and reporting of Federal Income Taxes. A copy of Circular E and all necessary reporting forms can be obtained from the nearest Internal Revenue Service office (or online at www.irs.gov/forms_pubs/index.html).

Retirement Contributions. A municipal governing body may enroll its employees in the Local Governmental Employees' Retirement System (LGERS), the Firemen's and Rescue Squad Workers' Pension Fund, or a local retirement plan (G.S. 160A-163; G.S. Chapter 58, Article 85). Except for the Firemen's Fund, employee contributions to these systems must be deducted from paychecks and, along with the municipality's contribution, remitted to the State Treasurer's Office. Contributions to the Firemen's Fund may be handled by individual firefighters or deducted by the municipality. LGERS contributions are due by the fifth state government working day of each month. Information and forms for the Firemen's Fund and LGERS may be obtained by contacting the Retirement Systems Division.

N.C. Department of the State Treasurer
Retirement Systems Division
325 N. Salisbury Street
Raleigh, NC 27603
(919) 508-5176

www.nctreasurer.com/dsthome/RetirementSystems

The Treasurer's Office now has the ORBIT system available to give employers, employees, and retirees online access to retirement accounts and transactions. The system is also used for employer reporting, including contributions:

www.nctreasurer.com/DSTHome/RetirementSystems/ORBIT+Employer+Information+Site.htm

Law Enforcement Officers Special Separation Allowance. G.S. 143-166.42 requires local governments to provide a special separation allowance to retired law enforcement officers who meet specified age and service requirements. The statute does not set forth a complete structure for local government implementation of the special separation allowance, but rather mandates it by making the provisions of G.S. 143-166.41 [the special separation allowance for state law enforcement] applicable to local governments by reference. The allowance is to be paid in equal installments on the payroll frequency used by the employer.

The local government employer is responsible for making determinations of eligibility and administering payments. The statutes yield no definitive answer as to whether payments to a retired officer must cease if the officer becomes reemployed by another local government, or by a state department or agency. However, case law provides some guidance on steps a local government may take to establish rules in the event a retired officer is reemployed. Contact the League for more information and policy language to consider.

Unemployment Insurance. The unemployment insurance tax is a tax on employer payrolls paid by the employer and used to provide funds from which unemployment benefits are paid. These contributions are not deducted from employees' wages. See page 170 for further information on required quarterly reports and payments of this tax.

Insurance and Additional Fringe Benefits. G.S. 160A-162 authorizes a municipality to offer a variety of other fringe benefits for its employees. Depending on the benefits offered and on employee withholding requests, deductions are not unusual for life insurance, health insurance, credit union, and the United Way. The clerk may be called upon to supervise the withholding of payments for some or all of these purposes.

The League of Municipalities, through its Risk Management Services Division, has insurance available for municipalities in the three categories described below. For more information concerning any of the League-sponsored insurance pools, contact:

NCLM Risk Management Services
P.O. Box 1310
Raleigh, N.C. 27602
(919) 733-1212
www.nclm.org

Health and Life Insurance. There is no statutory requirement to provide health or life insurance, but these are common municipal employee benefits. Coverage might include medical, hospitalization, dental, vision, life, short term disability, and/or long term disability.

Workers' Compensation. G.S. Chapter 97 provides that all municipalities are covered by the Workers' Compensation Act and that their employees and elected officials are entitled to benefits under this program. Each municipality should provide for financing of these benefits, either by the purchase of insurance, the establishment of a self-insurance fund, or by joining the League-sponsored insurance pool.

Public Officers and Employees' Liability Insurance. The past few decades have evidenced increased degrees of exposure to potential legal liability on the part of municipalities, as well as their officials and employees, both personally and in their official capacities. Increases in the number of lawsuits based on federal constitutional and statutory grounds, such as civil rights and antitrust claims, have been particularly alarming.

Municipalities are authorized to pay the legal defense costs of employees or officers, or former employees or officers, who are sued in either their official or individual capacities, if the lawsuit concerns an act or omission in the course and scope of their official duties [G.S. 160A-167(a)]. As potential exposure and legal defense costs have increased, many cities and towns have found it prudent, if not imperative, to obtain insurance coverage against these risks. Municipalities are specifically authorized to make appropriations for that purpose [G.S. 160A-167(b)].

Family/Parental Leave. G.S. 95-28.3 requires employers to grant four hours leave per year so employees with school-aged children may attend or otherwise be involved at the child's school. This leave must be at a mutually agreed upon time between the employer and employee, and the employer can require the employee to provide a written request for the leave at least 48 hours in advance and a written verification of attendance from the school. Employers are not required to pay for this leave, but they may not take adverse action against an employee who requests it.

In addition, the federal Family and Medical Leave Act requires employers to provide up to 12 weeks of unpaid leave in a 12-month period for certain purposes, including the birth or adoption of a child, care of a family member with a serious health condition, or the employee's own serious health condition. In 2008, a new category of servicemember family leave was added under the FMLA. Servicemember family leave entitles the spouse, child, parent or next-of-kin of a member of the U.S. Armed Forces (including the National Guard and the Reserves) to a total of 26 workweeks of unpaid leave during a 12-month period to care for a servicemember being treated for or recovering from a serious injury or illness incurred in the line of duty. To be eligible under the FMLA, the employee must have worked for the employer at least 1,250 hours during the 12-month period preceding the request for leave, and he or she must work at a jobsite where 50 or more employees are employed by the employer within a 75-mile radius. Therefore, many smaller cities and towns may not have employees eligible to receive FMLA benefits. Employers must display a poster explaining employees' rights and obligations under FMLA (see posting requirements below).

OSHA. The Occupational Safety and Health Act requires employers to maintain a log of recordable occupational injuries and illnesses (Form 101) and to post an annual summary of these (Form 200). Employers must also display a poster explaining employees' rights and obligations under OSHA (see Workplace Posting Requirements below).

Workplace Posting Requirements. Employers must display several posters providing information to employees about their rights in the workplace under state and federal law. Posters are available free of charge from federal and state agencies. You can obtain posters from the N.C. Department of Labor at www.nclabor.com/posters/posters.htm or the U.S. Department of Labor at www.dol.gov/compliance/topics/posters.htm.

At a minimum, municipalities should obtain and display the following:

- (1) The North Carolina Labor Law Poster, which includes information on OSHA, wages and hours laws, worker's compensation and unemployment insurance. Available from the N.C. Department of Labor, 1-800-LABOR-NC, or www.nclabor.com.
- (2) Equal Employment Opportunity is the Law, a consolidated poster including information on federal protections under the Title VII of the Civil Rights Act, the Age Discrimination in Employment Act, the Equal Pay Act and the Americans with Disabilities Act. Available from the U.S. Department of Labor, Office of Federal Contract Compliance Programs, (919) 790-8248 (Raleigh Office) or (704) 749-3380 (Charlotte Office), or order online from www.osha.gov/pls/epub/wageindex.list.
- (3) Family and Medical Leave Poster, explaining applicability of the law. Available from the U.S. Department of Labor, Wage and Hour Division, (919) 790-2741 (Raleigh Office) or (704) 749-3360 (Charlotte Office), or order online at www.osha.gov/pls/epub/wageindex.list.
- (4) Fair Labor Standards Act Poster, containing information on the federal minimum wage provisions. There is one tailored for state and local government employees. Available from the U.S. Department of Labor, Wage and Hour Division, (919) 790-2741 (Raleigh Office) or (704) 749-3360 (Charlotte Office) or www.osha.gov/pls/epub/wageindex.list.

Termination. In general, local government personnel in North Carolina work on an "employment at will" basis. This means that such an employee may be terminated at any time, without cause. It is important to note, however, that any express employment contract between the parties, or an adopted personnel ordinance, may give the employee additional rights and provide procedural requirements that must be honored. In addition, various state and federal statutory and constitutional provisions prohibit employment discrimination based on race, sex, religion, age, pregnancy, disability or national origin.

Resources. Although it is impossible to provide complete information about personnel issues within the limited confines of this manual, a detailed reference on municipal personnel entitled *Employment Law: A Guide for North Carolina Public Employers* is available from the School of Government. The SOG has several personnel and management experts on staff to respond to your inquiries. The League's membership services staff is also available for consultation on personnel and management issues.

The *N.C. Department of State Treasurer Policies Manual* contains detailed information on payroll, tax withholding, FLSA, travel policies and other personnel-related topics. The manual can be ordered from the Local Government Commission by calling (919) 715-3744. Portions of the manual are also available online at:

www.nctreasurer.com/DSTHome/StateAndLocalGov/AuditingAndReporting/policiesmanual.htm

B. Privacy of Employee Personnel Records

G.S. 160A-168 establishes strict regulations to protect the privacy of personnel records of employees, former employees and applicants for employment. This statute establishes that the following information with respect to each employee is a matter of public record: name; age; date of original employment or appointment; the terms of any contract (past or present) by which the employee is employed whether written or oral to the extent the city has the written contract or a record of the oral contract in its possession; current position title; current salary; date and amount of most recent change in salary; date of most recent change in position; and the office or position to which the employee is currently assigned. The term "salary" includes pay, benefits, incentives, bonuses, and deferred and all other forms of compensation paid by the employing entity.

All other information contained in an employee's personnel file is confidential and open to inspection only in the following circumstances:

- (1) The employee or his or her duly authorized agent may examine all portions of his or her personnel file, except (i) letters of reference solicited prior to employment, and (ii) information concerning a medical disability, mental or physical, that a prudent physician would not divulge to his patient.
- (2) A licensed physician designated in writing by the employee may examine the employee's medical record.
- (3) A city employee having supervisory authority over the employee may examine all material in the employee's personnel file.
- (4) By order of a court of competent jurisdiction, any person may examine such portion of an employee's personnel file as may be ordered by the court.

- (5) An official of an agency of the State or the federal government, or any political subdivision of the State, may inspect any portion of a personnel file when such inspection is deemed by the official having custody of such records to be necessary and essential to the pursuance of a proper function of the inspecting agency, but no information shall be divulged for the purpose of assisting in a criminal prosecution (of the employee), or for the purpose of assisting in an investigation of (the employee's) tax liability. However, the custodian of the records may release the name, address, and telephone number from a personnel file for the purpose of assisting in a criminal investigation.
- (6) An employee may sign a written release, to be placed with his personnel file, that permits the person with custody of the file to provide, either in person, by telephone, or by mail, information specified in the release to prospective employers, educational institutions, or other persons specified in the release.
- (7) The city manager, with concurrence of the council (or in cities not having a manager, the council) may inform any person of the employment or nonemployment, promotion, demotion, suspension or other disciplinary action, reinstatement, transfer or termination of a city employee and the reasons for that personnel action. Prior to release of such information, the manager or council must determine in writing that the release is essential to maintaining public confidence in administration of city services or to maintaining the level and quality of city services. The writing must be maintained in the clerk's or manager's office subject to public inspection and becomes part of the employee's personnel file.

The following need not be disclosed to employees or other persons, even if considered part of an employee's personnel file:

- (1) Testing or examination material used solely to determine individual qualifications for appointment, employment, or promotion in city service, when disclosure would compromise the objectivity or the fairness of the testing or examination process.
- (2) Investigative reports or memoranda and other information concerning the investigation of possible criminal actions of an employee, until the investigation is completed and no criminal action taken, or until the criminal action is concluded.
- (3) Information that might identify an undercover law enforcement officer or a law enforcement informer.

- (4) Notes, preliminary drafts and internal communications concerning an employee. In the event such materials are used for any official personnel decision, then the employee or his duly authorized agent shall have a right to inspect such materials.

G.S. 160A-168(c2) provides that professional representatives of training, research, or academic institutions, with permission of and subject to limitations set by the city council, may have access to personnel files upon certification that such information will be used solely for statistical, research or teaching purposes and that no information identifying those employees whose files are opened will be released. The city must retain this certification at least as long as the personnel file examined is retained.

In order to comply with this law and safeguard the privacy of employee records, we recommend that the governing body of each municipality designate a custodian of personnel records. In many municipalities, the clerk may be called upon to act as custodian. As G.S. 160A-168(e) makes it a criminal misdemeanor for the custodian to knowingly, willfully, and with malice allow any person to have access to confidential information under improper circumstances, it is important for the clerk acting as custodian to be familiar with the general requirements of this statute. Violation may subject the offender to a fine up to \$500.00. Before any confidential information is released, we recommend that the clerk consult with the city or town attorney. Attorneys on the League staff are also available for assistance.

Some municipalities have found it helpful to require any person requesting information about employees to put the request in writing, usually on a standard request form. The request then can be checked against the requirements of G.S. 160A-168 and retained for the record. For a sample information request form, see Form #15 attached.

FORM #13

EMPLOYMENT APPLICATION

(CITY)(TOWN)(VILLAGE) OF _____, NORTH CAROLINA

WE CONSIDER APPLICANTS FOR VACANT POSITIONS WITHOUT REGARD TO RACE, COLOR, RELIGION, SEX, NATIONAL ORIGIN, AGE, MARITAL OR VETERAN STATUS, DISABILITY OR ANY OTHER LEGALLY PROTECTED STATUS. IT IS THE RESPONSIBILITY OF EACH APPLICANT TO NOTIFY US IF ANY REASONABLE ACCOMODATIONS ARE NECESSARY TO ALLOW COMPLETION OF THE APPLICATION PROCESS.

(PLEASE PRINT)

Position Applied For		Date		
Last name	First Name	Middle name		
Address	Street	City	State	Zip Code
Telephone Number(s)	Drivers License		Social Security Number	
Home	No.			
Work	State			

(Please Circle One)

Are you at least 18 years of age?
(If no, you must provide required proof of your eligibility to work.)

Yes No

Have you ever filed an application with us before?
If yes, give date _____

Yes No

Have you ever been employed with us before?
If yes, give date _____

Yes No

Are you currently employed?

Yes No

May we contact your present employer about your qualifications and work history?

Yes No

May we contact your previous employers about your qualifications and work history?

Yes No

Are you a male between the ages of 18 and 26?
If yes, have you registered for military service? (Proof is required.)

Yes No

Are you a citizen of the United States or are you legally authorized to work in the United States?
(Proof of citizenship/immigration status will be required prior to employment.)

Yes No

Do you have any relative(s) employed by this municipality?
If yes, please provide relative's name and department and indicate your relationship to that person:

Yes No

Have you been convicted of an offense other than a minor traffic violation? Yes No
 If yes, please explain: _____

(A conviction does not mean you cannot be hired. The offense and how recently you were convicted will be evaluated in relation to the job for which you are applying.)

Have you ever used a name other than the one shown on this application? Yes No

If yes, please indicate name(s): _____

When would you be available to start work? _____

EDUCATION

Circle highest level completed:

1 2 3 4 5 6 7 8 9 10 11 12 / GED / College 1 2 3 4 / Graduate School 1 2 3 4

Name & Location	Dates Attended	Graduate?	Major & Degree (if applicable)
Elementary School		Yes No	
High School		Yes No	
College or University		Yes No	
Graduate or Professional		Yes No	
Business, Trade or Military		Yes No	
List any apprenticeships or vocational training:			
List any professional registrations, licenses or certifications:			
List any other training, classes, or workshops you have attended that are related to the position applied for:			

SPECIAL SKILLS AND QUALIFICATIONS

Summarize special job-related skills and qualifications acquired from employment or other experience.

Have you ever had any job related training in the United States military? Yes No

If yes, please describe

REFERENCES

Give name, address and telephone number of three (3) references who are not related to you and are not former employers.

1. _____

2. _____

3. _____

EMPLOYMENT EXPERIENCE

List below your entire work experience record. Start with your present or last position and work back in time. Include any military service assignments and any self-employment. Please account for periods of unemployment. Separate sheets with additional information may be attached. Resumes may also be attached.

1. Employer	Dates employed (give month and year)	
	From	To
Address	Telephone Number	
Duties Performed		
Salary:	Starting	Final
Job Title	Supervisor	
Reason for Leaving		
2. Employer	Dates employed (give month and year)	
	From	To
Address	Telephone Number	
Duties Performed		
Salary:	Starting	Final
Job Title	Supervisor	
Reason for Leaving		

3. Employer	Dates employed (give month and year)	
	From	To
Address	Telephone Number	
Duties Performed		
Salary:	Starting	Final
Job Title	Supervisor	
Reason for Leaving		

4. Employer	Dates employed (give month and year)	
	From	To
Address	Telephone Number	
Duties Performed		
Salary:	Starting	Final
Job Title	Supervisor	
Reason for Leaving		

Please provide any additional information that you feel may be helpful to us in considering your application:

APPLICANT'S STATEMENT

I certify that information provided herein is true and complete to the best of my knowledge. I authorize investigation of all statements contained in this application and release of pertinent information to the (City)(Town)(Village) of _____ as may be necessary in arriving at an employment decision. In the event of my employment, I understand that false or misleading information given in my application or interview(s) may result in discharge. I understand, also, that I am required to abide by all rules and regulations of the (City)(Town)(Village) of _____.	
Signature of Applicant	Date

FOR PERSONNEL DEPARTMENT USE ONLY
--

Arrange interview? Yes No

Remarks: _____

Employed? Yes No

Date of employment _____ Salary _____

Job Title _____ Department _____

Authorized by _____
Name and Title Date

FORM #14

Employee Information Card

Name_____

Budget No. _____

Address_____

Term. Date _____

Social Security No. _____

Birth Date _____

Ret. _____

Date Hired _____

Ins. _____

Position _____

Other _____

SALARY:

Credit Union _____

Annual Bi-Weekly Hourly Date

Soc. Sec. _____

St. With. _____

Fed. With. _____

FORM #15

Request For Information From Employee Personnel Records

North Carolina General Statute 160A-168 restricts the release of information from personnel files of a municipal employee to the items shown below, except in certain limited circumstances.

Employee's Name: _____ Age: _____

Date of Original Employment: _____

Current Position Title: _____

Department/Office to Which Currently Assigned: _____

Current Salary:

Pay \$ _____

Benefits \$ _____

Incentives \$ _____

Bonuses \$ _____

Deferred Compensation \$ _____

Other \$ _____

Date of Most Recent Increase or Decrease in Salary: _____

Amount of Most Recent Increase or Decrease in Salary: \$ _____

Date of Most Recent Change in Position Classification: _____

Does Employee Have Contract? _____ (if yes, terms of the contract are attached)

The above is a true and accurate recording of information contained in (City)(Town)(Village) personnel files.

Released by: _____ Date: _____
(Signature)

Position Title: _____ Department: _____

This page intentionally left blank.

CHAPTER 5

Purchase and Sale of Property

A. Purchase and Construction Contracts

The clerk may be assigned certain duties or responsibilities for purchasing supplies, materials and equipment and for the awarding of contracts for construction or repair work. The General Statutes contain strict laws regulating purchase and construction contracts of local governments, and the principal statutory requirements are outlined here. In addition, each clerk should consult the municipal charter, as it may contain additional requirements or variations from general law.

Formal Bidding

Bid Threshold. If the estimated cost of a construction or repair project is \$500,000 or more, or the estimated cost of purchasing apparatus, materials, supplies or equipment is \$90,000 or more, the municipality is required to advertise and receive formal bids before awarding the contract. G.S. 143-129(a). Dividing contracts to evade the statutory provisions is prohibited. G.S. 143-133.

Procedure. The municipality must first invite sealed bids by placing an advertisement in a newspaper of general circulation in the area as defined in G.S. 1-597, or by electronic means, or both. (A decision to advertise solely by electronic means, either for a particular contract or for all contracts generally, must be approved by the governing body at a regular meeting). The advertisement must state the time and place where specifications for the proposed work or a description of the apparatus, supplies, materials or equipment will be available and the time and place for opening of the bids. It must also reserve the governing body's right to reject any and all bids. The advertisement must be published at least once and scheduled so that at least seven full days elapse between the date on which the notice appears and the date of opening of the bids. G.S. 143-129(b).

Formal bids *for construction or repair work* must be accompanied by a deposit equal to not less than 5% of the bid amount. (Bid deposits are not required for purchase contracts.) The deposit can be in the form of cash, a cashier's check, or a certified check drawn on a bank or trust company insured by the Federal Deposit Insurance Corporation (FDIC). Instead of a deposit, the bidder can file a bid bond issued by a surety licensed in North Carolina. In the event the successful bidder fails to execute the contract within 10 days after the award or fails to give satisfactory surety, the bid deposit is retained. G.S. 143-129(b).

Formal bids must be sealed. It is a misdemeanor to open an envelope or package with knowledge that it contains a bid or to disclose or exhibit the contents of a bid without permission of the bidder prior to the time set for

the bid opening. Bids must be opened in public, although they are not required to be opened at a meeting of the governing body. G.S. 143-129(b).

The governing board may reject all the bids, or it may award the contract to *the lowest responsible bidder, taking into account quality, performance and the time specified in the proposal for performance of the contract*. Proposals may be rejected for any reason determined by the governing body to be in the best interest of the unit. G.S. 143-129(b)]. After opening, formal bids are open to public inspection, except for identified trade secrets. G.S. 132-1.2. Consult the *Municipal Records Retention and Disposition Schedule* to determine how long bids must be kept. (See page14).

Contracts for construction or repair within the formal bid range must be awarded by the governing body. For purchase contracts, the governing body may delegate the authority to award contracts in the formal range to the manager, purchasing agent, or other employee. G.S. 143-129(a). See page96 for more details. All contracts in the formal range must be executed in writing. G.S. 143-129(c).

For a sample advertisement, instructions to bidders and proposal, see Forms #16, #17 and #18 attached. The State Construction Office also has a number of forms available on its website: www.nc-sco.com.

Number of Bids. If formal bids are requested for a *construction or repair* contract, the contract may not be awarded unless at least three sufficient bids are received by the municipality. If fewer than three bids are received, the municipality should re-advertise and, after this second advertisement, may award the contract even if only one bid is received (G.S. 143-132). If a second advertisement is required, bids received in response to the first advertisement are usually returned to the bidders unopened and the bid bonds/deposits of the bidders returned.

For purposes of determining if enough bids have been received for a project under the dual bidding method, each single-prime bid counts as a bid in each of the four subdivisions of work, and each full set of separate-prime bids counts as a single-prime bid. If there are at least three single-prime bids but there is not at least one full set of separate-prime bids, no separate-prime bids are to be opened.

The three-bid requirement does not apply to purchase contracts or to the informal bidding process.

Withdrawal of Bid. If a person who submits a formal bid discovers a mistake in the bid, he or she may request that the bid be withdrawn and the bid bond or deposit returned. Such a request must be made in writing before the contract is awarded and within 72 hours after the bids are opened. The governing body must hold a hearing on the matter and may allow the bid to be withdrawn if an error is found. Mistakes must be clerical in nature (unintentional arithmetic error or unintentional omission) rather than errors in judgment. Otherwise, any bid deposit or bond is forfeited. A

person who makes such a request cannot be awarded the contract, even after a subsequent re-advertisement (G.S. 143-129.1).

Negotiation. If all bids exceed the funds available, the governing body may negotiate with the lowest responsible bidder, making reasonable changes in the plans and specifications to bring the contract price within the funds available. G.S. 143-129(b).

Informal Bidding

Bid Threshold. When the cost of a purchase contract or a contract for construction or repair work is at least \$30,000 but is less than the formal bid limits, a municipality must obtain informal bids (G.S. 143-131). Dividing contracts to evade the statutory provisions is prohibited. G.S. 143-133.

Procedure. Under the informal bid statute, no particular procedure for the advertising or receiving of bids is specified, and there is no minimum number of bids required. The municipality is free to follow whatever reasonable procedures it chooses. This could include soliciting and receiving bids by telephone, fax, or electronically. However, it is the duty of the person receiving informal bids to keep a record of all bids submitted. This can be done with a log sheet for recording information such as the date, item, price, and bidder. Such record is not open to public inspection until the contract is awarded [G.S. 143-131(a)]. *The contracts must be awarded to the lowest responsible bidder, taking into consideration quality, performance, and the time specified in the bids for the performance of the contract.*

Minority Participation: Note that some construction and repair contracts in the informal range require the solicitation of minority participation. Please see *Additional Provisions for Construction Contracts* below.

Exceptions to Competitive Bid Procedures

The statutes contain a number of exceptions to the competitive bidding process. In the following circumstances, neither formal nor informal bid procedures need be followed (unless otherwise specifically noted). The municipality is free to negotiate a contract without using any competitive procedures (although some still opt to do so under their own policies).

Both Construction and Purchasing

- (1) *Below bid threshold.* The estimated cost of the purchasing contract or construction or repair contract is less than \$30,000. [G.S. 143-129(a) and 143-131].
- (2) *Emergencies.* Cases of special emergency involving the health and safety of the people or their property. [G.S. 143-129(e)(2)].

Purchasing

- (3) *Fuel.* Purchases of gasoline, diesel fuel, alcohol fuel, motor oil or fuel oil. These purchases are not subject to the formal bid requirements—the informal bidding process is to be used. [G.S. 143-129(e)(5)].
- (4) *Sole-source.* Purchase of apparatus, materials, supplies or equipment when performance or price competition for a product are not available; a needed product is available from only one source of supply; or standardization or compatibility is the overriding consideration. The governing body must approve such purchases prior to the award of the contract. [G.S. 143-129(e)(6)].
- (5) *From another unit of government.* Purchase, lease or acquisition of any apparatus, supplies, materials or equipment from the United States or its agencies, or any other government unit or agency within the United States. The governing body may designate an officer or employee to enter a bid on its behalf at any sales of property owned by these entities. The governing body may authorize the officer or employee to make any partial or down payment or payment in full that may be required by the governmental unit or agency disposing of the property. [G.S. 143-129(e)(1)].
- (6) *On state or federal contract.* Purchases from contracts established by the state or an agency of the state, or by the United States or any federal agency, if the contractor is willing to extend the same or more favorable prices, terms, or conditions as established in the state or federal contract. [G.S. 143-129(e)(9) and (9a)]. Due to the large volume of items purchased by the state and federal governments, such purchases usually involve a significant savings to municipalities. Since the state or federal government has already taken bids on the contracts, no further bids need be taken by the municipality. For information on state contracts, contact the Division of Purchase and Contract in the Department of Administration at (919) 807-4500 (information also available online at www.ncpandc.gov). Federal contracts are often awarded by the General Services Administration, www.gsa.gov, or by specific agencies such as the U.S. Department of Transportation.
- (7) *Previously bid or “piggyback” contracts.* Competitive bidding can be waived for contracts to purchase apparatus, materials, supplies or equipment from a person or entity that has--within the previous 12 months and after having completed a public formal bid process--contracted with another public agency for the items. The vendor must be willing to furnish the items at the same or more favorable prices, terms and conditions as those provided to the other public agency. The other public agency can be the United States, a federal agency, any state or state agency, or any political subdivision of a state. To purchase under this exception, the municipality must publish notice

(in a newspaper, or by electronic means, or both) that it will consider waiving the bid procedure in order to contract with a qualified supplier pursuant to this provision. The governing body must approve the purchase at a regularly scheduled meeting no fewer than 10 days after publication of the notice. A decision to publish notice solely by electronic means for a particular contract or for all contracts under this exception must be approved by the governing body. [G.S. 143-129(g)].

- (8) *Group purchase.* Purchases made through a competitive bidding group purchasing program (a formally organized program that offers competitively bid purchasing services at discount prices to two or more public agencies. [G.S. 143-129(e)(3)]. An example of this type of program is U.S. Communities (see www.uscommunities.org/).
- (9) *Information technology.* Purchases through contracts established by the State Office of Information Technology Services are exempted under G.S. 143-129(e)(7)). G.S. 143-129.8 also authorizes a request for proposals procedure that may be used for information technology instead of any other procedure under state law, and G.S. 143-135.9 authorizes use of “best value” procurement.
- (10) *Used items.* Purchases of used apparatus, materials, supplies or equipment. (Does not include remanufactured, refabricated or demo items.) [G.S. 143-129(e)(10)].
- (11) *From nonprofit work center.* Purchase of goods and services directly from a nonprofit work center for the blind and severely disabled. [G.S. 143-129.5].
- (12) *Transportation authorities.* Purchases by a regional public transportation authority or regional transportation authority. G.S. 143-129(h) provides a “procurement by competitive proposal” method for these entities.

Construction

- (13) *Change order work.* Construction or repair work undertaken during the progress of a construction or repair project initially begun under the formal bid process. [G.S. 143-129(e)(4)].
- (14) *Construction management at risk.* Contracts by a public entity with a construction manager at risk. [G.S. 143-129(e)(11)].
- (15) *Unemployment labor.* Projects that use unemployment relief labor paid for in whole or in part from state or federal funds. G.S. 143-129(d).
- (16) *Force account work.* Construction or repair projects, when the work is to be done by the municipality's own employees, and where either of the following apply: (i) the total cost of the project (including labor) will

not exceed \$125,000 or (ii) the total cost of the labor alone will not exceed \$50,000. [G.S. 143-135].

- (17) *Guaranteed energy savings contracts.* [G.S. 143-129(e)(8) and G.S. 143-129.4]. These are subject to procedures set forth in G.S. Chapter 143, Article 3B.
- (18) *Streets.* Contracts with the N.C. Department of Transportation for street construction, repair and maintenance (G.S. 136-41.3).
- (19) *Solid waste facilities.* Contracts for solid waste management facilities. The municipality has the option of using the procedures set forth in G.S. 143-129.2 instead of the competitive bidding statutes.
- (20) *Airports.* Airport projects constructed in whole or in part with federal funding. Contracts can be let in the manner prescribed by the federal authorities rather than under state bidding procedures [G.S. 63-54(c)].

Services

- (21) *Contracts for services.* The statutory bid procedures do not apply to contracts for services such as insurance, solid waste collection, legal services, and accounting. For architectural and engineering services, state law (G.S. 143-64.31 through .34) establishes the policy that procurement of architectural and engineering services by state and local governments should be through a merit selection process with negotiation on the fee, rather than through the competitive bidding process. The statutes allow a local government to use the competitive bidding process in some circumstances (see G.S. 143-64.32).

Additional Provisions for Purchase Contracts

Delegation of Authority to Purchase. For purchases of apparatus, materials, supplies or equipment, G.S. 143-129(a) authorizes the municipal governing body to delegate to the manager, chief purchasing official or other employee the ability to award purchasing contracts, reject bids, and readvertise to receive bids on behalf of the unit. The person to whom the authority is delegated must of course comply with any bidding law requirements that would otherwise apply to the governing body. The governing body can restrict the delegated authority as to dollar amount or may impose any other conditions. See Form #19 for a sample delegation ordinance.

Reverse Auction. G.S. 143-129.9 allows municipalities to use the “reverse auction” method as an alternative means of obtaining competitive bids for the purchase of apparatus, materials, supplies or equipment (except it cannot be used for purchase of construction aggregates such as stone, sand and gravel). Reverse auction is a real-time purchasing process during which bidders compete to provide goods at the lowest price in an open and

interactive environment. Requirements for advertisement of bidding opportunities, timeliness of bid receipt, standard for awarding the contract, and other requirements in G.S. Chapter 143, Article 8 that are not inconsistent with reverse auction remain applicable.

Purchase With Trade-In. G.S. 143-129.7 allows municipalities to include in their specifications for the purchase of apparatus, materials, supplies or equipment an opportunity for bidders to acquire property as a “trade-in.” The unit can award the contract for both the purchase and the sale of the trade-in property, taking into consideration the amount offered on the trade-in when applying the criteria for award.

Electronic Bids. Municipalities are authorized to receive bids for purchase contracts electronically in addition to or instead of paper bids. Procedures for receipt of electronic bids for contracts subject to the formal bidding process must be designed to ensure the security, authenticity, and confidentiality of the bids to at least the same extent as is provided for with sealed paper bids. G.S. 143-129.9. Requirements for advertisement of bidding opportunities, timeliness of bid receipt, standard for awarding the contract, and other requirements in G.S. Chapter 143, Article 8 that are not inconsistent with electronic bids remain applicable.

Additional Provisions for Construction Contracts

Design Requirements. Plans and specifications for the construction or repair of public buildings must be prepared by a registered architect or registered engineer if:

- repairs do not include major structural change in framing or foundation support systems, and will cost more than \$300,000;
- repairs affect life safety systems, and will cost more than \$100,000;
- repairs include major structural change in framing or foundation support systems, and will cost more than \$135,000;
or
- construction of, or addition to, a public building or state-owned and operated utilities will cost more than \$135,000.

See G.S. 133-1.1. There is an exception for pre-engineered garages, sheds and workshops up to 5,000 square feet used exclusively by city, county, public school or state employees for purposes related to their employment. (However such structures must be separated from other buildings or property lines by 30 feet.) On projects requiring an architect or engineer to prepare the plans and specifications, the architect or engineer must perform inspections and issue a signed and sealed certificate of compliance.

For projects that do not require a registered architect or engineer to prepare the plans and specifications, the governing board or awarding authority must require a certificate of compliance with the state building code from the

city or county inspector for the specific trades involved or from a registered architect or engineer, unless:

- the plans and specifications are approved by the State Construction Office and the completed project is inspected by that office and the State Electrical Inspector;
- the project is exempt from the state building code; or
- the project has a total projected cost of less than \$100,000 and does not alter life safety systems.

Fire Safety Approval. Plans and specifications for buildings for the use of cities, counties or public schools of 20,000 square feet or more must be submitted to the N.C. Commissioner of Insurance for fire safety approval before they may be approved by the governing body (G.S. 58-31-40). If the Department of Insurance does not act within 60 days of submission, the municipality may request approval by the State Construction Office in the Department of Administration.

North Carolina Department of Insurance
Office of State Fire Marshall
1202 Mail Service Center
Raleigh, N.C. 27699-1202
(919) 661-5880
www.ncdoi.com/osfm

Licensed Contractors. A licensed general contractor must be used for most construction projects costing \$30,000 or more. G.S. Chapter 87, Article 1. There are some exceptions contained in G.S. 87-1.1. Architects and engineers who prepare specifications for public projects must include information on licensure requirements in the invitation to bidders and the specifications. G.S. 87-15.

Dispute Resolution. The municipality must either use the dispute resolution process adopted by the State Building Commission or adopt its own process, which must include mediation. The municipality can set a reasonable threshold (not to exceed \$15,000) for the amount that must be in controversy before a party may require other parties to participate in the dispute resolution process, can require that costs of the process be divided among the parties, and can require in its contracts that a party participate in mediation as a precondition to initiating litigation. G.S. 143-128 (f1).

Interest on Late Payments. On all public construction contracts, state law requires that a municipality pay the full balance due a prime contractor within 45 days after the project has been completed and accepted, or occupied, whichever comes first. If payment is not made by this date, interest will begin to run on the unpaid balance at the rate of 1% per month unless a lower rate is agreed upon. State law also provides that a prime contractor is to be paid the same rate of interest on late periodic payments made during the course of a construction project unless the contract provides otherwise. The payment of interest on late progress payments is a

matter of negotiation between the parties, so municipal officials should be alert to this provision in any construction contract (G.S. 143-134.1).

Retainage. G.S. 143-134.1 limits the amount of retainage (money withheld from payment) on public projects. If the total project costs are less than \$100,000, no retainage on periodic or final payments is allowed for public construction contracts. The general rule is that when the total project costs are equal to or greater than \$100,000, (1) the owner cannot retain more than 5% of any periodic payment due a prime contractor; and (2) when the project is 50% complete, the owner may not keep further retainage from periodic payments if the contractor continues to perform satisfactorily.

Reports. Local governments are required to report certain information on construction projects to the state Department of Administration. Please see Chapter 8 of this manual for more details.

Contracts for Buildings of \$300,000 or More

The following apply to *construction or repair contracts for buildings that exceed \$300,000*. The provisions do not apply to the purchase or erection of prefabricated or relocatable buildings except that portion of the work that must be performed at the construction site.

Specifications. The municipality must prepare separate specifications for the following categories of work on a construction project:

- (1) Heating, ventilating, air conditioning and accessories (separately or combined into one conductive system), refrigeration for cold storage (where the cold storage cooling load is 15 tons or more of refrigeration), and all related work;
- (2) Plumbing and gas fittings and accessories, and all related work;
- (3) Electrical wiring and installations, and all related work; and
- (4) General work not included in the three branches listed above.

[G.S. 143-128(a)]. If the governing body prefers, specifications for additional branches of work may be prepared.

Methods. Under G.S. 143-128(a1), municipalities are authorized to use the following methods for awarding contracts to construct, alter or repair buildings:

- *Separate-prime bidding.* Under a separate prime (also called multiple-prime) system, separate bids are received for each category of work for which specifications are required. If the estimated cost of any category does not exceed \$25,000, it may be combined with any other branch of work. Contracts are to be awarded to the lowest responsible, responsive bidders, taking into consideration quality, performance, the time specified in the bids for performance of the contract, and compliance with G.S. 143-128.2 (minority business participation goals).
- *Single-prime bidding.* Under a single-prime bidding system, single bids are received for the entire project. Bidders must identify in their bids the subcontractors they will use for the four categories of work for which specifications are required. Contracts are to be awarded to the lowest responsible, responsive bidders, taking into consideration quality, performance, the time specified in the bids for performance of the contract, and compliance with G.S. 143-128.2 (minority business participation goals).
- *Dual bidding.* The municipality may choose to receive bids under both the single-prime and separate-prime systems. Bids received as separate-prime bids must be received, but not opened, one hour prior to the deadline for submission of single-prime bids. The contract is to be awarded to the lowest responsible, responsive bidder under the single-prime system or to the lowest responsible, responsive bidder under the separate-prime system, taking into consideration quality, performance, compliance with G.S. 143-128.2 (minority business participation goals) and time specified in the bids to perform the contract. In deciding the system under which to award the contract, the municipality may consider cost of construction oversight, time for completion, and other factors it considers appropriate.
- *Construction management at risk.* G.S. 143-128.1 provides details of the construction management at risk approach. A construction manager at risk, who must be a licensed general contractor, contracts directly with the municipality for all construction. The construction manager guarantees a maximum price for the project, prequalifies subcontractors, accepts bids and awards subcontracts, and coordinates all subcontract work. In selecting a construction manager at risk, the municipality must use the criteria in G.S. 143-64.31 through 64.34 (procurement of architectural, engineering and surveying services). This requires a merit selection process with negotiation on the fee, rather than through the competitive bidding process. The statutes allow a local government to use a competitive bidding process in some circumstances (see G.S. 143-64.32). If this method is chosen, the municipality must report certain information to the Secretary of Administration (see *Reports* below).
- *Alternative contracting methods.* Other methods of contracting must be authorized by the State Building Commission under G.S. 143-

135.26(9). An example of an alternative method is design-build. Contact the State Construction Office for more information at (919) 807-4098 or <http://www.nc-sco.com>.

Performance and Payment Bonds. Performance bonds are intended to provide a remedy for the project owner in the event that a contractor defaults, and payment bonds are intended to provide a remedy for subcontractors who provide labor or materials on a project in the event that they are not paid by the general contractor. If a construction or repair project involves *contracts whose total exceeds \$300,000*, the municipality must require a performance bond and a payment bond for the full amount of the contract from each contractor or construction manager at risk with a contract for more than \$50,000. G.S. 44A-26. The governing body can, in its discretion, require performance and payment bonds on any other construction contracts. As an alternative to bonds, the governing body can allow the deposit of money, certified checks, or government securities for the full amount of the contract. G.S. 143-129(c). Model performance and payment bonds are set out in G.S. 44A-33. Failure by the designated municipal official to require the proper bonds or security is a misdemeanor. G.S. 44A-32.

Minority Business Participation Requirements

Definition. A “minority business” [also called a HUB or “historically underutilized business”] is one in which at least 51% of the business is owned and controlled by one or more persons who are Black, Hispanic, Asian American, American Indian, Female, Disabled or Disadvantaged. [G.S. 143-128.4].

Database. The Secretary of Administration is to develop a statewide uniform program for certifying historically underutilized businesses and a database of the certified businesses. See www.doa.state.nc.us/HUB/. Effective July 1, 2009, all state agencies and local governments can only use the historically underutilized businesses listed in the database for purposes of compliance with the minority business requirements.

Applicability. A local government project of \$100,000 or more that involves the *construction or repair of a building* and that receives *state appropriations or grants* is subject to a ten percent verifiable percentage goal for participation by minority businesses in the total value of the work. This would include building projects done by a private entity on a facility to be leased or purchased by a local government unit. A local government can only apply a different goal to such projects if it had adopted a different verifiable goal prior to December 1, 2001 and it continues to have a sufficiently strong basis in evidence to justify the use of that goal.

A local government project of more than \$300,000 that involves the *construction or repair of a building* and that receives *no state funding* is subject to the local government’s own minority participation goal. Each

municipality must, after notice and a public hearing, adopt a verifiable percentage goal for participation by minority businesses in the total value of work for locally funded construction projects. The municipality may continue to use a previously adopted goal.

Keep in mind that the point of the verifiable participation goal is that good faith efforts are made to include minorities in the contract awarding process. The statutes do not require selection of minority subcontractors on the basis of their minority status. Contracts will still be awarded to the lowest responsible bidder without regard to race, religion, color, creed, national origin, sex, age or disability.

Before awarding a contract, the municipality must develop and implement a minority business participation outreach plan, attend a prebid conference, notify minority businesses about the opportunity to bid on the project at least 10 days before the scheduled bid opening, and utilize other media to inform potential minority bidders of the opportunity. G.S. 143-128.2(e). The municipality must also require bidders to undertake certain good faith efforts.

Bidders are required to make good faith efforts to recruit minority businesses, as specified in G.S. 143-128.2(f). The Department of Administration has adopted rules establishing a point system for different efforts based on project size, cost, type and other factors. See 01 NC Administrative Code 30I.0102. (The code is available online at <http://reports.oah.state.nc.us/ncac.asp>). Bidders must earn at least 50 points in order for their bids to be considered responsive. Each bidder must identify on its bid the minority businesses that it will use and total dollar value of the bid that will be performed by minority businesses, if applicable. The bidder must also document in an affidavit the good faith efforts it has made. A contractor's bid may not be rejected for failure to include participation by minority businesses, but it can be rejected for failure to undertake good faith efforts to recruit and select minority subcontractors as specified in the municipality's guidelines. After bids are received, the apparent lowest responsible bidder must provide additional documentation regarding minority business participation and good faith efforts.

Municipalities are authorized to agree to and comply with minimum minority business participation requirements established by the federal government on projects financed by federal grants or loans. G.S. 160A-17.1.

For contracts from \$30,000 to \$300,000 involving *construction or repair of a building*, the municipality must solicit minority participation under a more simplified procedure since these projects are in the informal bidding range. [But if state funding is involved, see above.] A record must be maintained of contractors solicited and efforts made to recruit minority business participation. This information, including the type of project, total dollar value of the project, dollar value of minority business participation, and documentation of minority business recruitment efforts, is reported to the

Department of Administration's Office for Historically Underutilized Business. [Please see *HUBSCO Reporting* on page 162].

B. Sale of Surplus Property

Municipalities in North Carolina are authorized by G.S. 160A-266 to dispose of surplus property in the following ways:

- (1) Private negotiation and sale (subject to limitations noted below)
- (2) Advertisement for sealed bids
- (3) Negotiated offer, advertisement, and upset bid
- (4) Public auction
- (5) Exchange

As the clerk often will become involved in these transactions, the required procedures are outlined below. When these procedures state that a notice must be published, it means publication in a newspaper having general circulation in the municipality, and qualified to accept legal notices pursuant to G.S. 1-597. A number of forms are provided at the end of this chapter, and additional forms are available in the School of Government's book, *Local Government Property Transactions in North Carolina*.

Private Negotiation and Sale (G.S. 160A-267). Private negotiation and sale may generally be used only for the sale of personal property valued at less than \$30,000 for any item or group of similar items [G.S. 160A-266(b)]. However, both real property and personal property of any value can be conveyed at private sale to non-profit entities carrying out a public purpose (G.S. 160A-279--see page 111). Private sale is also available under certain circumstances for economic development property [G.S. 158-7.1(d)], community development property [G.S. 160A-457(4)], urban redevelopment property [G.S. 160A-514(e)], and open space [G.S. 160A-403]. In some circumstances, real property of any value and personal property valued at \$30,000 or more, with architectural, archaeological, artistic, cultural or historical significance, may be disposed of by private negotiation and sale [G.S. 160A-266(b)]. The property may be sold only to a nonprofit corporation or trust organized for preservation purposes, and the organization must enter into a preservation agreement.

At a regular meeting, the governing body must adopt a resolution or order authorizing a specified official to dispose of the specific items of property by private sale (see Form #20). The resolution should identify clearly the property to be sold and may, but need not, specify a minimum price. A notice summarizing the contents of the resolution must be published once, and no sale may take place until at least 10 days after the publication (see Form #21).

Advertisement for Sealed Bids (G.S. 160A-268). This procedure is the same as that provided for the purchase of materials and equipment, as set out in G.S. 143-129.

Pursuant to resolution by the governing body authorizing the sale (see Form #22), bids are invited by publication of notice at least one week before (or in the case of real property, thirty days before) the date specified for the opening of bids (see Form #23). The notice must include:

- (1) A complete description of the property to be sold;
- (2) The place where bids may be submitted;
- (3) The time and place where the bids will be opened;
- (4) A reservation by the governing body of the right to reject any or all bids.

Bids must be opened in public. Unless it rejects all bids, the governing body must select the highest responsible bidder.

Negotiated Offer, Advertisement, and Upset Bid (G.S. 160A-269). The municipality may receive, solicit or negotiate an offer to purchase specific property and, pursuant to a resolution of the governing body (see Form #24), may advertise the offer for upset bids.

If an offer to purchase is received and the governing body proposes to accept it, the governing body must require the offeror to deposit 5% of the amount of the bid with the clerk, and the clerk must publish a notice of the offer and an advertisement for upset bids (see Form #25).

Upset bids must be submitted within 10 days after the date of publication, and must raise the bid that is being considered by at least 10% of the first \$1,000 and 5% of the remainder.

With the raising of the bid, the new bidder must deposit 5% of the bid amount with the clerk, and the clerk must publish the new offer and advertise for an upset bid over the increased bid amount.

This procedure must be repeated until such time as no upset bid is submitted within 10 days after the last publication. At that time, the governing body may accept the highest qualifying offer. The governing body may at any time reject any and all offers.

There are two ways to approach this process. (1) The governing body requests sealed upset bids, all of which are opened at the end of the 10-day period. The highest of these becomes the new offer that is then advertised. (2) As soon as a qualifying upset bid is submitted—even if on the first day of the 10-day period—it is considered to be the new offer and is then advertised. Either method will work, but the resolution and notice should clarify which is being followed.

Public Auction (G.S. 160A-270).

Real Property. The governing body must adopt a resolution authorizing the sale, containing a description of the property to be sold, and specifying the

date, time, place and terms of the sale (see Form #26). The resolution must also state that any bid must be accepted and confirmed by the governing body before the sale will be final. The resolution may, but need not, require that the highest bidder make a bid deposit in a specified amount. A notice of the sale must be published at least 30 days before the date of the auction (see Form #27). The notice must include a general description of the land sufficient to identify it, the terms of the sale, and a reference to the authorizing resolution. After the bids are received, the highest bidder must be reported to the governing body, and the governing body must accept or reject this bid within 30 days. If the bid is rejected, the governing body may re-advertise the property for sale.

Personal Property. The governing body at a regular meeting must adopt a resolution authorizing a specified official to dispose of the property at public auction. The resolution must describe the property to be sold, and set out the time, date, place and terms of the sale (see Form #28). The resolution, or a notice summarizing its contents, must be published at least 10 days before the date of the auction. If the highest bid complies with the terms of the sale, the award may be made and the sale consummated by the official conducting the auction, unless the resolution authorizing the sale provides otherwise (see Form #29).

Electronic Auction. G.S. 160A-270(c) authorizes municipalities to conduct auctions of real or personal property electronically. This can be done by either authorizing the use of existing public or private electronic auction services (e.g. *GovDeals*, *www.govdeals.com*) or by establishing an electronic auction procedure. Notice of an electronic auction must provide the information specified under *Real Property* or *Personal Property* above, and must include the electronic address where information about the property to be sold can be found and the electronic address where electronic bids can be posted. The notice may be published in a newspaper of general circulation in the municipality, or by electronic means, or both. A decision to publish notice solely by electronic means for a particular auction or for all auctions must be approved by the governing body.

Exchange of Property (G.S. 160A-271). A municipality can exchange any real or personal property for other property by private negotiation if it receives a full and fair consideration in exchange for its property. Municipalities can also exchange public enterprise facilities for like facilities that are located either within or outside the corporate limits. When the governing body is considering an offer to exchange property, it may wish to first adopt a resolution of intent to exchange. (Although this preliminary resolution is not required by the statute, it may help to avoid confusion.) A notice must be published at least 10 days prior to the designated regular meeting, which should set forth all the information contained in the resolution (see Form #30). A notice must be published at least 10 days prior to the designated regular meeting, which should set forth a description of the properties to be exchanged, the value of the properties and other consideration changing hands, and a statement that the governing body intends to authorize the exchange at its next regular meeting (see Form #31).

At the meeting, the governing body adopts a resolution to authorize the exchange (see Form #32).

Simplified Procedures for Personal Property Under \$30,000 (160A-266).

Municipalities also have the option to adopt a simplified procedure for disposition of personal property valued at less than \$30,000 for any one item or group of items [G.S. 160A-266(c)]. This method avoids the necessity for individual resolutions authorizing the sale or exchange of items of relatively low value. The governing body must adopt regulations prescribing the procedures to be followed. The procedures can provide for either public or private sale or exchange and may (but need not) include published notice requirements. The procedures can authorize an appropriate official to declare such property as surplus, set its value, and convey title upon sale. The designated official must keep a record of any property sold under the procedures, to include a general description of the property, to whom it was sold or with whom exchanged, and the amount or money or other consideration received. For a sample ordinance, see Form #33.

Discarding Property [G.S. 160A-266(d)]. Municipalities are authorized to discard any personal property that is determined to have no value; that remains unsold or unclaimed after the municipality has exhausted efforts to sell it using one of the authorized methods; or that poses a potential threat to public health or safety.

C. Other Disposition of Property

Lease or Rental (G.S. 160A-272). Municipalities may lease or rent any of their real property upon a determination that the property will not be needed by the municipality for the term of the lease. When the governing body is considering a lease, it may wish to first adopt a resolution of intent to authorize such a lease (see Form #33). (Although this preliminary resolution is not required by the statute, it may help to avoid confusion.) For leases with a term of 10 years or less, the governing body must publish a notice describing the property, stating the annual lease payments and announcing the governing body's intent to authorize the lease at its next regular meeting (see Form #34). The notice must be published at least 10 days before the regular meeting, at which the governing body will adopt a resolution authorizing execution of the lease agreement (see Form #35). No public notice is necessary before adopting a resolution authorizing a lease for a term of one year or less, and the governing body may delegate to the city manager or other appropriate administrative official the authority to enter into such a lease. Leases for terms of more than 10 years will be treated as sales, and one of the procedures set out above for sale of property must be followed. Leases of land for the construction of low and moderate income housing are subject to the provisions of G.S. 160A-278.

Sale, Lease or Exchange With Governmental Units (G.S. 160A-274).

Municipalities are authorized to enter into arrangements with the state and other local government units concerning sale, purchase, lease, exchange and

joint use of government property, both real and personal. The municipality may determine the terms and conditions of the transaction. No consideration is required, and the Attorney General's office has ruled that the procedural requirements of the various sale and disposition statutes referred to herein are not applicable to such an arrangement. "Governmental unit" for purposes of the statute is defined as city, county, school administrative unit, sanitary district, fire district, the State of North Carolina, or any other public district, authority, department, agency, board commission or institution. These transactions require action of the governing body.

Sale or Lease of Land to Volunteer Fire Departments and Rescue Squads (G.S. 160A-277). Municipalities are authorized to sell, lease or convey land or interests in land to volunteer fire departments and rescue squads that provide service to the municipality, for the purpose of constructing or expanding their facilities. No consideration is required. The conveyance must be authorized by resolution adopted at a regular meeting. Notice must be published at least 10 days before the meeting, describing the property, stating its value, indicating the proposed monetary consideration or lack thereof, and stating the governing body's intent to authorize the conveyance.

Lease of Land for Housing (G.S. 160A-278). A municipality may lease land for the construction of housing for persons of low or moderate income, upon whatever terms and conditions it deems wise. The lease can be made by private negotiation and may extend longer than ten years. Notice is to be published at least ten days before the regular meeting at which the governing body intends to authorize the lease by resolution. The notice must describe the property to be leased, state its value and the proposed consideration, and state the governing body's intention to authorize the lease.

Sale of Property to Entities Carrying Out a Public Purpose (G.S. 160A-279). Municipalities are authorized to convey by private sale any real or personal property (except property acquired by eminent domain) to any entity if (1) the municipality is authorized to appropriate funds to the entity, (2) the entity carries out a public purpose, and (3) the entity is not a for-profit corporation. The private sale procedures of G.S. 160A-267 must be followed, and the municipality must attach to the conveyance conditions or covenants to ensure that the property will be put to a public use by the receiving entity. Such conveyances may, but need not, have monetary consideration, since the promise to continue to use the property for a public purpose can constitute the consideration. [Note that the statute also allows municipalities to convey surplus automobiles without compensation and without the requirement that they be used for a public purpose if conveyed to Work First participants selected by the local department of social services.]

Donation of Personal Property to Other Governmental Units (G.S. 160A-280). A municipality may donate personal property to another governmental unit--including supplies, materials and equipment--that the governing body deems to be surplus, obsolete or unused. The other governmental unit can

be any unit within the United States, a sister city in another country, or a nonprofit organization incorporated by the US, any of the fifty states, or the District of Columbia. “Governmental unit” is defined as in G.S. 160A-274. The governing body must post a public notice at least five days prior to adopting a resolution to approve the donation.

Property Seized or Found by Law Enforcement Agencies. G.S. Chapter 15, Article 2 sets forth the procedures for disposing of personal property seized or found by law enforcement officers. These statutes generally require that unclaimed property be sold at public auction, with the proceeds to be paid to the local board of education for school purposes. The disposition of confiscated deadly weapons is controlled by G.S. 14-269.1.

Weapons Owned by Law Enforcement Agencies. Weapons owned by the law enforcement agency (not seized weapons) that are no longer needed by the agency are surplus property that may be disposed of using any of the usual disposition methods for personal property. However, anyone buying a weapon from the municipality must obtain a permit as required by G.S. Chapter 14, Article 52A. Law enforcement officers authorized to carry firearms do not have to obtain a permit if they identify themselves as officers authorized to carry firearms and the purpose for purchasing the firearms is directly related to their official duties.

The municipality is also authorized to award to a retiring law enforcement officer or the officer’s surviving relatives the service side arm of the officer, at a price to be determined by the governing body. The retired officer or surviving relative must obtain a permit as required by G.S. Chapter 14, Article 52A, or the weapon must be rendered incapable of firing (G.S. 20-187.2).

D. Ethics and Conflict of Interest

General Rule on Conflicts. Under G.S. 160A-75, a member of the governing body may be excused from voting on issues that affect the member’s own financial interest or official conduct. (See page 9). There are also statutes that specifically address voting and land use conflicts. (See page 150).

The other major statute is G.S. 14-234 (often called the “conflict of interest statute”), which addresses whether or not a municipal official can transact business with his or her own municipality. G.S. 14-234 makes it a criminal offense (a Class 1 misdemeanor) for any municipal officer or employee who is involved in the *making* or *administering* of a contract on behalf of the municipality to derive a *direct benefit* from the contract. It is also a violation for a municipal officer or employee who derives a direct benefit but is not involved in making or administering the contract to attempt to influence anyone who *is* involved in making or administering the contract. Contracts entered into in violation of the statute are void. The obvious intent is to

prevent municipal officials from profiting at the public's expense, or even appearing to do so.

For purposes of the statute, a person is “involved in making a contract” if the person participates in the development of specifications or terms of the contract or in the preparation or award of the contract. (A member of the governing body is automatically involved in making the contract if the body takes action on the contract, even if that person does not participate in the action.) A person is “involved in administering a contract” if he or she oversees the performance of the contract or has authority to make decisions regarding the contract or to interpret the contract.

A person receives a “direct benefit” if the person or his or her spouse (1) has more than a 10% ownership or other interest in an entity that is a party to the contract; (2) derives any income or commission directly from the contract; or (3) acquires property under the contract.

Exceptions. The following are the exceptions to the conflict of interest prohibitions under G.S. 14-234. If a municipal official will derive a direct benefit from a contract that falls under one of the exceptions, he or she may not deliberate or vote on the contract and may not attempt to influence any person involved in making or administering the contract.

- (1) Banking, Utilities [14-234(b)(1)]. The statute does not apply to contracts between the municipality and banks, savings and loan associations or public utilities.
- (2) Condemnations [14-234(b)(2)]. The statute does not apply to property interests conveyed by public officers or employees under a judgment entered by the superior court in a condemnation proceeding initiated by the municipality.
- (3) Employment of Spouse [14-234(b)(3)]. The statute does not apply to an employment relationship between the municipality and the spouse of a municipal official.
- (4) Public Assistance [14-234(b)(4)]. The statute does not apply to remuneration to an official for services, facilities, or supplies furnished to needy individuals under a program of direct public assistance being administered by the municipality.
- (5) Small Town Exception [14-234(d1)]. Elected municipal officials (or persons appointed to fill an elective municipal office), in municipalities having a population of no more than 15,000 according to the latest federal census, may transact business with their own municipalities if the following safeguards are strictly observed:
 - (a) The contract, or series of contracts, is approved by a specific resolution of the municipal governing body in an open meeting, is recorded in the minutes, and the amount does not exceed

\$12,500 for medically-related services or \$25,000 for other goods or services within a 12-month period; and

- (b) The official entering into the contract with the municipality does not participate in any way or vote; and
- (c) The total annual amount of all such contracts is specifically noted in the audited annual financial statement of the municipality; and
- (d) The municipal governing body posts in a conspicuous place, in the city hall, a list of all such officials with whom contracts have been made, briefly describing the subject matter of the contracts and their total amounts. This list must cover the preceding 12 months and must be brought up to date at least quarterly; and
- (e) The contract does not have to be bid out under G.S. Chapter 143, Article 8.

Local Policies. In addition to state law, some municipal ordinances, ethics policies, and charter provisions impose additional restrictions on municipal officers and employees.

Gifts and Favors. G.S. 14-234 prohibits public officers and employees from soliciting or receiving gifts or rewards in exchange for recommending, influencing or attempting to influence the award of a public contract. See also G.S. 133-32, which prohibits accepting gifts and favors from contractors or suppliers that have a contract with the governmental unit, have performed under such a contract within the past year, or anticipate bidding on such a contract in the future.

State Government Ethics. G.S. Chapter 138A establishes the ethical rules that legislators and certain other state officials must follow. As a general rule, legislators and other “covered persons” may not accept gifts. There is an exception to the general ban on gifts that will allow municipalities to invite their legislators or state officials to meetings at which food and beverages are provided. Food and beverages for immediate consumption can be provided to persons covered under the state ethics law in connection with any of the following:

- An open meeting of a public body, provided that the meeting is properly noticed under the Open Meetings Law;
- A gathering of an organization with at least 10 or more individuals in attendance open to the general public, provided that a sign or other communication is displayed containing a message that is reasonably designed to convey to the general public that the gathering is open to the general public;

- A gathering of a governmental unit to which the entire board of which a public servant is a member, at least 10 public servants, all the members of the House of Representatives, all the members of the Senate, all the members of a county or municipal legislative delegation, all the members of a recognized legislative caucus with regular meetings other than meetings with one or more lobbyists, all the members of a committee, a standing subcommittee, a joint committee or joint commission of the House of Representatives, the Senate, or the General Assembly, or all legislative employees are invited, and one of the following applies:
 - At least 10 individuals associated with the governmental unit actually attend, other than the covered person or legislative employee, or the immediate family of the covered person or legislative employee.
 - All board members of the governmental unit are notified and invited to attend.

G.S. 138A-32(e)(1). “Invited” means written notice of the gathering containing the date, time, and location given at least 24 hours in advance to the specific qualifying group listed. If it is known at the time of the written notice that at least one sponsor is a lobbyist or lobbyist principal, the written notice must also state whether or not the gathering is permitted under this section of the statute. Contact the N.C. Ethics Commission for opinions and interpretations of these provisions.

G.S. Chapter 120C sets forth detailed regulations and requirements regarding lobbyists and lobbyist principals (the person or entity whose interest the lobbyist represents). The lobbying provisions do not apply to elected or appointed officials or employees of a municipality when acting solely in connection with matters pertaining to the office and public duties. G.S. 120C-700. However, be aware that a municipality that hires a contract lobbyist will be considered a lobbyist principal. If a municipality is a lobbyist principal, it must pay a fee and make detailed reports related to lobbying expenditures to the Department of the Secretary of State.

More information on state ethics and lobbying laws is available from the N.C. Ethics Commission, www.ethicscommission.nc.gov/ and the Department of the Secretary of State, www.secretary.state.nc.us/lobbyists/.

Questions of Interpretation. The statutes regarding purchasing, sale of surplus property, and conflict of interest often prompt questions of interpretation. In addition to consulting with your own municipal attorney, clerks should feel free to contact the School of Government faculty and the League staff for assistance.

Resources. Excellent written resources are available from the School of Government: [An Overview of Contract Bidding Requirements for North](#)

Carolina Local Governments, A Legal Guide to Purchasing and Contracting for North Carolina Local Governments, Construction Contracts with North Carolina Local Governments, Local Government Property Transactions in North Carolina, and Ethics, Conflicts, and Offices: A Guide for Local Officials.

FORM #16

Advertisement - Bids Wanted

Sealed proposals for the following will be received by the (Governing Body) of the (City)(Town)(Village) of _____, North Carolina, in the (Council Chamber) of the (City)(Town)(Village) Hall until _____ o'clock a.m. on _____, 2____, at which time they will be publicly opened and read:

(Describe supplies/materials/equipment or construction/repair services sought)

Proposals must be on standard forms furnished by the (City)(Town)(Village) and must be marked "PROPOSAL FOR _____."

Proposal forms and specifications may be obtained at the office of the _____.

(*If applicable) Each proposal must be accompanied by a deposit equal to 5% of the net price bid. This deposit may consist of cash, or cashier's check issued by or a certified check drawn on a Bank or Trust Company authorized to do business in North Carolina or on a Bank insured by the Federal Deposit Insurance Corporation, payable to the (City)(Town)(Village) of _____, or a 5% Bid Bond issued by any surety authorized to do business in North Carolina. This deposit will be retained in the event of failure of the successful bidder to execute the contract within 10 days after notice of award or to give satisfactory surety as required.

The (City)(Town)(Village) reserves the right to reject any or all proposals.

FORM #17

Instructions to Bidders

1. Each bidder must submit a proposal on the blank form herewith provided. The bidder must sign the proposal correctly and a proposal may be rejected if it shows any omissions, alterations of form, additions not called for, conditional bids or irregularities of any kind.
2. Each proposal must be submitted in a sealed envelope, so marked as to indicate its contents without being opened. This envelope shall be placed in another one addressed to the (Manager) (Clerk) of the (City)(Town)(Village) of _____, (address), North Carolina. If forwarded otherwise than by mail, it must be delivered directly to the office of the (City/Town/Village)(Manager) (Clerk).
3. Proposals will be opened promptly and read at the hour and on the date set in the advertisement, in the (Council Chamber) of the (City)(Town)(Village) Hall, _____, North Carolina. Bidders or their authorized agents are invited to be present.
4. The names of certain brands or makes, or definite specifications, denote quality standard in the article desired, but do not restrict bidders to the specific brand, make or manufacturer named. They are meant to convey to prospective bidders the general style, type, character and quality of the article desired.
5. The contract will be awarded to the lowest responsible bidder taking into consideration quality, performance and the time specified in the proposals for the performance of the contract.
6. (*If applicable) Each proposal must be accompanied by a deposit equal to 5% of the net price bid. This deposit may consist of cash, or a cashier's check issued by or a certified check drawn on a bank or a trust company authorized to do business in North Carolina or on a bank insured by the Federal Deposit Insurance Corporation, payable to the (City)(Town)(Village) of _____, or 5% Bid Bond issued by any surety authorized to do business in North Carolina. The deposit will be retained in the event of failure of the successful bidder to execute the contract within 10 days after award or to give satisfactory surety as required.
7. (*If applicable) The successful bidder must furnish a payment and performance bond on some surety company authorized to do business in North Carolina for the full amount of the contract price. Instead of such bond, the successful bidder may deposit money, government securities, or a certified check on a North Carolina bank or trust company, payable to the (City)(Town)(Village) of _____ for the full amount of the contract. The bond or deposit guarantees faithful performance of the contract and prompt payment by the contractor of all sums due for labor and materials.

FORM #18

Proposal

to the (City)(Town)(Village) of _____, North Carolina

The undersigned bidder has carefully examined the annexed form of contract, specifications and instructions to bidders and hereby declares that he or she will furnish the following items in a manner prescribed in the contract, specifications and instruction to bidders for the following prices:

<u>ITEM</u>	<u>UNIT PRICE</u>	<u>TOTAL PRICE</u>
1. _____	\$ _____	\$ _____
2. _____	\$ _____	\$ _____
	Total Bid	\$ _____
	Less Cash Discount	\$ _____
	Net Delivered Price \$	_____

GUARANTEED DELIVERY DATE _____

NAME OF MANUFACTURER _____

(*If applicable) The undersigned bidder encloses a deposit equal to 5% of the net price bid. This deposit consists of cash or a cashier's check issued by or a certified check drawn on a bank or trust company authorized to do business in North Carolina, or on a bank insured by the Federal Deposit Insurance Corporation, payable to the (City)(Town)(Village) of _____, or a 5% bid bond issued by any surety authorized to do business in North Carolina. The deposit will be retained by the (City)(Town)(Village) in the event that the undersigned, if he or she is the successful bidder, fails to execute a formal contract within ten days after notice of the award is given, or fails to give satisfactory surety as required in the Instructions to Bidders.

BID DEPOSIT: Cash, Cashier's Check, Certified Check or Bid Bond \$ _____

Name of Firm

Signature of Bidder and Title

Address of Bidder

FORM #19

AN ORDINANCE DELEGATING AUTHORITY TO PURCHASE APPARATUS, SUPPLIES, MATERIALS OR EQUIPMENT

BE IT ORDAINED by the (governing body) of the (City)(Town)(Village) of _____:

Section 1. Grant of Authority. Subject to the restrictions and conditions hereinafter provided, when purchasing apparatus, supplies, materials or equipment for use by the (City)(Town)(Village), in addition to such authority as may be provided by law and/or otherwise delegated by the (governing body), the (designated official) shall have authority to:

- (a) prepare, or cause to be prepared, plans and/or specifications setting forth a complete description of the item(s) to be purchased and the characteristics, features and/or requirements therefor;
- (b) include, where appropriate, in specifications for the item(s) to be purchased an opportunity for bidders to purchase as trade-in specified personal property owned by the (City)(Town)(Village);
- (c) advertise, or otherwise secure bids, for such item(s), if required under applicable law;
- (d) award contracts for the purchase of the item(s) and, where applicable, award contracts for the purchase of the item(s) and the sale of trade-in property;
- (e) reject bids;
- (f) readvertise to receive bids;
- (g) waive bid bond or deposit requirements;
- (h) waive performance and payment bond requirements; and,
- (i) execute and deliver the purchase contract(s).

Section 2. Report. At the first meeting of the (governing body) following the award of any contract(s) pursuant to this Ordinance, the (designated official) shall submit a report to the (governing body) summarizing the bids received and the contract(s) awarded. Such report shall be included in the minutes of the meeting at which it is received.

Section 3. Extent of Authority. Except in cases of sole source purchases pursuant to N.C.G.S. 143-129(f) and cases of purchases from established contracts pursuant to N.C.G.S. 143-129(g), unless otherwise provided by law, the provisions of this Ordinance

shall apply to the purchase of apparatus, supplies, materials or equipment requiring the estimated expenditure of municipal funds in an amount not to exceed _____ for any one item or group of similar items.

OR

Section 3. Extent of Authority. Except in cases of sole source purchases pursuant to N.C.G.S. 143-129(f) and cases of purchases from established contracts pursuant to N.C.G.S. 143-129(g), unless otherwise provided by law, the provisions of this Ordinance shall apply to the purchase of all apparatus, supplies, materials or equipment required for use by the (City)(Town)(Village).

Section 4. No Limitation of Other Authority. The provisions of this Ordinance are not intended to limit, restrict or revoke, in any manner, authority otherwise granted and/or delegated to the (designated official) by statute, law or action of the (governing body).

Section 5. Appropriation Required. No purchase shall be made by the (designated official) under authority of this Ordinance unless an appropriation for such purpose has been authorized in the annual budget, or by supplemental appropriation or budget appropriation amendment duly adopted by the (governing body).

Section 6. Application of General Statutes. In acting pursuant to the authority delegated by this Ordinance, the (designated official) shall comply with the requirements of Article 8, Chapter 143 of the North Carolina General Statutes, as from time to time amended, modified, supplemented, revised, or superseded, to the same extent as would have otherwise applied to the (governing body).

Section 7. Authority. This Ordinance is enacted pursuant to the provisions of N.C.G.S. 143-129(a).

Section 8. Effective Date. This Ordinance shall be effective upon adoption.

Adopted this _____ day of _____, 2____.

Mayor

ATTEST:

_____(City)(Town)(Village) Clerk

Approved as to Form:

_____(City)(Town)(Village) Attorney

FORM #20

Resolution Authorizing the Disposition of Certain Personal Property By Private Sale

WHEREAS, the (governing body) of the (City)(Town)(Village) of _____ desires to dispose of certain surplus property of the (City)(Town)(Village);

NOW, THEREFORE, BE IT RESOLVED by the (governing body) that:

(1) The following described property is hereby declared to be surplus to the needs of the (City)(Town): (describe property).

(2) The (designated official) is authorized to dispose of the described property by private sale at a negotiated price.

(3) (Optional) The minimum price to be accepted for the property is \$_____.

(4) The (City)(Town)(Village) Clerk shall publish notice summarizing this Resolution in accordance with G.S. 160A-267.

(5) The sale may be consummated not earlier than 10 days from the date of publication.

Adopted this _____ day of _____, 2_____.

FORM #21

Private Sale

Public Notice

The (governing body) of the (City)(Town)(Village) of _____ has authorized the (designated official) to dispose of the following property by private sale at a negotiated price:

(describe property)

(Optional) The minimum price to be accepted for the property is \$ _____.

The sale may be consummated no earlier than (insert date that is 10 days from the date of publication). Inquiries regarding the sale may be directed to (designated official) at (insert contact information).

This notice is published in accordance with G.S. 160A-267.

(City)(Town)(Village) Clerk

FORM #22

Resolution Authorizing the Advertisement for Sealed Bids for the Sale of Certain Property

WHEREAS, the (governing body) of the (City)(Town)(Village) of _____ desires to dispose of certain surplus property of the (City)(Town)(Village);

NOW, THEREFORE, BE IT RESOLVED by the (governing body) that:

1. The following described property is hereby declared to be surplus to the needs of the (City)(Town)(Village): (describe property).
2. The (designated official) is authorized and directed to receive on behalf of the (governing body) sealed bids for the purchase of the property described above.
3. Sealed bids may be submitted to the (City)(Town)(Village) Clerk's office to be opened on (specify date and time) at that location.
4. The (City)(Town)(Village) clerk shall cause a notice of this resolution to be published in accordance with G.S. 160A-268.
5. The (governing body) reserves the right to reject any or all bids.

Adopted this ____ day of _____, 2 ____.

FORM #23

Sale by Sealed Bids

Public Notice

The (governing body) of the (City)(Town)(Village) of _____ will accept sealed bids for the purchase of the following property:

(describe property)

Sealed bids may be submitted to the office of the (City)(Town)(Village) Clerk, (address), to be opened at that location on (specify time and date). The (governing body) reserves the right to reject any or all bids.

Inquiries regarding the sale may be directed to (designated official) at (insert contact information).

This notice is published in accordance with G.S. 160A-268.

(City)(Town)(Village) Clerk

FORM #24

Resolution Authorizing the Advertisement of an Offer to Purchase Certain Property

WHEREAS, the (governing body) of the (City)(Town)(Village) of _____ desires to dispose of certain surplus property of the (City)(Town)(Village);

NOW, THEREFORE, BE IT RESOLVED by the (governing body) that:

1. The following described property is hereby declared to be surplus to the needs of the (City)(Town)(Village): (describe property).

2. The (governing body) has received an offer to purchase for the sum of \$_____ the property described above. The person making the offer must deposit with the (City)(Town)(Village) Clerk a sum equal to five percent (5%) of his or her offer (specify form of deposit).

3. The (governing body) proposes to accept the offer unless a qualifying upset bid shall be made.

4. The (City)(Town)(Village) Clerk shall cause a notice of such offer to be published in accordance with G.S. 160A-269.

*5. (Alternate) Persons wishing to upset the offer must submit a sealed bid to the (City)(Town)(Village) Clerk within ten (10) days after publication of the notice. The person making the bid must deposit with the (City)(Town)(Village) Clerk a sum equal to five percent (5%) of his or her offer (specify form of deposit). At the conclusion of the ten (10) days, the clerk shall open the bids, and the highest such bid will become the new offer. If there is more than one bid in the highest amount, the first such bid received will become the new offer.

*5. (Alternate) Persons wishing to upset the offer must submit a written bid to the (City)(Town)(Village) Clerk within ten (10) days after publication of the notice. The person making the bid must deposit with the (City)(Town)(Village) Clerk a sum equal to five percent (5%) of his or her offer (specify form of deposit). Once a qualifying upset bid has been received, that bid will become the new offer.

6. If a qualifying upset bid is received, the (City)(Town)(Village) Clerk is directed to re-advertise the offer at the increased upset bid amount, and to continue with this process until a ten (10) day period has passed without receipt of a qualifying upset bid.

Adopted this _____ day of _____, 2____.

*Include either but not both.

FORM #25

Upset Bid

Public Notice

The (governing body) of the (City)(Town)(Village) of _____ has received an offer to purchase the following property for the sum of \$_____:

(describe property)

(Alternate*) Any person may submit a sealed upset bid to the (City)(Town)(Village) Clerk at (address) by 5:00 p.m. on (date that is 10 days from the publication of notice). At that time bids will be opened, and the highest such bid will become the new offer. If there is more than one bid in the highest amount, the first such bid received will become the new offer.

(Alternate*) Persons wishing to upset the offer must submit a written bid to the (City)(Town)(Village) Clerk at (address) by 5:00 p.m. on (date that is 10 days from the publication of notice). The person making the bid must deposit with the (City)(Town)(Village) Clerk a sum equal to five percent (5%) of his or her offer (specify form of deposit). Once a qualifying upset bid has been received, that bid will become the new offer.

If a qualifying upset bid is received, the new offer will be advertised and the process continued until a ten (10) day period has passed without receipt of a qualifying upset bid.

To qualify as an upset bid, the offer must be at least \$(insert amount that increases the amount of the bid by at least 10% of the first \$1,000 and 5% of the remainder), and must be accompanied by a bid deposit equal to 5% of the increased bid (indicate form of deposit).

Inquiries regarding the sale may be directed to (designated official) at (insert contact information).

This notice is published in accordance with G.S. 160A-269.

(City)(Town)(Village) Clerk

*Include either but not both.

FORM #26

Resolution Authorizing the Sale of Certain Real Property At Public Auction

WHEREAS, the (governing body) of the (City)(Town)(Village) of desires to dispose of certain surplus property of the (City)(Town)(Village):

NOW, THEREFORE, BE IT RESOLVED by the (governing body) that:

1. The following described property is hereby declared to be surplus to the needs of the (City)(Town)(Village): (describe property).
2. The (designated official) is authorized to receive on behalf of the (governing body) bids at public auction for the purchase of the described property.
3. The public auction will be held on (specify date) at (specify time), at (specify location). The terms of sale shall be (specify terms).
4. The (City)(Town)(Village) Clerk shall cause a notice of the public auction to be published in accordance with G.S.160A-270(a).
5. (Optional) The person making the highest bid shall deposit with the (City)(Town)(Village) Clerk an amount equal to 5% of the bid (specify form of the deposit). The deposit will be held until the (governing body) either rejects the bid or, if the (governing body) accepts the bid, until the closing of the sale. The deposit will be forfeited to the (City)(Town)(Village) if the highest bidder refuses to close the sale after the bid is accepted by the (governing body).
6. The highest bid shall be reported to the (governing body) and must be accepted or rejected by the (governing body) within 30 days of the report.

Adopted this _____ day of _____ 2____.

FORM #27

Public Auction of Real Property

Public Notice

The (governing body) of the (City)(Town)(Village) of _____, pursuant to a Resolution of (date) proposes to take bids at public auction on (specify date and time) at (specify location of sale) for the following real property:

(describe property)

The terms of the sale shall be (describe terms).

After all bids are received and the highest bid is reported to the (governing body), the (governing body) shall accept or reject the highest bid within 30 days.

(Optional) The person making the highest bid shall deposit with the (City)(Town)(Village) Clerk an amount equal to five percent (5%) of his or her bid (specify form of deposit). The deposit will be held until the (governing body) either rejects the bid or, if the (governing body) accepts the bid, until the closing of the sale. The deposit will be forfeited to the (City)(Town)(Village) if the highest bidder refuses to close the sale after the bid is accepted by the (governing body).

Inquiries regarding the auction may be directed to (designated official) at (insert contact information).

This notice is published in accordance with G.S. 160A-270.

(City)(Town)(Village) Clerk

FORM #28

Resolution Authorizing the Sale of Certain Personal Property at Public Auction

WHEREAS, the (governing body) of the (City)(Town)(Village) of _____ desires to dispose of certain surplus property of the (City)(Town)(Village);

NOW, THEREFORE, BE IT RESOLVED by the (governing body) that:

1. The following described property is hereby declared to be surplus to the needs of the (City)(Town)(Village):

(describe property)

2. The (designated official) is authorized to receive on behalf of the (governing body) bids at public auction for the purchase of the described property.

3. The public auction will be held on (specify date) at (specify time), at (specify location). The terms of sale shall be (specify terms*).

4. The highest bid, if it complies with the terms of sale, may be accepted by the (designated official) and the sale consummated.

5. The (City)(Town)(Village) Clerk shall cause a notice of the public auction to be published in accordance with G.S. 160A-270(b).

Adopted this _____ day of _____, 2____.

*Terms might include such things as the property is sold "as is" with no express or implied warranties; items purchased must be removed from the premises within a certain number of days of the sale; the successful bidder must pay the full purchase price in a certain form by a specified date and time, etc.

FORM #29

Public Auction of Personal Property

Public Notice

The (governing body) of the (City)(Town)(Village) of _____, pursuant to Resolution of (date), proposes to take bids at public auction on (specify date and time) at (specify location of sale) for the following personal property:

(describe property)

The terms of the sale shall be (specify terms).

The highest bid, if it complies with the terms of the sale, will be accepted by the (designated official) and the sale consummated.

Inquiries regarding the auction may be directed to (designated official) at (insert contact information).

This notice is published in accordance with G.S. 160A-270.

(City)(Town)(Village) Clerk

FORM #30

Resolution of Intent to Exchange Property

WHEREAS, the (governing body) of the (City)(Town)(Village) of _____ has received a proposal to exchange the (real) (personal) property of the (City)(Town)(Village) described below for the (real) (personal) property of (name of owner) described below:

(1) Property of (City)(Town)(Village) of _____: (describe property)

(2) Property of (name of owner): (describe property); and

WHEREAS, the estimated value of the property of the (City)(Town)(Village) of _____ is \$_____; the estimated value of the property of (name of owner) is \$_____.

WHEREAS,

*(Alternate) No other consideration will change hands.

*(Alternate) Other consideration in the amount of \$_____ will be (given) (received) by the (City)(Town)(Village).

WHEREAS, the (governing body) intends to consider authorizing such exchange at its regular meeting to be held on (date).

NOW, THEREFORE, BE IT RESOLVED by the (governing body) of the (City)(Town)(Village) of _____, that:

1. The (City)(Town)(Village) Clerk shall cause to be published at least 10 days prior to (date of regular meeting), a notice as required by G.S. 160A-271.

Adopted this _____ day of _____, 2_____.

*Include either but not both.

FORM #31

Exchange

Public Notice

The (governing body) of the (City)(Town)(Village) of _____ intends, at its regular meeting to be held at (time) on (date), to authorize the exchange of the (real) (personal) property of the (City)(Town)(Village) of _____ described below for the (real) (personal) property of (name of owner) described below:

1. Property of the (City)(Town)(Village) of _____: (describe property)
2. Property of (name of owner) : (describe property)

The estimated value of the property of the (City)(Town)(Village) of _____ is \$_____; the estimated value of the property of (name of owner) is \$_____.

*(Alternate) No other consideration will change hands.

*(Alternate) Other consideration in the amount of \$_____ will be (given) (received) by the (City)(Town)(Village).

At the meeting, all interested persons will be given an opportunity to be heard.

This notice is published in accordance with G.S. 160A-271.

(City)(Town)(Village) Clerk

*Include either, but not both.

FORM #32

Resolution Authorizing Exchange of Property

WHEREAS, at its meeting on (date), the (governing body) of the (City)(Town)(Village) of _____ adopted a resolution stating its intent to consider the exchange of certain (real) (personal) property of the (City)(Town)(Village) for certain other (real) (personal) property; and

WHEREAS, public notice of the intent of the (governing body) and of the time and place of the meeting was published as required by law; and

WHEREAS, at its regular meeting on (date), the (governing body) considered the exchange of property, and heard from all interested persons who appeared and expressed a desire to be heard; and

WHEREAS, the (governing body) has determined that the (City)(Town)(Village) will receive a full and fair consideration for its property in the exchange;

NOW, THEREFORE, BE IT RESOLVED by the (governing body) of the (City)(Town)(Village) of _____, that;

1. The Mayor and (City)(Town)(Village) Clerk are hereby authorized to execute (deeds and other) necessary documents in order to effect an exchange of the (real) (personal) property of the (City)(Town)(Village) described below for the (real) (personal) property of (name of owner) described below, and to deliver and receive appropriate (deeds and other) documents:

Property of the (City)(Town)(Village) of _____: (describe property)

Property of (name of owner): (describe property).

Adopted this _____ day of _____, 2_____.

FORM #33

An Ordinance Prescribing Procedures for Disposing of Personal Property Valued at Less Than \$30,000

BE IT ORDAINED by the (governing body) of the (City)(Town)(Village) of _____:

Section 1. The (designated official) is hereby authorized to dispose of any surplus personal property owned by the (City)(Town)(Village) of _____, whenever he or she determines, in his or her discretion, that:

- (a) The item or group of items has a fair market value of less than thirty thousand dollars (\$30,000.00);
- (b) The property is no longer necessary for the conduct of public business; and,
- (c) Sound property management principles and financial considerations indicate that the interests of the (City)(Town)(Village) would best be served by disposing of the property.

Section 2. The (designated official) may dispose of any such surplus personal property by any means which he or she judges reasonably calculated to yield the highest attainable sale price in money or other consideration, including but not limited to the methods of sale provided in Article 12 of G.S. Chapter 160A. Such sale may be public or private, and with or without notice and minimum waiting period.

Section 3. The surplus property shall be sold to the party who tenders the highest offer, or exchanged for any property or services useful to the (City)(Town)(Village) if greater value may be obtained in that manner, and the (designated official) is hereby authorized to execute and deliver any applicable title documents. If no offers are received within a reasonable time, the (designated official) may retain the property, obtain any reasonably available salvage value, or cause it to be disposed of as waste material. No surplus property may be donated to any individual or organization except by resolution of the (governing body).

Section 4. The (designated official) shall keep a record of all property sold under authority of this Ordinance and that record shall generally describe the property sold or exchanged, to whom it was sold, or with whom exchanged, and the amount of money or other consideration received for each sale or exchange.

Section 5. This ordinance is enacted pursuant to the provisions of N.C.G.S. 160A-266(c).

Section 6. This ordinance shall become effective upon adoption.

Adopted this ____ day of _____, 2____.

Mayor

ATTEST:

(City)(Town)(Village) Clerk

Approved as to Form:

(City)(Town)(Village) Attorney

FORM #34

Resolution of Intent to Lease or Rent Property

WHEREAS, the (Governing Body) of the (City)(Town)(Village) of _____ has determined that the (real)(personal) property of the (City)(Town)(Village) described below will not be needed by the (City)(Town)(Village) for (insert maximum term of lease, not to exceed ten years);

(describe property)

WHEREAS, the (Governing Body) desires to lease or rent the (real)(personal) property of the (City)(Town)(Village) described above; and

WHEREAS, the (Governing Body) intends to consider authorizing such lease or rental at its regular meeting to be held on the _____ day of _____, 2____;

NOW, THEREFORE, BE IT RESOLVED by the (Governing Body) of the (City)(Town)(Village) of _____ that:

1. The (City)(Town)(Village) Clerk shall cause to be published at least 10 days prior to (date of regular meeting), a notice as required by G.S. 160A-272.

2. At its regular meeting on (date), the (Governing Body) intends to authorize the lease or rental of the (real)(personal) property of the (City)(Town)(Village) described above.

Adopted this _____ day of _____, 2_____.

FORM #35

Lease or Rental

Public Notice

The (Governing Body) of the (City)(Town)(Village) of _____ intends, at its regular meeting to be held at (time) on (date), to authorize the lease or rental of the (real)(personal) property of the (City)(Town)(Village) of _____ described below for a term of _____ years:

(Describe Property)

The annual rental or lease payment for the (real)(personal) property of the (City)(Town)(Village) of _____ described above is \$_____.

(City) (Town)(Village) Clerk

NOTE: No public notice need be given for resolutions authorizing leases or rentals for terms of one year or less.

FORM #36

Resolution Authorizing the Lease or Rental of Certain Property

WHEREAS, at its regular meeting on the _____ day of _____, 2____, the (Governing Body) of the (City)(Town)(Village) of _____ adopted a resolution stating its intent to consider at its regular meeting to be held on the _____ day of _____, 2____, the lease or rental of certain (real)(personal) property of the (City)(Town)(Village); and

WHEREAS, public notice of the intent of the (Governing Body) and of the time and place of the meeting was published along with a description of the (real)(personal) property and a statement of the annual rental or lease payments, as required by law; and

WHEREAS, at its regular meeting on the _____ day of _____, 2____, the (Governing Body) considered the lease or rental of the property and desires to lease or rent the (real)(personal) property of the (City)(Town)(Village) described below;

NOW, THEREFORE, BE IT RESOLVED by the (Governing Body) that:

1. The following described property is hereby declared to be surplus to the needs of the (City)(Town)(Village):

(Describe Property)

2. The Mayor and the (City)(Town)(Village) Clerk are hereby authorized to execute a lease or rental agreement for the (real)(personal) property of the (City)(Town)(Village) described above, said lease or rental agreement to be for no longer than 10 years (including options to extend or renew).

3. The annual rental or lease payment for the (real)(personal) property of the (City)(Town)(Village) of _____ described above will be \$_____.

Adopted this _____ day of _____, 2____.

This page intentionally left blank.

CHAPTER 6

Elections

A. Regular Municipal Elections

Municipal elections are governed by the Uniform Municipal Election Law, found in G.S. Chapter 163, Articles 23 and 24. This law, enacted in 1971, supersedes any municipal election procedures previously established by charter.

Prior to January 1, 2002, municipalities with non-partisan elections were authorized to conduct their own elections. However, G.S. 163-280.1 abolished all municipal boards of election, except in a small handful of named municipalities. See Session Law 2001-274. Of the municipalities so authorized, only one (Morganton) still has a municipal board of elections. In all other municipalities, the county board of elections is now responsible for conducting municipal elections, and there are no longer any significant election-related duties for the municipal clerk. However, all clerks should be aware of the following general information.

Method of election. There are four methods of election authorized for cities, towns, and villages in North Carolina:

- Partisan primary and election - G.S. 163-291
- Nonpartisan plurality - G.S. 163-292
- Nonpartisan election and runoff - G.S. 163-293
- Nonpartisan primary and election - G.S. 163-294

The charter usually sets forth the method of election. (If it does not, see G.S. 163-290, and check for subsequent local acts of the General Assembly.) Keep in mind that the method of election is one aspect of the charter that may have been amended by ordinance using the procedures in G.S. 160A-101 through 160A-111 (see *Home Rule* below).

Eligibility of candidate. Only persons who are registered to vote in the municipality will be permitted to file notice of candidacy for election to municipal office. G.S. 163-294.2(b). The procedures for challenging the qualifications of a candidate are found in G.S. Chapter 163, Article 11B.

Residency. Questions sometimes arise as to whether a person is truly a resident of the municipality in which he or she wishes to vote or hold office. G.S. 163-157 provides election officials with guidelines and factors to consider in making a determination of residency.

Felony disclosure. G.S. 163-106 requires candidates to file with their notice of candidacy a statement as to whether he or she has ever been convicted of a felony. If so, the candidate must name the offense, date of conviction, date of restoration of citizenship rights, and county and state of conviction.

Filing period. Candidates for municipal office must file their notices of candidacy with the board of elections no earlier than 12:00 noon on the first Friday in July and no later than 12:00 noon on the third Friday in July preceding the election [G.S. 163-294.2(c)]. A candidate may not file for more than one municipal office at the same election. G.S. 163-294.2(f).

Filing fees. Filing fees for municipal primaries or elections must be set by the municipal governing body no later than the day before candidates are permitted to begin filing notices of candidacy. The governing body may set filing fees up to 1% of the annual salary of the office sought, but the fee may not be less than \$5.00. G.S. 163-294.2(e).

Absentee ballots. Absentee voting may be permitted in a municipal election, including a primary or general election or referendum, if the election is conducted by the county board of elections. The municipal governing body must adopt a resolution authorizing absentee ballots, if desired, no later than 60 days prior to an election. Any such resolution will remain effective for subsequent elections unless repealed no later than 60 days before an election. Copies of all resolutions must be filed with the State Board of Elections and the county board of elections within 10 days of adoption in order to be effective. G.S. 163-302.

Activating voters. When new territory is added to a municipality through annexation, a map must be provided to the local board of elections so that voters can be activated within that territory. G.S. 163-288.1.

Redistricting/delayed elections. If the municipality is divided into electoral districts, state law authorizes the governing body to revise the district boundaries from time to time. See G.S. 160A-23. In the election year following the federal decennial census, the General Assembly usually adopts special rules to allow municipalities to delay elections if necessary in order to complete redistricting. See e.g. G.S. 160A-23.1.

The National Council of State Legislatures is a good resource for information on redistricting law and cases interpreting the constitutional issues: www.ncsl.org/programs/legismgt/redistrict/redistlaw.htm. Please see Chapter 8 of this manual for more information on the census. The NC State Data Center is located within the NC Office of State Budget and Management and provides access to US Census data and technical assistance to data users. A wealth of information is also available from the U.S. Census Bureau.

U.S. Census Bureau
Charlotte Regional Office
901 Center Park Drive, Suite 106
Charlotte, NC. 28217-2935
(704) 424-6400 or 1-800-331-7360
www.census.gov/rocha/www/
www.census.gov/

Employee Political Activity. G.S. 160A-169 prohibits a municipal employee, while on duty or in the workplace, from soliciting or coercing contributions for political or partisan purposes. Employees may not use their official authority or influence to interfere with or affect the result of an election or nomination for political office. However, employees are free to attend political meetings and support candidates while off duty.

Resign to Run. A law requiring candidates to resign from their current office in order to run for another office was ruled unconstitutional by the North Carolina Supreme Court in 1992. The statute was subsequently repealed.

Information and Assistance. The State Board of Elections or your county board of elections can answer questions concerning municipal election procedures.

State Board of Elections
P.O. Box 27255
Raleigh, N.C. 27611-7255
Phone: (919) 733-7173 or toll-free 1-(866)-522-4723
www.sboe.state.nc.us

B. Special Elections

A local government cannot hold a special election or referendum unless specifically authorized to do so by the N.C. Constitution, the N.C. General Statutes, a charter provision, or other local act of the General Assembly. See G.S. 163-287. The most common special elections are discussed below.

Alcoholic Beverage Elections. Authorization to hold municipal alcoholic beverage elections is contained in G.S. 18B-600. Below are the basic requirements. Further information concerning alcoholic beverage elections, including forms, may be obtained from the League of Municipalities upon request. You may also wish to contact the ABC Commission for consultation on state laws and regulations pertaining to the sale of alcoholic beverages.

N.C. Alcoholic Beverage Control Commission
4307 Mail Service Center
Raleigh, N.C. 27699-4307
Phone: (919) 779-0700
Fax: (919) 662-3583
www.ncabc.com

Eligibility.

- **City ABC Store Elections.** Any municipality having at least 500 registered voters and located in a county that does not operate ABC stores may hold a special election to determine whether ABC stores may be operated within the corporate limits. G.S. 18B-600(d).

- City Malt Beverage or Unfortified Wine Elections. A municipality may hold a malt beverage or unfortified wine election only if (a) it is located in a county that has already held such an election; (b) the vote in the last county election was against the sale of that kind of alcoholic beverage; and (c) either the municipality has a population of 500 or more, or the municipality operates an ABC store. G.S. 18B-600(c).
- City Mixed Beverage Elections. A municipality may hold a mixed beverage election if it has at least 500 registered voters and either (a) it already operates a city ABC store; (b) it will hold an ABC store election at the same time as the mixed beverage election; or (c) it does not operate an ABC store but is located in a county that does, the county has previously held a mixed beverage election, and the vote in the last county election was against the sale of mixed beverages. G.S. 18B-600(e).
- Small City Mixed Beverage Elections. A municipality may hold a mixed beverage election if it has at least 300 registered voters and is located in a county with at least one other city that has approved the sale of mixed beverages. (This does not apply to Alamance, Avery, Burke, Caldwell, Carteret, Cleveland, Henderson, Onslow, Polk, Robeson, Rowan, Rutherford and Wilkes Counties.) G.S. 18B-600(e1).
- Small Town Mixed Beverage Elections. A municipality may hold a mixed beverage election if (1) it has at least 200 registered voters and (2) it is located in a county bordering the Neuse River and Pamlico Sound that has not approved the sale of mixed beverages, and that county has only one city that has approved the sale of mixed beverages. G.S. 18B-600(e3).
- Ski Resorts ABC Elections. A municipality that provides governmental services to as many as 1,000 snow skiers weekly during the normal ski season from December 1 through March 15 is authorized to hold malt beverage, unfortified wine and/or mixed beverage elections. G.S. 18B-600(e2).
- Multicounty/City ABC Elections. G.S. 18B-600(e4). A municipality located in two or more counties can hold a malt beverage or unfortified wine election if:
 - the municipality has a population of 500 or more, any county in which a portion of the municipality is located has already held such an election, and the vote in the last election was against the sale of that kind of beverage OR
 - the municipality has at least 500 registered voters and any county in which a portion of the city is located operates ABC stores or a municipality in either county in which the municipality is located operates an ABC store

- Small Resort Town ABC Elections. A municipality may hold a mixed beverage election if (1) it was incorporated after 1990 and before June 1, 1995, (2) it has at least 100 residents, (3) it is located in a county that borders another state and that has two other municipalities that have ABC stores, and (4) at the time of the election, it has boundaries that border or include land in three counties. G.S. 18B-600(e5).
- Railroad Passenger Terminus Location Elections. Any municipality that is the passenger terminus of a rail line that carries at least 60,000 passengers annually may hold a malt beverage or unfortified wine election. G.S. 18B-600(h).
- County Elections. Any county can hold a malt beverage, unfortified wine, or ABC store election. A county can hold a mixed beverage election only if it already operates at least one county ABC store or a county election on ABC stores is to be held at the same time as the mixed beverage election. G.S. 18B-600(a).
- Other ABC Elections. There are also provisions to allow township elections and beautification district elections. See G.S. 18B-600(f) and -600(g).

Procedures.

When a city is eligible to hold an election, the election may be called in either of two ways: (1) the governing body of a municipality makes a written request to the local board of elections to hold the election, or (2) the local board of elections calls for an election if one is requested by a petition signed by at least 35% of the voters registered in the municipality at the time the petition is initiated. G.S. 18B-601.

The specific requirements for a valid petition are set out in G.S. 18B-601(e). All requests for petitions should be directed to the local board of elections. There are generally no significant duties for the municipal clerk in connection with ABC elections.

"Home Rule" Election (Charter Amendment by Ordinance). The governing body of a city, town or village has a limited authority to amend the municipal charter by ordinance in order to implement certain types of charter changes. Charter amendments by ordinance are restricted to the options set out in G.S. 160A-101:

- (1) name of the municipality
- (2) style of the corporation (city, town or village)
- (3) style of the governing body (commissioners, aldermen or council)
- (4) term of office of governing body members (two or four years, staggered or not)
- (5) number of governing body members
- (6) mode of election (at large, district or ward system, or

- combination)
- (7) type of election (partisan, nonpartisan plurality, nonpartisan election and run-off, or nonpartisan primary and election)
- (8) selection of the mayor (elected by the voters or selected by the board from among its members)
- (9) form of government (mayor-council or council-manager)

Any charter amendment not authorized by G.S. 160A-101 must be accomplished by local act of the General Assembly.

Charter amendments by ordinance may be initiated either by the governing body or by citizen petition. There are a number of procedures set forth in the statutes regarding notice, public hearing, and other matters. Complete procedures and forms for charter amendments by ordinance are available from the League of Municipalities.

There are three ways in which a charter amendment by ordinance may be made subject to a referendum. These are:

- (1) The governing body may make a charter amendment by ordinance effective only if approved by a vote of the people. G.S. 160A-102.
- (2) If the governing body chooses not to make the ordinance subject to a vote of the people, ten percent of the qualified voters of the municipality (or 5,000 voters, whichever is less) may petition for a referendum. This petition must be filed with the municipal clerk not later than 30 days after publication of the notice of adoption of the ordinance and must bear the signature and residence addresses of the qualified petitioners. G.S. 160A-103.
- (3) Citizens may on their own accord bring forth proposed charter amendments and may initiate a referendum on the proposals by petition. The petition must contain the signatures and residence addresses of ten percent of the qualified voters of the municipality (or 5,000 voters, whichever is less). It must describe the proposed amendments. G.S. 160A-104.

Certified copies of ordinances amending the charter must be filed with the Secretary of State and the Legislative Library. G.S. 160A-111.

Department of the Secretary of State
Land Records Management Division
P.O. Box 29622
Raleigh, N.C. 27626-0622
(919) 807-2000
www.secstate.state.nc.us

Legislative Library
500 Legislative Office Building
300 N. Salisbury St.
Raleigh, N.C. 27603-5925
Phone: (919) 733-9390
www.ncleg.net/LegLibrary

C. Other Special Elections

Recall Elections. Although there is no provision under general state law for a "recall" election as to municipal officials, some charters contain recall provisions. The procedures for a recall election depend upon the specific provisions of the charter.

Initiative and Referendum Powers. There is no provision under general state law for citizens to initiate a referendum on a municipal ordinance. However, a few municipalities do have such initiative and referendum powers authorized by special charter provisions.

Property Tax Election. With an approving vote of the people, any municipality may levy property taxes for any purpose for which it is authorized by its charter or general law to appropriate money. Any property tax levy approved by a vote of the people is not counted toward the \$1.50 rate limitation. Procedures for calling and holding a property tax election are contained in G.S. 160A-209 (e). A municipality may also hold a referendum on whether to increase the \$1.50 tax rate limitation under G.S. 160A-209(f).

D. Voting Rights Preclearance Requirements

Reporting Requirements of the Federal Voting Rights Act of 1965. The Voting Rights Act of 1965, as amended, is a federal law enacted to protect the voting rights of racial and language minority group members and to prevent dilution of the voting strength of minorities. Section 5 of this Act requires all municipalities in 40 designated counties to report to the United States Department of Justice any legislative enactments or administrative practices that are adopted "affecting local elections." [See 42 U.S.C. Section 1973c]. Under the Act, the Attorney General has 60 days to make any objections to the local change. If no objection is made within this time, the local enactment affecting elections may be enforced.

The provisions of Section 5 require the reporting of any local changes, however minor, that affect elections. Included within the reporting requirements are charter amendments to adopt optional forms of government under G.S. 160A-101 through 160A-111, ordinances or administrative changes affecting ward or precinct boundaries, voter qualifications, election procedures, local acts of the General Assembly affecting elections, and all annexation ordinances. G.S. 120-30.9F

designates the municipal attorney as the official responsible for making the submission.

The law applies to municipalities in the following 40 counties:

Anson	Gates	Onslow
Beaufort	Granville	Pasquotank
Bertie	Greene	Perquimans
Bladen	Guilford	Person
Camden	Halifax	Pitt
Caswell	Harnett	Robeson
Chowan	Hertford	Rockingham
Cleveland	Hoke	Scotland
Craven	Jackson	Union
Cumberland	Lee	Vance
Edgecombe	Lenoir	Washington
Franklin	Martin	Wayne
Gaston	Nash	Wilson
	Northampton	

For more detailed information regarding compliance with the reporting requirements of this federal law, contact the League of Municipalities or the State Board of Elections. The League publication entitled *Mechanics of Annexation* contains a discussion of the preclearance requirements and procedures as well as forms for submission.

Contact information for preclearance submissions is as follows:

Mail via the U.S. Postal Service:

Chief, Voting Section
Civil Rights Division
Room 7254 – NWB
U.S. Department of Justice
950 Pennsylvania Ave., NW
Washington, DC 20530

Mail by overnight express service:

Chief, Voting Section
Civil Rights Division
Room 7254 - NWB
U.S. Department of Justice
1800 G. Street NW
Washington, DC 20006

You can call the Voting Section at (202) 307-2767 or toll-free at 1-(800) 253-3931. The website contains a great deal of information about Section 5 and of the Voting Rights Act and how to make a submission: www.usdoj.gov/crt/voting/sec_5/making.htm.

E. Bond Elections

One of the most critical elections for any municipality is an election to approve a proposed bond issue. G.S. Chapter 159, Subchapter IV specifies the requirements and procedures for the issuance and sale of bonds. Certain types of bonds can be issued without a vote of the people, while others require voter approval. G.S. 159-49.

The approval of the Local Government Commission is necessary for the issuance of bonds. If your municipality is considering borrowing money through the issuance of bonds with or without an election, early contact with the LGC staff (the State & Local Government Finance Division in the State Treasurer's office) is essential. Should the governing body decide to proceed with the issuance of bonds, the LGC, together with bond counsel, will guide the municipality through the various required steps and will assist the clerk and finance officer in complying with all statutory requirements.

N.C. Department of the State Treasurer
State & Local Government Finance Division
325 N. Salisbury Street
Raleigh, N.C. 27603-1385
(919) 807-2350
www.nctreasurer.com/dsthome/StateAndLocalGov

This page intentionally left blank.

CHAPTER 7

Land Use and Annexation

Municipal planning, zoning, subdivision regulation and annexation are often controversial. It is not the function of this manual to discuss the substantive law in these areas. The clerk, however, may have important responsibilities in connection with ordinances of this type, and some of the major duties are highlighted below.

Technical assistance with zoning, subdivision, annexation and other planning matters may be obtained from one of the five regional offices of the Division of Community Assistance. For information, contact the Division's Raleigh Office or check the link below:

Division of Community Assistance
N.C. Department of Commerce
4313 Mail Service Center
Raleigh, N.C. 27699-4313
(919) 733-2850

www.nccommerce.com/en/CommunityServices/CommunityPlanningAssistance/CommunityPlanningProgram/index.htm

Your local Lead Regional Organization (Council of Government) may also be able to provide technical assistance. A listing of these organizations is available at www.ncregions.org.

A. Zoning and Subdivision Regulation

Resources. The School of Government has several publications on zoning and land use regulation, including *Introduction to Zoning*; *Land Use Law in North Carolina*; *The Zoning Board of Adjustment in North Carolina*; *Board of Adjustment Workshop (set of videotapes)*; *Legal Aspects of Building Code Enforcement*; and *Development Review in Local Government: Benchmarking Best Practices*. The SOG also posts summaries of key legal issues related to the regulation of land use and development on its website at www.sog.unc.edu/organizations/planning/legalinfo.html.

Notice of Public Hearing. The governing body must hold a public hearing before adopting or amending any ordinance concerning zoning, subdivision regulation, historic districts, historic property, minimum housing codes, or other regulatory ordinances authorized by G.S. Chapter 160A, Article 19. A notice of the public hearing must be published once a week for two successive calendar weeks in a newspaper having general circulation in the area. The notice must be published the first time not less than 10 days nor more than 25 days before the date of the hearing. To determine when the notice must be published, exclude the first day of publication and include the day on which the hearing is to be held. [G.S. 160A-364]

The notice of the public hearing should contain the following information:

1. The date, time and place of the public hearing.
2. The purpose of the hearing, including an accurate description of the proposed ordinance or amendments to the ordinance or zoning map, and a statement identifying the property or area to be affected.
3. For a hearing on a development agreement, the notice must specify the location of the property involved and describe the land uses proposed. The draft agreement must be complete and available for inspection at the time of publication of the notice of the hearing.

There is no required form for this notice, but it must be designed to fairly inform those persons whose rights are affected. For a sample notice, see Form #37.

First Class Mail Notice. For *zoning map amendments*, the city must provide notice by first class mail to the owner of the parcel of land to which the amendment would apply, as well as to owners of abutting parcels. Using addresses listed on the county's tax abstracts, the notice must be deposited in the mail at least 10 but not more than 25 days prior to the date of the public hearing. The person who mails the notice must certify to the council that he or she has done so, and the certification is deemed conclusive in the absence of fraud. G.S. 160A-384(a).

Publication Option. There is an alternative to the mail notice requirement if a zoning map amendment directly affects more than 50 properties, owned by a total of at least 50 different property owners. In that case, the city can choose expanded published notice instead of first class mail notice.

If it chooses the publication option, the city must publish and post notice instead of providing mail notice. Notice of the public hearing must be published once a week for two successive calendar weeks in a newspaper of general circulation in the area, with the first publication not less than 10 days nor more than 25 days before the date of the hearing. The published notice must be at least one-half of a newspaper page in size. G.S. 160A-384(b)]. In addition to the published notice, one or more prominent signs must be posted on the site proposed for rezoning or on an adjacent public street or right of way. (If multiple parcels are included in the zoning map amendment, it is not necessary to post each parcel, as long as sufficient signs are posted in the area to provide reasonable notice to interested persons.

Any property owners residing outside the newspaper circulation area, according to the address on the most recent property tax listing of the affected property, must still be notified by first-class mail and the person mailing these notices must certify that he or she has done so.

Certified Mail Notice to Area Near Military Base. If the adoption or amendment of the ordinance would result in changes to the zoning map or would change or affect the permitted land uses of land located five miles or less from the perimeter boundary of a military base, the city must provide notice to the military base. Notice must be sent to the base commander by certified mail, return receipt requested, not less than 10 days nor more than 25 days before the date of the public hearing. [160A-364]

Protest Petitions. G.S. 160A-385 allows property owners in an area proposed for a zoning map change--or those immediately adjacent to the property--to protest the change. A protest petition must be signed by the owners of either (i) 20% or more of the area included in a proposed change, or (ii) 5% of a 100-foot wide buffer extending along the entire boundary of each discrete or separate area proposed to be rezoned. Street right of way is not considered in computing the 100-foot buffer, as long as the right of way is 100 feet wide or less. When less than an entire parcel of land is subject to a proposed zoning map amendment, the 100-foot buffer is measured from the property line of the parcel. In the absence of evidence to the contrary, the city can rely on the county tax listing to determine the owners of potentially qualifying areas.

If a valid protest petition is filed, the zoning map amendment cannot become effective unless it receives a favorable vote of three-fourths of all the members of the governing body (not just three-fourths of those present). Vacant positions on the governing body and members excused from voting are not counted as members for purposes of calculating the supermajority.

The provision for protest petitions is not applicable to any amendment that initially zones property added to the territorial coverage of the ordinance as a result of annexation or otherwise. It also doesn't apply to an amendment to adopted special use or conditional use districts or to conditional districts, if the amendment does not change types of permitted uses, increase approved residential density, increase the total approved size of non-residential development, or reduce the size of buffers or screening. G.S. 160A-385.

State law describes certain procedures that must be followed in submitting protest provisions. The petition must be in writing, must state that the signers protest the proposed rezoning, and must be signed by the property owners of the required percentage of affected property. G.S. 160A-386. If property is owned jointly by husband and wife, both must sign.

The petition must be received by the municipal clerk at least two normal working days (excluding Saturdays, Sundays, and legal holidays) before the date established for the public hearing on the proposed zoning amendment. This requirement is to allow the clerk enough time to determine whether the petition is accurate and sufficient. The municipality may by ordinance require that the petition be on a form prescribed by the municipality and that it include certain information necessary to determine whether the petition is accurate and sufficient. G.S. 160A-386.

Voting/Conflict of Interest. The land use statutes contain special rules on conflict of interest.

Map or text amendments. G.S. 160A-381 prohibits a councilmember from voting on any zoning map or text amendment when the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. Members of appointed boards providing advice to the city council are prohibited from voting on recommendations regarding any zoning map or text amendment when the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member.

Quasi-judicial decisions. G.S. 160A-388 prohibits a member of the board of adjustment (or any other body exercising the functions of a board of adjustment) from participating in or voting on any quasi-judicial matter in a manner that would violate an affected person's constitutional right to an impartial decision maker. Impermissible conflicts include, but are not limited to, a member having a fixed opinion before hearing the matter that is not susceptible to change; undisclosed ex parte communications; a close familial, business, or other relationship with an affected person; or a financial interest in the outcome of the matter.

Vested Rights. There are several methods for a landowner to establish a "vested right," which allows the landowner to continue a development activity under previous land use regulations without complying with new or amended regulations.

Common law vested rights. Case law in North Carolina provides that a landowner may obtain a vested right by making substantial expenditures in good faith reliance on a specific, individual approval of a project. Substantial expenditures can include the expenditure of money, time and/or labor. Expenditures must be made in "good faith," so the landowner cannot deliberately act with undue haste in an attempt to avoid compliance with new regulations. The expenditures must be made in reliance on an approval of an individual project, such as a building permit, special or conditional use permit, certificate of zoning compliance, or preliminary plat approval. Finally, the landowner must demonstrate that he or she would suffer undue loss or harm if required to comply with the new or amended regulation.

Statutory vested rights. There are also statutory methods for obtaining a vested right.

- *Building permit.* G.S. 160A-385(b) provides that any zoning ordinance change does not apply if the property owner possesses a valid building permit. The building permit expires in 6 months if work is not commenced or if the work is started but discontinued for a 12-month period (see G.S. 160A-418). If the building permit expires or is revoked, the vested right expires.

- *Site specific development plan.* G.S. 160A-385.1 also provides for establishing a vested right based on local government approval of a site specific development plan or phased development plan. Each local government may determine by ordinance what will constitute a site specific development plan in that jurisdiction (e.g. subdivision plat, preliminary development plan, special use permit). A vested right established thereby has a duration of two years, and the local government may extend it for up to five years.
- *Development agreement.* G.S. Chapter 160A, Article 19, Part 3D authorizes municipalities to enter into individual development agreements by ordinance after notice and public hearing. There are a number of criteria that the agreement must meet specified in the statute. One of these is a development plan that describes the proposed development of the property in some detail. G.S. 160A-400.26 provides that, in general, the land use laws applicable to development of the property are those in force at the time the agreement is executed. There are some exceptions specified in that statute, as well as provisions to deal with a change of jurisdiction in G.S. 160A-400.29.

State administrative rules. Some of the state's environmental regulations affecting land use may also contain vested rights provisions.

Quasi-Judicial Hearings. Note that for quasi-judicial decisions (e.g. variances, special and conditional use permits, zoning appeals), there are special requirements.

Notice. The ordinance will determine any notice or advertising requirements. Unless the ordinance mandates otherwise, only notice to the parties is required. However, it is a good idea to provide notice to adjacent property owners as well, and many ordinances require this or other additional notices.

Testimony. In a quasi-judicial hearing, the board functions much like a court. Therefore witnesses presenting testimony at quasi-judicial hearings must be under oath. The chair of the board of adjustment or any member temporarily acting as chair is authorized to administer oaths to witnesses. Hearsay and non-expert opinion testimony should be avoided.

Record of the Proceedings. A verbatim transcript or a tape recording of the proceedings should be kept, along with any exhibits.

Findings. The ordinance will generally contain a list of the findings that the board must make. The board must specify in writing what it determines the facts to be and must document the basis for its decision. There must be substantial, competent, material evidence in the record to support the findings of fact.

Planning Board. See G.S. 160A-361 for general provisions on establishing a planning board. G.S. 160A-387 requires that any initial zoning ordinance be referred to the planning board for review and recommendation. Subsequent to initial adoption of the zoning ordinance or zoning map, all proposed amendments are to be submitted to the planning board for review and comment. If no written report is received within 30 days of referral, the governing board can proceed to consider the amendment without a planning board report. The governing board is not bound by the planning board's recommendations.

Board of Adjustment. G.S. 160A-388 authorizes the appointment of a board of adjustment to hear and decide appeals from decisions of the official administering the zoning ordinance. The board may also be authorized to issue variances and special or conditional use permits, interpret zoning maps, rule upon disputed lot lines and district boundaries, or address other matters in administration of the ordinance. Many decisions of the board require a four-fifths majority—such as granting a variance, a special or conditional use permit, or overruling a determination of the zoning administrator. If there are no qualified alternates available, vacant seats and members disqualified from voting on a quasi-judicial matter are not counted when determining the supermajority.

Extraterritorial Jurisdiction. G.S. 160A-360 allows a municipality to exercise zoning authority and other Article 19 land use planning powers within a defined area outside its corporate limits. The general rule is that any size municipality may extend an ETJ up to one mile beyond city limits. With county approval, municipalities between 10,000 and 24,999 in population may extend the ETJ up to two miles and cities 25,000 or more may extend up to three miles. (Local acts of the General Assembly may modify these distances.) Municipalities may not extend extraterritorial powers into any area in which the county is performing all three of the following functions: (1) the county has adopted and is enforcing a zoning ordinance, (2) the county has adopted and is enforcing subdivision regulations, and (3) the county is enforcing the state building code. However, a municipality may do so where the county is not exercising all three powers or when the municipality and county have agreed upon the area within which each will exercise its powers.

Notice and Public Hearing. To exercise ETJ authority, the governing body adopts an ordinance specifying the areas to be included. Before adopting the ordinance, however, the board must hold a properly advertised public hearing, just as for any other zoning change. Notice of the hearing should be published as specified in G.S. 160A-364 (see *Notice of Public Hearing* above). The city must also notify the owners of all parcels of land proposed for inclusion in the ETJ. This notice is sent by first-class mail to the last addresses listed for the affected property owners in the county tax records. The notice must be mailed at least four weeks prior to the public hearing, and the person mailing the notices must certify to the governing body that they were sent by first-class mail. The notice must inform the property owner of the effect of the ETJ extension, the owner's right to participate in

the public hearing, and the right of all residents of the area to apply to serve as a representative on the planning agency and board of adjustment. G.S. 160A-360(a1).

Boundaries and Map. The boundaries of the extraterritorial area are to be defined, to the extent feasible, in terms of geographical features identifiable on the ground. The description of the extraterritorial area must be drawn on a map, set forth in a written description, or shown by a combination of these methods. The description and/or map must be recorded in the office of the register of deeds of each county in which any portion of the area lies. G.S. 160A-360(b).

Zoning of the ETJ. Once extraterritorial jurisdiction has been established, the city may take appropriate steps to zone the area and exercise the other desired planning powers. If an area to be added to the ETJ is currently being regulated by the county, the county's regulations remain in effect until the city either adopts its own regulations, or 60 days elapses, whichever is sooner.

Representation in the ETJ. State law requires a municipality that exercises extraterritorial zoning or subdivision powers to provide for proportional representation of ETJ residents on its planning agencies. An advisory board established prior to July 1, 1983 to provide ETJ representation will fulfill this requirement. Otherwise, the city must provide in its ordinance a means of appointment of residents of the extraterritorial area to the planning or zoning board and the board of adjustment. The actual appointments are made by the board of county commissioners following a public hearing. However, if the county commissioners fail to make the appointments within 90 days after receiving a resolution from the city council requesting that they be made, the city council can make them. The governing body may provide in the zoning ordinance that the extraterritorial representatives function only with respect to matters within the extraterritorial area, or that those representatives may vote on all matters. If the extraterritorial area lies in more than one county, there must be extraterritorial representation from each county. G.S. 160A-362.

Notification to Department of Transportation. State law requires that municipalities give the N.C. Department of Transportation written notice of the establishment or revision of any commercial or industrial zones or regulations on property lying within 660 feet of the right-of-way of interstate or primary highways. Notice should be sent by registered mail to DOT within 15 days after the effective date of the zoning action. G.S. 136-136; G.S. 136-153.

State Road Maintenance Engineer
N.C. Department of Transportation
1567 Mail Service Center
Raleigh, 27699-1567
(919) 733-3725
www.ncdot.org/doh

Subdivision Regulation. Municipalities may by ordinance regulate the subdivision of land both within the corporate limits and within a duly adopted extraterritorial planning jurisdiction. The subdivision ordinance may require that a plat be prepared, approved, and recorded with the municipality whenever any subdivision of land takes place and before lots may be sold. It may address construction of community service facilities, coordination of streets, reservation of open space and recreational land, and various other matters. G.S. 160A-371 and 160A-372. The definition in G.S. 160A-376 includes several exceptions to the applicability of a subdivision ordinance.

Land Use Requirements Imposed by Environmental Rules. State or federal environmental regulations may require local governments to adopt certain types of development controls, such as buffers and limitations on built-upon area. Examples of this include the state's Water Supply Watershed Protection requirements, state rules for individual river basins, and state and federal stormwater programs. More information on these provisions is available from the N.C. Department of Environment and Natural Resources, Division of Water Quality, <http://h2o.enr.state.nc.us/>, and from the School of Government, www.efc.unc.edu/index.html.

Limitations on Land Use Authority. Statutes, case law, or constitutional principles may establish limits on the zoning of certain types of properties and land uses, including the following:

- *Agricultural uses.* Bona fide farms are generally exempt from county zoning, but they are not exempt from city zoning. Cities that wish to provide some flexibility to farming operations are authorized to establish voluntary agricultural districts under G.S. 160A-383.2.
- *Amateur radio antennas.* G.S. 160A-383.3 requires city ordinances regulating the placement, screening, or height of amateur radio antennas or support structures to reasonably accommodate them and use the minimum practicable regulation necessary. The ordinance may not restrict amateur radio antennas or support structures to heights of 90 feet or lower unless necessary to achieve a clearly defined health, safety or aesthetic objective.
- *Bars and other alcoholic beverage establishments.* G.S. Chapter 18B provides a uniform system of state control over the sale of alcoholic beverages, and G.S. 18B-100 prohibits local governments from establishing different rules. Case law interpreting these statutes holds that local zoning restrictions on the location and operation of facilities that have ABC permits are preempted. Once a facility obtains an ABC permit, local zoning may not restrict the availability of alcohol, limit business hours, or otherwise prohibit what would be lawful under the state ABC

laws. Pursuant to G.S. 18B-901, the ABC Commission will notify the city of a permit application for a location within city limits, and the city has 15 days to file written objection to issuance of the permit. The city's written comments may include information regarding the inconsistency of the location with existing land use regulations as well as other concerns such as an overabundance of ABC establishments in the neighborhood, parking and traffic issues, etc. The ABC Commission is required to consider the city's recommendation but is not bound by it.

- *Family and group care homes.* G.S. 168-22. A family care home with six or fewer handicapped person is deemed a residential use and must be a permissible use in all residential districts. The statute allows a minimum separation requirement between family care homes of up to one-half mile. (However, it is unclear whether federal laws prohibiting discrimination against the handicapped would preclude such spacing requirements.)
- *Forestry.* G.S. 160A-458.5 prohibits cities from regulating certain forestry activities but it specifically preserves the authority to regulate activity associated with development of forest lands.
- *Historic areas.* G.S. Chapter 160A, Article 19, Part 3C authorizes the designation of historic districts subject to the procedures specified therein.
- *Manufactured housing.* G.S. 160A-383.1. Municipalities may not adopt or enforce zoning regulations that have the effect of excluding manufactured homes from the entire zoning jurisdiction.
- *State buildings and land.* G.S. 160A-392 authorizes cities to apply their zoning requirements to the erection, construction and use of buildings by the State of North Carolina and its political subdivisions. However, land owned by the state may not be included in an overlay district or special or conditional use district without state approval.
- *Wireless telecommunications facilities.* G.S. Chapter 160A, Article 19, Part 3E sets parameters for city review of applications to site cell towers and to collocate wireless facilities on existing structures.

Moratoria. G.S. 160A-381(e) authorizes municipalities to adopt temporary moratoria on development approval under certain circumstances. A moratorium is adopted by ordinance and requires notice and a public hearing before adoption, except in cases of imminent and substantial threat to public health or safety. A moratorium of 60 days or less requires

publishing of notice in a newspaper of general circulation in the area not less than seven days before the date of the public hearing. A moratorium of 61 days or more, or an extension that makes the total duration of the moratorium at least 61 days, is subject to the same notice and hearing requirements as any other zoning ordinance or amendment (see *Notice of Public Hearing* above). The statute contains specific items that must be included in any moratorium ordinance.

B. Annexation

Resources. Annexation is a complex process and its many procedures are beyond the scope of this publication. The League of Municipalities has available two *Mechanics of Annexation* publications--one for municipalities of 5,000 or more and one for municipalities under 5,000--that outline the statutory requirements for annexation and contain sample forms. Population for purposes of annexation authority is determined as of the last federal decennial census. The School of Government also has a three-volume series entitled *Annexation Law in North Carolina*. Please consult these publications for detailed information on the annexation process.

Methods. There are five methods by which municipalities may annex territory into their corporate limits. These are: (1) annexation by action of the General Assembly, (2) 100% petition for voluntary contiguous annexation, (3) 100% petition for voluntary "satellite" annexation, (4) city-initiated annexation subject to development standards and service requirements, and (5) resolution for annexation of property owned by the municipality. The 1983 amendments to the annexation laws repealed all local acts that previously restricted the annexation authority of various cities and towns, thus making the statutory annexation methods uniformly applicable to all municipalities for the first time since 1959. The former statutory provisions for annexation by referendum were repealed.

There is a possibility that the application of these procedures to your municipality has been modified by local act of the General Assembly adopted after 1983. If you are unsure which provisions are applicable to your jurisdiction, please consult with your municipal attorney.

- (1) **Action of the General Assembly.** Occasionally the General Assembly directly annexes territory to a municipality by the enactment of a local bill. The General Assembly is also the only entity that has the power to "de-annex" property once it is part of a municipality.
- (2) **100% Petition for Voluntary Annexation--Contiguous Area.** If 100% of the owners of an area contiguous to the boundaries of a municipality petition the governing body for annexation, the area may be annexed by ordinance.

The petition must be prepared in the form described in G.S. 160A-31. The petition must describe the area proposed for annexation and be signed by all owners of real property in the area. When property is owned jointly by husband and wife, both must sign. The petition must also contain the address of each property owner and, if a municipal ordinance so provides, the petition must include a declaration of any zoning vested rights.

When a petition is received, the governing body directs the clerk to investigate the sufficiency of the petition. After making the investigation, the clerk must certify the results to the governing body.

- (3) **100% Petition for Voluntary Annexation--"Satellite" Area.** The governing body of a municipality that is eligible for Powell Bill funds may annex by ordinance certain areas whose boundaries do not at any point touch its primary corporate limits. These non-contiguous areas are commonly known as "satellites."

G.S. 160A-58.1 specifies that all of the owners of property within the proposed satellite area (with the exception of tax-exempt property, railroad companies, public utilities, and electric or telephone membership corporations) must sign the petition. When property is owned jointly by husband and wife, both must sign. If a municipal ordinance so provides, the petition must also include a declaration of any zoning vested rights.

The petition must describe the proposed area by metes and bounds and have attached a map showing the proposed satellite area in relation to the primary corporate limits.

When a petition is received, the governing body directs the clerk to investigate the sufficiency of the petition. After investigation, the clerk must certify to the governing board that the petition meets the requirements of the statutes. [G.S. 160A-58.2] G.S. 160A-58.1 lists the standards that a satellite area must meet.

- (4) **City-Initiated Annexation Subject to Development Standards and Service Requirements.** The statutes provide for unilateral annexation by the municipality, subject to minimum development standards and service requirements. There are separate procedures for municipalities of less than 5,000 population (see G.S. 160A-33 through 160A-42) and cities of 5,000 or more (see G.S. 160A-45 through 160A-54). The process is very

detailed, and the steps and requirements as set out in the statutes and the League's annexation book should be followed meticulously. Your municipal attorney should be involved at an early stage of the proceedings.

- (5) **Annexation of Municipal Property.** To annex either contiguous or satellite property owned by the municipality, the governing body must adopt a resolution of intent to annex, hold a public hearing, and then proceed to adopt an ordinance to annex the property. [G.S. 160A-31 and 160A-58.7]

Clerk's Role. The clerk may be involved in many aspects of the annexation proceedings. Some of the primary duties for the clerk in an annexation are to certify the sufficiency of petitions, publish and mail notices, and file the ordinances and maps as discussed below.

Certifying of Petitions. In a voluntary annexation the clerk is charged with the responsibility of certifying the sufficiency of the petition. This will involve determining that all owners of the property (other than those exempted by statute from signing) have signed the petition and included an address; verifying that the property is either contiguous to the city limits or meets the statutory standards of a satellite, as appropriate; determining that the description of the property is adequate and, where required, that a map is included; and making sure that any other requirement that the city itself imposes on annexation petitions is met. Assistance of the city attorney or other staff may be needed in some cases.

Notices. Each of the statutory methods of annexation requires a public hearing, and the city-initiated method requires an additional public informational meeting. The clerk will likely be involved in publishing and mailing notices of any annexation public hearings. There are also requirements for notification of rural fire departments and solid waste firms serving the annexation area under certain circumstances. Please consult the Leagues' *Mechanics of Annexation* for detailed discussion and samples of the required notices.

Filing of Ordinances and Maps. The current municipal boundaries, including satellite corporate limits, must at all times be drawn on a map, set out in a written legal description, or shown by a combination of the two. This delineation must be filed and retained permanently in the office of the municipal clerk. [G.S. 160A-22] It is important to update the map and legal description after each annexation.

Following completion of any annexation proceeding, an accurate map of the annexed territory, together with a duly certified copy of the annexation ordinance, must be recorded in the office of the register of deeds of the county or counties in which the annexed territory is located, and in the Department of the Secretary of State pursuant to G.S. 160A-29. In addition,

a copy of the map must be delivered to the city or county board of elections, as appropriate (G.S. 163-288.1).

Filings with the Secretary of State are due no later than 30 days following the effective date of the annexation ordinance. Ordinances should have an identifying number. The Secretary of State also has a website devoted to municipal annexation maps and ordinances.

N.C. Department of the Secretary of State
Annexation Officer
Land Records Management Division
P.O. Box 29622
Raleigh, N.C. 27626-0622
Phone: (919) 807-2206
Fax: (919) 807-2210
www.secretary.state.nc.us/land/municipal_annexations.htm

Although G.S. 47-30 establishes size and other requirements for maps recorded with the register of deeds, there is a specific exemption from these rules for maps of municipal boundaries and annexation areas [see G.S. 47-30(j)]. However, clerks may still wish to follow the specifications set out in the statute.

Municipalities make an annual report to the Office of State Budget and Management providing information about all annexations that became effective during the fiscal year. The state uses this information in making its annual estimate of the municipality's population for purposes of per capita revenue distribution. Information should also be sent to the U.S. Census Bureau, which has a separate boundary survey. Please see Chapter 8 of this manual for more information.

It is also a good idea to send annexation information to the county tax assessor and to electric and gas companies that serve the annexed area. You might also consider sending information to your local cable company, telephone companies, and DOT division office.

Reporting Requirements of the Federal Voting Rights Act (Preclearance). The courts have held that the provisions of Section 5 of the federal Voting Rights Act require the reporting of any local changes, however minor, that affect elections. Included within the reporting requirements are all annexation ordinances and annexation acts of the General Assembly. For a list of the 40 counties subject to the Act see Chapter 6 of this manual. Information regarding compliance with the reporting requirements of this federal law is included in the League's annexation book.

FORM #37

Notice of Public Hearing

Proposed Amendment to the Zoning Ordinance

(CITY) (TOWN) (VILLAGE) OF _____, NORTH CAROLINA

Notice is hereby given that a Public Hearing will be held by the (governing body) of the (City)(Town)(Village) of _____ at [location] on [day of week], [date], at [time] (a.m.)(p.m.), for the purpose of considering an amendment to the zoning ordinance. The proposed amendment is as follows:

(Insert description of the amendment and identify the property or area affected).

The public is urged to be present for this important meeting. A copy of the proposed ordinance and map are on file in the (City) (Town) (Village) Clerk's Office for inspection by all interested citizens.

(City) (Town) (Village) Clerk

[See page 36 for sample ADA language that may be added to this notice.]

CHAPTER 8

State and Federal Reports

Listed below are some of the major state and federal reports that must be processed during each fiscal year. In many municipalities the completion and filing of such reports is one of the responsibilities that is placed upon the clerk. The contents of some of these reports and their due dates may vary from time to time. For exact due dates for the current fiscal year, please consult the Municipal Calendar prepared and distributed each year by the League of Municipalities.

A. Annexation and Boundary Surveys

NC Boundary and Annexation Survey. Municipalities must make an annual report to the Office of State Budget and Management providing information about all annexations that became effective during the fiscal year. The state uses this information in making its annual estimate of the municipality's population for purposes of per capita revenue distribution. Every tenth year, the estimate begins with the federal census figures. These figures are then adjusted in succeeding years for annexations and natural population growth. Forms are usually mailed to each municipality in late June, with a late July deadline for submission. It is important to make the submission in a timely manner so that the most current information is available to the state in making its population estimates for purposes of revenue distribution. Information that is submitted late may be rejected and the municipality will have to wait until the following year to be credited with any additional population.

Office of State Budget and Management
20320 Mail Service Center
Raleigh, N.C. 27699-0320
(919) 807-4756
www.osbm.state.nc.us

Please note that the state and federal boundary surveys are separate and distinct. The types of information gathered, the timelines, and the use of the information are different. Providing information to one does not mean that the information will be conveyed to the other.

US Census Boundary and Annexation Survey. The federal decennial census is a count of every person living in the United States that is performed every ten years as mandated by the US Constitution. Among other things, census data is used to apportion Congressional seats among the states and to distribute billions in federal funds. The census also forms the basis for population estimates that the state uses to distribute shared revenues to local governments.

The U.S. Census Bureau conducts an annual Boundary and Annexation Survey (BAS) to collect information about defined geographic areas, including incorporated municipalities. The BAS is used to update information about the legal boundaries and names of all governmental units in the United States. Letters are mailed to designated contacts in September of each year, and materials are mailed in January. The deadline for response is April 1 of each year.

US Census Bureau
National Processing Center
ATTN: BAS Returns, Building 63A
1201 East 10th Street
Jeffersonville, IN 47132
Email: geo.bas@census.gov

The U.S. Census Bureau also has a program for Local Update of Census Addresses (LUCA) that allows local governments the opportunity to review and update the census address list for their communities: www.census.gov/geo/www/luca2010/luca.html.

B. Beer and Wine Data Form

Distribution Data Verification. Municipalities where malt beverages and wine are legally sold can share in an annual distribution of excise tax proceeds (G.S. 105-113.82). Municipalities that have not held a referendum on such sales can also receive a distribution if sales are legal within the county. To qualify, a Distribution Data Verification Form must be filed annually with the Department of Revenue's Corporate, Excise and Insurance Tax Division. The Department mails the form to each local government in February, and the report is due back by March 15.

Department of Revenue
Corporate, Excise and Insurance Tax Division
P.O. Box 25000
Raleigh, N.C. 27640
(919) 733-8510
www.dor.state.nc.us

C. Construction Reports

HUBSCO Reporting. All public entities are required to submit minority business utilization and construction project data to the N.C. Office for Historically Underutilized Businesses on a semiannual basis [G.S. 143-128.3 and -131]. The HUBSCO Construction Reporting System is a web-based application for the submission of this data. Information on the system and how to use it can be accessed at the website below. If the municipality did not have any construction projects within the reporting period, a “no projects” form should be submitted into the system.

N.C. Department of Administration
Office for Historically Underutilized Businesses
1336 Mail Service Center
Raleigh, N.C. 27699-1336
919-807-2330
www.doa.state.nc.us/hub

CM at Risk Report. If the municipality uses the construction manager at risk method, it must report to the Secretary of Administration information including a detailed explanation of why the particular construction manager was chosen; the terms of the contract; a list of other firms considered and their proposed fees; and the form of bidding used by the construction manager on the project. G.S. 143-64.31(b). The report should also contain the owner-approved minority business outreach plan of the construction manager selected and documentation of the means by which minority businesses were contacted to solicit their participation in bid proposals if the 10% goal is not reached. See 01 NC Administrative Code 30I.0306. (The code is available online at <http://reports.oah.state.nc.us/ncac.asp>). The report is submitted to the Office of Historically Underutilized Businesses.

Effectiveness and Cost-Benefit Report. On or before April 1 of each year, the municipality must send a report to the Secretary of the Department of Administration on the effectiveness and cost-benefit of utilization of each of the construction methods authorized in G.S. 143-128(a1) used by the municipality. The report is to be filed in the year in which the project is completed and is to include the type of construction method used; total dollar value of building projects by specific project with costs; the bid costs and relevant post-bid costs; a detailed listing of contractors and subcontractors indicating whether they were out-of-state contractors and subcontractors; and if an out-of-state contractor or subcontractor was selected, the reason for the selection. G.S. 143-128(a2).

D. Financial Reports

Audit. Contracts to audit accounts must be submitted to the Local Government Commission for its approval prior to beginning the audit. It is highly recommended that the contract be submitted by June 30 of each year to ensure compliance with auditing deadlines. See Form LGC-205, Contract to Audit Accounts. The finance officer must file a copy of the annual independent audit with the LGC by October 31 (G.S. 159-34). Bills or claims for audit fees must also be submitted for LGC approval before payment. Forms and instructions are available online.

Deposits and Investments. The finance officer must make a semi-annual report to the Local Government Commission on the amount of funds on hand, the amounts of deposits of such funds in depositories, and a list of all investment securities and time deposits held by the municipality. Each bank or trust company acting as a depository may be required to describe

the security for all such public deposits. These reports, on Form LGC-203, are due July 25 (for period January 1 through June 30) and January 25 (for period July 1 through December 31), or such other times as required by the LGC (G.S. 159-33). Forms and instructions are available online.

Depository Notice. The finance officer must file Form INV-91, the notification of public deposit, by June 30 each year. It is to be sent to the branch office of each financial institution that holds public funds, and a copy sent to the Local Government Commission. Forms and instructions are available online.

Financial Information. The finance officer of each municipality must also submit to the Local Government Commission an annual statement of financial information (AFIR). This statement must be on Form LGC-37 and is due on December 1. However, the LGC highly recommends that the form be submitted by October 31 (G.S. 159-33.1).

Local Government Commission
Department of the State Treasurer
325 N. Salisbury Street
Raleigh, N.C. 27603-1385
(919) 807-2350
www.treasurer.state.nc.us

E. Fire Department Reports

Certification of Firefighters. Municipalities are required to make an annual report to the State Firemen's Association as to the current roster of certified firefighters. This report is used in determining eligibility for participation in the state firefighters' pension fund and for the payment of death benefits. In November of each year, a letter is sent to the fire chief listing the roster of certified firefighters as shown on current records. This listing must then be updated by the municipality and returned (G.S. 58-86-25) by January 1. Forms are also available on the NCSFA website. The NCSFA reports the list of eligible firefighters to the State Treasurer annually by July 1.

North Carolina State Firemen's Association
P.O. Box 188
Farmville, N.C. 27828-0188
(800) 253-4733
www.ncsfa.com

Local Relief Fund Report. In order to maintain the fire department's eligibility to receive annual payments from the Department of Insurance for the local firemen's relief fund, the board of trustees of the local fund must file an annual financial report with the State Firemen's Association. The report is sent to the treasurer of the local relief fund in June and is due by October 31 (G.S. 58-84-40). See contact information for NCSFA above.

Report of Fire Conditions. In order to maintain the fire department's eligibility to receive annual payments from the Department of Insurance for the local firemen's relief fund, the clerk or finance officer must file a Report of Fire Conditions with the Commissioner of Insurance on or before October 31 of each year. The report is to contain information about the number of personnel, type and amount of equipment, and type of water supply used for fire suppression, as well as the names of members of the board of trustees of the local firemen's relief fund (G.S. 58-84-46).

Department of Insurance
Office of the State Fire Marshal
1202 Mail Service Center
Raleigh, N.C. 27699-1202
(800) 634-7854
www.ncdoi.com/osfm

F. Gasoline/Motor Fuel Tax Refunds

State Motor Fuel Excise Tax. As of January 1, 2003, municipalities are exempt from this tax (G.S. 105-449.88). If the tax has been incurred, municipalities remain eligible for a refund of the state tax for motor fuels (gasoline, undyed diesel and undyed kerosene) purchased and used for operating municipal equipment (G.S. 105-449.105). To receive this refund, a refund claim (Form GAS-1206) must be filed with the Motor Fuels Tax Division of the N.C. Department of Revenue, by the last day of the month after the month in which the tax was paid (G.S. 105-449.108). Claim forms are available online or may be obtained from:

North Carolina Department of Revenue
Motor Fuels Tax Division
P. O. Box 25000
Raleigh, N.C. 27640-0950
(919) 733-3409
www.dor.state.nc.us

Federal Excise Tax on Fuel. Local governments are exempt from the federal excise tax on gasoline, diesel fuel and kerosene purchased for the exclusive use of the governmental unit. Local governments may enter into arrangements to purchase tax-excluded gasoline, undyed diesel fuel, and undyed kerosene by filing with a registered ultimate vendor a certificate indicating that the fuel is for the exclusive use of the local government. The vendor will then be able to seek a refund of the excise taxes the vendor has paid. [Note that local governments can also purchase dyed diesel fuel (blue for off-highway vehicles and red for motor vehicles) or dyed kerosene at a tax-excluded price from any vendor who sells the dyed fuel.]

If the local government purchase of fuel includes the federal excise tax, the rules on receiving a refund of the tax vary depending on the method of payment:

- Credit Card. Beginning January 1, 2006, if gasoline, diesel fuel or kerosene is purchased with a credit card, the credit card issuer is the only person who can file for a refund of the federal excise tax. The credit card issuer will need a certificate from the local government giving up its right to claim any refund on taxable fuel. If the credit card issuer is not registered by the IRS or does not meet the necessary conditions for a claim, it must collect the tax and the local government can file for a refund.
- Without Credit Card. If gasoline is purchased without using a credit card, the registered ultimate vendor can claim the refund. The vendor will need a valid certificate or waiver from the local government. If the vendor does not meet the necessary conditions for a claim, the local government can file for a refund. If diesel fuel or kerosene is purchased without using a credit card, the registered ultimate vendor can claim the refund--local governments may not claim a refund for the tax on these fuels.

To obtain a refund where applicable, file IRS Form 8849 (*Claim for Refund of Excise Taxes*) with Schedule 1 (*Nontaxable Use of Fuels*), available from your local IRS office, by calling 1-800-TAX FORM, or online at www.irs.gov. Filings can be done on a quarterly basis, if at least \$750 in fuel tax paid was paid in that quarter. (If you cannot claim at least \$750 at the end of a quarter, the amount can be aggregated with other quarters of that tax year.) Otherwise, an annual claim can be made on Form 8849, Schedule 1 at the close of the tax year. For more information, see IRS Publication 510 (*Excise Taxes*). This publication includes model certificates.

G. Gender Equity Appointment Reports

Appointment Reporting. G.S. 143-157.1 requires any authority that appoints members to a “statutorily created decision-making or regulatory board, commission, council or committee” to report to the Department of the Secretary of State annually by September 1 as to the number and gender of appointments made during the preceding year. The statute provides a specific list of the boards for which local governments are to report appointments. The statute provides that in a municipality the clerk is the person responsible for filing the annual report, retaining applications for appointment, and ensuring that information describing the applicant’s gender and qualifications is available for public inspection. The appointment reporting form is available online.

N.C. Department of the Secretary of State
Attn: Appointment Reporting
P.O. Box 29622
Raleigh, N.C. 27626-0622
(919) 807-2000
E-mail: appoint@sosnc.com
Website: www.secretary.state.nc.us/apprpt/apprpting.asp

H. Payroll/Personnel Reports

State Income Tax Withholding. State law requires a municipality to withhold North Carolina income tax from the salary of all employees. Units withholding an average of less than \$500 per month must file returns quarterly, by the last day of April, July, October and January. Units withholding an average of at least \$500 but less than \$2,000 per month must file returns monthly. For these units, returns for the months of January through November are due by the 15th of the following month and returns for December are due by the following January 31. Units withholding an average of at least \$2,000 per month must file returns according to the Internal Revenue Code's schedule for payment of federal employment taxes (G.S. 105-163.6). Complete information is contained in the N.C. Department of Revenue's Booklet NC-30, entitled *Income Tax Withholding Tables and Instructions for Employers*. For a copy of Booklet NC-30 and the necessary withholding forms, contact the N.C. Department of Revenue at (800) 252-3052 or online at www.dor.state.nc.us.

Form NC-3, the annual state income tax withholding reconciliation for the preceding calendar year, is due by February 28 of each year. (G.S. 105-163.7).

Federal Income Tax Withholding. Federal law also requires a municipality to withhold federal income tax from the salary of an employee. Complete information is available from the Internal Revenue Service in Circular E, entitled *Employer's Tax Guide--Publication 15* which contains instructions for withholding and reporting of Federal Income Taxes. A copy of Circular E and all necessary reporting forms can be obtained from the nearest Internal Revenue Service office or online at www.irs.gov/forms_pubs/index.html.

Retirement Contributions. If municipal employees are enrolled in the Local Governmental Employees' Retirement System (LGERS) (general employees and law enforcement officers) or a local retirement plan (G.S. 160A-163), employee contributions to these systems must be deducted from paychecks and, along with the municipality's contribution, be remitted to the State Treasurer. Contributions to the Firemen's Fund may be handled by individual firefighters or deducted by the municipality. LGERS contributions are due by the fifth state government working day of each month. Information and forms for the Firemen's Fund and LGERS may be obtained by contacting the Retirement Division of the N.C. Department of the State

Treasurer at (919) 508-5360, by e-mail (nc.retirement@nctreasurer.com), or online at www.nctreasurer.com.

I. PEG Channel Certification

In order to share in funds for the operation of any public, educational, or government access channels, the municipality must certify the number of qualifying channels to the Department of Revenue on an annual basis. Certification on Form TR-PEG is due by July 15. (G.S. 105-164.44J).

N.C. Department of Revenue
PO Box 25000
Raleigh, NC 27640
(919) 733-4548
www.dor.state.nc.us

J. Powell Bill

Street Mileage Certification. Around the first of May each year the N.C. Department of Transportation sends to the mayor (as required by state law) qualifying forms and instructions for Powell Bill street aid funds. The mayor must acknowledge receipt of the documents by May 15. These forms are for the annual certification of municipal street mileage within the municipality. The time for filing these statements is set by DOT, and the deadline selected is usually during the first three weeks of July. DOT notifies each municipality to acknowledge receipt of the information furnished. Failure to make the required report within the time allowed may result in loss of the municipality's allocation. The funds are distributed on or before October 1 of each year. [G.S. 136-41.1]

Expenditures Report. Each municipality must also report expenditures of Powell Bill funds during the preceding fiscal year to DOT by August 1. Forms for reporting these expenditures are normally sent to the mayor around the first of May each year. [G.S. 136-41.3] For a list of allowable expenditures of Powell Bill funds, see Chapter 9 of this manual. Note that DOT usually sends an updated allowable expenditures list as a part of the Powell Bill package mailed to municipalities annually. The following website also contains information on requirements and proper expenditures:

www.ncdot.org/financial/fiscal/ExtAuditBranch/Powell_Bill/powellbill.html

Contract With Department of Transportation. Any municipality with a population of 5,000 or less may contract with the Department of Transportation for DOT to do such street construction, maintenance, or improvement on municipal streets as the governing body may request, within the limits of current or accrued Powell Bill payments. Contracts are for a two-year period. The request to contract must be made by official action of the governing body on or before June 1. Notice of the desire to terminate a contract is to be made on or before April 1 of the year in which it

is to expire; otherwise the contract continues for another two years. [G.S. 136-41.3]

Contact Information. The contact information for acknowledging and filing Powell Bill documents, and for asking questions about the requirements and proper expenditures, is:

N.C. Department of Transportation
Fiscal Section
Powell Bill Unit
1514 Mail Service Center
Raleigh, N.C. 27699-1514
(919) 733-3624, extension 303

K. Property Transactions

The Internal Revenue Code requires that the amount of gross proceeds received by a seller of real property be reported on Form 1099-S (Proceeds from Real Estate Transactions). See 26 Code of Federal Regulations 1.6045-4. A copy of the form must be sent to the person who received the proceeds from the transaction by the end of the January immediately following the year in which the transaction took place, and the form must be filed with the IRS by the end of February. The person responsible for closing the transaction (usually the closing attorney or settlement agent but under some circumstances the transferee's or transferor's attorney) is responsible for the forms. Check with your municipal attorney to determine if there were any property transactions for which a 1099-S is required to be sent.

L. Sales and Use Tax Refund

State Sales Tax. Municipalities are required to pay the North Carolina sales tax on items purchased for municipal use. However, each municipality is entitled to an annual refund of tax paid if the required refund report is filed with the state Department of Revenue after June 30, but not later than December 31, of each year [G.S. 105-164.14(c)]. The report covers sales taxes paid during the immediately preceding fiscal year. Note that some sales and use taxes are not refundable, such as the tax paid on the purchase of electricity and telecommunications services and tax on the lease or rental of motor vehicles. Refund forms and instructions (Revenue Department Form E585) may be obtained from the address below. Forms and instructions are also available online.

North Carolina Department of Revenue
Sales and Use Tax Division
P.O. Box 25000
Raleigh, N.C. 27640-0640
(919) 733-2151
www.dor.state.nc.us

M. Street Fiscal Data Report

In addition to the reports required for Powell Bill eligibility (see *Powell Bill* above), the Department of Transportation also requires a separate report on street expenditures. This is known as the N.C. Municipal Street Fiscal Data Report. The form is sent to the attention of the municipal finance officer in early October. All expenditures for street purposes (not limited to Powell Bill expenditures) are to be included. The report is due by mid-November.

N.C. Department of Transportation
Fiscal Section
Powell Bill Program
1514 Mail Service Center
Raleigh, N.C. 27699-1514
(919) 733-3624, extension 303

N. Unclaimed Property

Abandoned and unclaimed property (such as wages, utility deposits, refunds, etc.) held by the municipality must be reported to the state on an annual basis (G.S. 116B-60). Forms ASD-21 (*Report of Unclaimed Property*) and ASD-159G (*Unclaimed Property Verification and Checklist*) are due by November 1 of each year. These forms are available online or from the State Treasurer's office. Note that if the value of the property is \$50.00 or more, the municipality must send first-class mail notice to the last known address of the apparent owner between 60 and 120 days before filing the report (G.S. 116B-59).

Department of State Treasurer
Unclaimed Property Program
325 North Salisbury Street
Raleigh, N.C. 27603-1385
Phone: (919) 508-1000
Fax: (919) 715-0229
www.nctreasurer.com

O. Unemployment Insurance

Tax & Wage Report. Each municipality must make quarterly wage reports to the Unemployment Insurance Division of the Employment Security Commission. Employers are mailed Form NCUI 101 (*Employers' Quarterly Tax & Wage Report*) for reporting information as to the first quarter of the calendar year. For subsequent quarters, the employer must either file online, download a blank form from the ESC website, or contact the Status Unit at 919-733-7156 to request additional forms. Employers can also report via magnetic tape or diskette—employers with 100 or more employees are required to use magnetic media, while others have the option to choose

this reporting method [G.S. 96-9(a)(7)]. These reports are due on or before the last day of the month following the close of each calendar quarter (G.S. 96-9)—April 30, July 31, October 31, and January 31. G.S. 96-9(f)(2) allows governmental employers to elect one of two methods of payment. If the municipality has chosen the experience rating method, it must also remit its quarterly payments on the same schedule as the reports. Municipalities using the direct reimbursement method will reimburse the state on an annual basis for any benefits paid. Direct reimbursement municipalities are normally billed for benefits charged, if any, on November 15 and the municipality has 25 days thereafter to make the payment without penalty or interest.

Employment Security Commission
Unemployment Insurance Division
P.O. Box 26504
Raleigh, North Carolina 27611-6504
(919) 733-7395
www.ncesc.com

P. Utilities Commission Report

Electric, Gas or Telephone System. Municipalities furnishing electric, gas or telephone service must file a report with the Utilities Commission by November 15 of each year regarding the operation of these systems for the preceding fiscal year (G.S. 62-47).

Chief Clerk's Office
Utilities Commission
N.C. Department of Commerce
4325 Mail Service Center
Raleigh, North Carolina 27699-4325
(919) 733-7328
www.nccommerce.com

This page intentionally left blank.

Chapter 9

Streets and Roads

A. Permissible Uses of Powell Bill Funds

Municipal eligibility. A municipality's eligibility to receive Powell Bill funds depends on the year of incorporation. Those incorporated prior to January 1, 1945 must have had a municipal election within the four years preceding the allocation and must currently either impose an ad valorem tax or provide other funds for the municipality's general operating expenses. (G.S. 136-41.2A). Those incorporated on or after January 1, 1945 must have had the most recent municipal election required by charter or general law; levied an ad valorem tax for the current fiscal year of at least five cents (\$.05) on a \$100 valuation; collected at least 50% of the total ad valorem tax levied for the preceding fiscal year; and adopted a budget ordinance showing that funds have been appropriated for at least two from a list of municipal services (those incorporated on or after January 1, 2000 must show at least four of a list of services). (G.S. 136-41.2).

Street eligibility. To qualify as a municipal street for purposes of Powell Bill expenditures, the street must be a public road maintained by the municipality and open to use by the general public and have an average width of at least 16 feet. [G.S. 136-41.1]

Authorized uses. G.S. 136-41.3 states that Powell Bill funds shall be spent only for the purposes of maintaining, repairing, constructing, reconstructing, or widening any street or public thoroughfare including bridges, drainage, curb and gutter and other necessary appurtenances within the corporate limits of the municipality; for the municipality's proportionate share of assessments for such purposes; for the planning, construction and maintenance of bikeways within the rights-of-way of public streets and highways; and for the planning, construction and maintenance of sidewalks along public streets and highways. Below are the current expenditure guidelines as of the date of publication of this manual. The Powell Bill qualifying package sent to your municipality annually includes an updated list of expenditure guidelines each year. You can also check for the guidelines online at:

www.ncdot.org/financial/fiscal/ExtAuditBranch/Powell_Bill/powellbill.html

Administration. Municipalities receiving Powell Bill funds are required to maintain a separate record of accounts indicating in detail all receipts and expenditures of the funds. See page 72 for further information on the method of distribution of the funds, and page 168 for reports that must be filed annually with the N.C. Department of Transportation.

Assistance. G.S. 136-41.3 makes it illegal for any municipal employee or member of the governing body to authorize, direct, or permit the expenditure

of any Powell Bill funds for any purpose not authorized by law. Any person permitting unauthorized expenditures can be held personally liable for the amount. When in doubt as to a particular expenditure, consult the Powell Bill Unit, your municipal attorney or auditor, or the League of Municipalities. The Powell Bill program is administered by NCDOT's External Audit Branch:

N.C. Department of Transportation
Fiscal Section
External Audit Branch
Powell Bill Unit
1514 Mail Service Center
Raleigh, N.C. 27699-1514
(919) 733-3624, extension 303

www.ncdot.org/financial/fiscal/ExtAuditBranch/Powell_Bill/powellbill.html

Expenditure Guidelines

Powell Bill funds CAN be used for the following purposes:

1. Improvements or new construction of local municipal Powell Bill streets (not state system streets), such as:

- Stabilizing or grading;
- Paving, retreatments, or seal coating;
- Curb and gutter construction, including curb cuts for the disabled;
- Construction of necessary storm drainage for the protection of street located within the street right-of-way;
- Construction of bridges or culverts;
- Grade crossing eliminations;
- Necessary landscaping or seeding required for proper street maintenance;
- Widening;
- Purchase, rental, operation, and maintenance of equipment necessary for street construction;
- Engineering, surveying and other expenses incurred in qualifying for Powell Bill funds, provided such data is to be used as basic information for the construction and maintenance of streets;
- Necessary legal expenses incurred in street improvement programs;

- Acquisition of right-of-way;
- Salaries for street labor, supervision of street labor, and engineering used exclusively in street construction *[maintain appropriate documentation to support expenditures]*;
- Payments to contractors for any of the above;
- Sidewalk construction.

2. Routine maintenance on local municipal Powell Bill streets (not state system streets), such as:

- Dragging, machining, blading or shaping;
- Patching, sealing or crack filling;
- Shoulder or curb and gutter maintenance and repair, including curb cuts for the disabled;
- Ditching, repair or maintenance of storm drains, culverts, catch basins, inlets, bridges, fills, etc., located within the street rights-of-way, which are necessary and essential to street maintenance;
- Dust control treatments, calcium chloride applications;
- Removal of snow, sand, or debris resulting from natural causes *(but not normal garbage or refuse collection)*;
- Mowing along and within rights-of-way of municipal Powell Bill streets;
- Labor, supervision, and engineering used exclusively in street maintenance *[maintain appropriate documentation to support expenditures]*;
- Purchase, rental, operation and maintenance of equipment (including safety equipment) necessary and essential for street maintenance, including computers used exclusively for Powell Bill street maintenance *[must prorate use of any equipment used for purposes other than eligible Powell Bill purposes--maintain appropriate documentation to support expenditures]*;
- Purchase of materials and supplies necessary for proper street maintenance and drainage;
- Payments to contractors for any of the above;
- Sidewalk maintenance.

3. Traffic control purposes, such as:

- Purchase and maintenance of traffic control devices;
- Purchase and maintenance of other traffic signs necessary for proper traffic control (*but not street name signs*);
- Purchase and application of traffic paint;
- Construction and maintenance of computerized traffic signal system;
- Construction and maintenance of speed bumps.

4. Special street assessments:

Payment of the municipality's proportionate share of a special street assessment levy and cost incurred for improving intersections in an assessment program.

5. Bonds:

Current payment of principal or interest due on bonds outstanding, issued *exclusively* for streets and sidewalks, provided the bonds were issued after enactment of the Powell Bill.

6. Bikeways:

Planning, construction and maintenance of bikeways located within the rights-of-way of public streets and highways.

7. Sidewalks:

Planning, construction and maintenance of sidewalks located within the rights-of-way along public streets and highways.

8. Banking:

Fees associated with a checking account *only* for Powell Bill. Prorated fees associated with a General Fund checking account with Powell Bill funds are not eligible. Banking fees are only Powell Bill eligible if the checking account is established only for Powell Bill funds.

Powell Bill funds CANNOT be used for the following purposes:

- Construction, maintenance or repair on state primary highways, state secondary roads, or private streets;
- Street lighting;
- Purchase or maintenance of parking meters;
- Construction or maintenance of off-street parking areas or facilities;
- Street name signs;
- Leaf vacuums;
- Street repairs necessitated by utility installation or repairs;
- Installation, repair or removal of underground or overhead utility lines or fire hydrants;
- Garbage or refuse collection or removal, including purchase, operation or maintenance of garbage trucks *[municipalities with combined street and sanitation departments should be extremely careful with respect to separation of payrolls and purchases]*;
- Salaries or other expenses for traffic police;
- Police cars and motorcycles;
- Construction or maintenance of streets outside corporate limits, even if on municipally-owned property;
- Thoroughfare planning studies or pavement management system studies and bicycle pedestrian planning grants;
- Construction of equipment sheds for housing street equipment;
- Indirect costs such as budget administration, data processing, office equipment, etc.
- Mowing along state system streets;
- State system streets, Small Urban Projects, even if the type of work is Powell Bill eligible;
- State system streets, Transportation Improvement Program (TIP), even if the type of work is Powell Bill eligible.

B. Street Closing Procedures

G.S. 160A-299 provides procedures for permanently closing streets and alleys. If a municipality proposes to close a street, alley or portion thereof, the clerk will have several duties and responsibilities. The steps necessary to comply with the statutes are listed here.

Applicability. These procedures apply to any street or public alley within the municipality or its extraterritorial jurisdiction that has been irrevocably dedicated to the public whether or not it has actually been open, as well as to unopened streets or public alleys shown on plats that have not been accepted or maintained by the municipality. Any street or alley under the control of the N.C. Department of Transportation can only be closed if NCDOT consents.

Resolution of Intent. Most street closings are initiated by adjacent property owners, who petition the municipality and request such action. For the municipality to permanently close any street or public alley, the governing body must first adopt a resolution stating its intent to close the street or alley and calling a public hearing on the matter. The resolution of intent should set the time for the public hearing at least five weeks later, to allow time for advertising, and should direct the clerk to advertise the resolution and notify the appropriate parties. (See Form #38).

Publication of Resolution. The resolution of intent must be published once a week for four weeks prior to the hearing in a newspaper of general circulation in the municipality.

Mailed Notice. Individuals owning property adjoining the street or alley as shown in the county tax records must be sent a copy of the resolution of intent by registered or certified mail. (See Form #39). A copy should also be sent to NCDOT if the street or alley is under its authority.

Posting of Notice. Notice of the proposed closing and public hearing must be prominently posted in at least two places along the street or alley. (See Form #40).

Public Hearing. At the public 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.

Order. After the public hearing is held, if the governing body is satisfied that the closing of the street is not contrary to the public interest, and that individuals owning property in the vicinity of the street or alley or in the subdivision in which it is located will not be deprived of reasonable means of ingress and egress to their property, then the governing body may adopt an order for the closing of the street or alley. (See Form #41). Any person aggrieved by the order (including DOT if the street is under its authority) may appeal to the General Court of Justice within thirty days after its adoption.

Filing. A certified copy of the order of the governing body (or judgment of the court in the event of an appeal) must be filed in the office of the register of deeds of the county in which the street, alley, or any portion thereof, is located.

Title to Property. After a street or alley is closed in accordance with these procedures, title to the street or alley right-of-way vests in the persons owning parcels adjacent to the street or alley, and their lot lines will be extended to the center line of the street or alley (or the property owners can agree to divide the right-of-way in some other manner). However, a municipality may reserve its right, title, and interest in any utility improvement or easement within a street closed. Such reservation must be stated in the order of closing and extends to utility improvements or easements owned by private utilities that have a utility agreement or franchise with the municipality. The municipality may execute quitclaim deeds to clear titles.

Withdrawal of Dedication of Unopened Street. Note that there is a separate procedure for a person who has made an offer of dedication of a street for public use to withdraw that offer if the street has not been opened within fifteen years. (For example, subdivision plats commonly offer streets for dedication.) See G.S. 136-96 for details on this procedure. In the case of such a withdrawal, the municipality can still retain utility easements by following the specified steps in G.S. 160A-299(g).

FORM #38

Resolution of Intent

A RESOLUTION DECLARING THE INTENTION OF THE (GOVERNING BODY) OF THE (CITY)(TOWN)(VILLAGE) OF _____ TO CONSIDER THE CLOSING OF _____ STREET BETWEEN _____ STREET AND _____ STREET.

WHEREAS, G.S. 160A-299 authorizes the (governing body) to close streets and public alleys; and

WHEREAS, the (governing body) considers it advisable to conduct a public hearing for the purpose of giving consideration to the closing of _____ Street between _____ Street and _____ Street;

NOW, THEREFORE, BE IT RESOLVED by the (governing body) that:

(1) A meeting will be held at _____ (a.m.) (p.m.) on the _____ day of _____, 2____, in the (place) to consider a resolution closing that portion of _____ Street between _____ Street and _____ Street.

(2) The (City)(Town)(Village) Clerk is hereby directed to publish this Resolution of Intent once a week for four successive weeks in the (name of newspaper), or other newspaper of general circulation in the area.

(3) The (City)(Town)(Village) Clerk is further directed to transmit by registered or certified mail to each owner of property abutting upon that portion of said street a copy of this Resolution of Intent.

(4) The (City)(Town)(Village) Clerk is further directed to cause adequate notices of this Resolution of Intent and the scheduled public hearing to be posted as required by G.S. 160A-299.

Upon motion duly made by (Councilmember) (Commissioner) (Alderman) _____, and duly seconded by (Councilmember) (Commissioner) (Alderman) _____, the above resolution was duly adopted by the (governing body) at the meeting held on the _____ day of _____, 2____, in the (City)(Town)(Village) Hall.

Upon call for a vote the following (Councilmembers) (Commissioners) (Aldermen) voted in the affirmative:

and the following (Councilmembers) (Commissioners) (Aldermen) voted in the negative:

This the _____ day of _____, 2_____, at _____ o'clock (a.m.)(p.m.)

Mayor

ATTEST:

(City)(Town)(Village) Clerk

FORM #39

Letter of Notification

(To be Sent by Registered or Certified Mail)

Date_____

Dear Mr./Ms. _____:

As an abutting property owner on that portion of _____ Street between _____ Street and _____ Street, you are hereby notified that the (City)(Town)(Village) (governing body) will on the _____ day of _____, 2____, hold a public hearing for the purpose of considering a resolution to close that portion of _____ Street between _____ Street and _____ Street.

You are advised that you have a right to appear at the hearing to comment and to register any objections you may have with respect to the closing.

You are further advised that this action is being taken pursuant to authority granted by G.S. 160A-299. You are further advised that, should the street be ordered closed and should you be aggrieved by the closing, you may appeal within thirty days from the date of the order to the General Court of Justice.

A copy of the resolution declaring the intention of the (governing body) to consider closing the street(s) described above is enclosed.

Sincerely,

(City)(Town)(Village) Clerk

FORM #40

Notice - For Posting

Public Notice

The public will take notice that the (governing body) of the (City)(Town)(Village) of _____ will on the _____ day of _____, 2____, in (location) pursuant to G.S. 160A-299, consider a resolution to close that portion of _____ Street between _____ Street and _____ Street.

All abutting property owners are hereby notified to appear at this meeting to present any objections that they may have with respect to the closing of the street.

(City)(Town)(Village) Clerk

FORM #41

Street Closing Order

A RESOLUTION ORDERING THE CLOSING OF THAT PORTION OF _____ STREET
BETWEEN _____ STREET AND _____ STREET

WHEREAS, on the ____ day of _____, 2____, the (governing body) of the
(City)(Town)(Village) of _____ directed the (City)(Town)(Village) Clerk to publish
the Resolution of Intent of the (governing body) to consider closing that portion of
_____ Street between _____ Street and _____ Street, in the
_____ newspaper once each week for four successive weeks, such resolution
advising the public that a meeting would be conducted in (place) on (date); and

WHEREAS, the (City)(Town)(Village) (governing body) on the ____ day of
_____, 2____, ordered the (City)(Town)(Village) Clerk to notify all persons
owning property abutting on that portion of _____ Street between
_____ Street and _____ Street, as shown on the county tax records,
by registered or certified mail, enclosing with such notification a copy of the Resolution of
Intent; and

WHEREAS, the (City)(Town)(Village) Clerk has advised the (governing body) that (he)
(she) sent a letter to each of the abutting property owners advising them of the day, time
and place of the meeting, enclosing a copy of the Resolution of Intent, and advising the
abutting property owners that the question as to closing that portion of _____
Street between _____ Street and _____ Street would be acted
upon, said letters having been sent by registered or certified mail; and

WHEREAS, the (City)(Town)(Village) Clerk has advised the (governing body) that
adequate notices were posted on the applicable street(s) as required by G.S. 160A-299; and

WHEREAS, after full and complete consideration of the matter and after having
granted full and complete opportunity for all interested persons to appear and register any
objections that they might have with respect to the closing of said street in the public
hearing held on (date); and

WHEREAS, it now appears to the satisfaction of the (governing body) that the closing
of said street is not contrary to the public interest, and that no individual owning property,
either abutting the street or in the vicinity of the street or in the subdivision in which the
street is located, will as a result of the closing be thereby deprived of a reasonable means of
ingress and egress to his or her property;

NOW, THEREFORE, subject to the reservation of easements to the
(City)(Town)(Village) of _____ for utility purposes as shown on a map
recorded in Book of Maps _____, page _____ in the office of the _____ County
Register of Deeds, the portion of _____ Street between

_____ Street and _____ Street is hereby ordered closed, and all right, title, and interest that may be vested in the public to said area for street purposes is hereby released and quitclaimed to the abutting property owners in accordance with the provisions of G.S. 160A-299.

The Mayor and the (City)(Town)(Village) Clerk are hereby authorized to execute quitclaim deeds or other necessary documents in order to evidence vesting of all right, title and interest in those persons owning lots or parcels of land adjacent to the street or alley, such title, for the width of the abutting land owned by them, to extend to the centerline of the herein closed street (with provision for reservation of easements to the (City)(Town)(Village) of _____ for utility purposes) in accordance with the provision of G.S. 160A-299.

The (City)(Town)(Village) Clerk is hereby ordered and directed to file in the Office of the Register of Deeds of _____ County a certified copy of this resolution and order.

Upon motion duly made by (Councilmember) (Commissioner) (Alderman) and duly seconded by (Councilmember) (Commissioner) (Alderman) _____, the above resolution was duly adopted by the (governing body) at a meeting held on the ____ day of _____, 2____, in the (City)(Town)(Village) Hall.

Upon call for a vote the following (Councilmembers) (Commissioners) (Aldermen) voted in the affirmative:

and the following (Councilmembers) (Commissioners) (Aldermen) voted in the negative:

This the ____ day of _____, 2____, at ____ o'clock (a.m.)(p.m.).

Mayor

ATTEST:

(City)(Town)(Village) Clerk

NORTH CAROLINA

_____ COUNTY

I hereby certify that the foregoing is a true and accurate copy of a resolution duly adopted by the (governing body) of the (City)(Town)(Village) of _____, North Carolina, at a meeting held _____, 2____, at _____ o'clock (a.m.)(p.m.) at the (City)(Town)(Village) Hall in the (City)(Town)(Village) of _____.

IN WITNESS WHEREOF, I have hereunto set my hand and have caused the official corporate seal of said (City)(Town)(Village) to be affixed, this the _____ day of _____, 2____.

(City)(Town)(Village) Clerk

NORTH CAROLINA

_____ COUNTY

I, _____, a Notary Public, do hereby certify that _____, (City)(Town)(Village) Clerk, personally appeared before me this day and acknowledged the due execution of the foregoing certification, for the purposes therein expressed.

WITNESS my hand and notarial seal this ____ day of _____, 2____.

Notary Public

My Commission Expires: _____

C. Street Name/Property Numbering Changes

The General Statutes give municipalities general authority and control over all public streets within the corporate limits, except those under state control. G.S. 160A-296. This includes the authority to open, close, name and rename streets. However, unlike street closing, the statutes do not specify a particular procedure for changing the names of streets or changing the numbering of properties.

Some municipalities have developed their own policies and ordinances for property numbering and street name changes. Samples of these are available from the League.

Items to keep in mind when renaming or renumbering:

- State approval will be needed if the street is a part of the state-maintained highway system. DOT requires a resolution from the municipality with the SR (State Road) number, the proposed new name, and a description of which part of the road will be affected (e.g. from which intersection to which intersection). Submit this to the local DOT Division Engineer with a letter of request.
- Consider how the change might affect the provision of emergency services. Renaming or renumbering may be necessary to avoid confusion when dispatching police, fire or other emergency response.
- Input from the land use planning staff or planning board might be helpful.
- While state law does not establish a required procedure, it may be desirable to hold a public hearing and use appropriate means to notify citizens and businesses, particularly those directly affected.
- Consider the need for new signage well in advance of the effective date of any name change.
- Remember to amend any official maps to reflect changes, including the Powell Bill map.
- Record changes as appropriate at the register of deeds' office.
- Notify the post office of any changes.

D. Special Assessments for Street Improvements

As an alternative or supplement to using the general fund or Powell Bill funds to finance street or sidewalk improvements, state law authorizes a municipality to levy special assessments against benefited properties. (G.S. Chapter 160A, Article 10). The statutory procedures must be strictly followed.

For detailed information on the procedures for levying and collecting special assessments, and sample forms to use in this process, please refer to the League's publication entitled *Special Assessments for Street Improvements--Procedures and Forms*.

Note that municipal charters often contain provisions modifying the state law requirements for special assessments. For example, state law provides that assessments for street or sidewalk projects may be begun only after a sufficient petition is received (G.S. 160A-217), but a number of individual charters alter or remove that requirement.

CHAPTER 10

Resources

A. **North Carolina League of Municipalities**

P. O. Box 3069
Raleigh, N.C. 27602
Phone: (919) 715-4000
Fax: (919) 733-9519
Website: www.nclm.org

NCLM Risk Management Services

P.O. Box 1310
Raleigh, N.C. 27602
Phone: 1-(800) 228-0986

The North Carolina League of Municipalities is a nonpartisan federation of cities, towns and villages in North Carolina. Its purpose is to promote excellence in municipal government and it carries out this mission through a range of services and by advocating the municipal viewpoint at the state and federal level.

Through its Risk Management Services division, the League offers its members the opportunity to participate in one or more of three, self-funded governmental insurance pools. These pools provide workers' compensation, health, property and liability coverage.

The League offers a variety of services to member municipalities, including legal inquiry, sample ordinances, personnel consultation, legislative lobbying, and various contract fee services (such as charter revisions and position classification/pay plan studies). Outlines and summaries concerning a wide variety of subjects, some including forms, may be obtained upon request. Information about the complete range of services may be obtained by contacting the League or viewed on the website.

In addition to this *Reference Guide*, the League produces a number of publications of interest to municipal clerks, including:

Directory of N.C. Municipal Officials
Mechanics of Annexation
Municipal Calendar
Digest of Municipal Law (Case Law and Legislation)
Survey of Municipal Salaries
Fringe Benefits and Personnel Practices
Water & Sewer Rates Survey
Solid Waste Practices & Finances Survey
Special Assessments Procedures & Forms

In most cases, a free copy is furnished to each member municipality at the time of publication. Special reports, bulletins and memoranda are produced as necessary, such as the *Legislative Bulletin* and the annual memorandum on *State Shared and State Collected Taxes*. Publications are listed on the website: www.nclm.org/Publications/pubs.pdf.

B. UNC School of Government

CB #3330, Knapp Building
UNC - Chapel Hill
Chapel Hill, N.C. 27599-3330
Phone: (919) 966-5381
Publications: (919) 966-4119
Fax: (919) 962-0654
Website: www.sog.unc.edu

The School of Government conducts a continuous series of schools and short courses for municipal, county and state officials. A list of schools can be viewed online at www.sog.unc.edu/calendar/index.html. In addition, individual faculty members have expertise in a number of subject matter areas related to local government and are available for consultation.

A number of useful publications are available from the SOG Publications Office. A complete list may be obtained upon request or viewed online at www.sogpubs.unc.edu. Subjects include:

- Budgeting and Finance
- Code Enforcement
- Economic Development
- Elections
- Employment/Personnel Law
- Ethics
- Incorporation
- Legislation
- Management
- Municipal Government
- Open Meetings Law
- Parliamentary Procedure
- Planning and Zoning
- Privilege License Taxation
- Property Taxes
- Public Records
- Purchasing and Contracts

C. Clerks' Listserv

The School of Government hosts Clerk-Net, a webpage that includes information on joining the Clerks' Listserv (an e-mail list that allows clerks throughout the state to share information and ideas). Clerks have found the

Listserv to be a useful tool in posting questions and requesting samples from other municipalities: www.sog.unc.edu/organizations/clerks/index.html.

D. N.C. Association of Municipal Clerks

North Carolina Association of Municipal Clerks
P.O. Box 3069
Raleigh, N.C. 27602
(919) 715-4000
www.ncamc.com

The North Carolina Association of Municipal Clerks, an affiliate of the League of Municipalities, is a professional organization of city, town, and village clerks from across the state, dedicated to the continued growth and development of municipal clerks. It provides continuing opportunities for clerks to gain knowledge and skills that increase effectiveness and efficiency in carrying out their duties through educational programs. The NCAMC also produces the MORE Manual and, in collaboration with the League, this Reference Guide.

E. International Institute of Municipal Clerks

8331 Utica Avenue, Suite 200
Rancho Cucamonga, CA 91730
Phone: (909) 944-4162
Fax: (909) 944-8545
Website: www.iimc.com

The IIMC is an association of municipal clerks and officials from cities and towns around the world. Its mission is to encourage and provide professionalism in local government through education. IIMC sponsors continuing education and offers the opportunity for clerks to receive professional certification through the Certified Municipal Clerk (CMC) and Master Municipal Clerk (MMC) programs. An individual must be a member of IIMC for at least two years and complete specific educational requirements in order to be eligible for certification. The website lists the criteria for CMC and MMC designations and includes the necessary applications.

The IIMC has available a number of technical bulletins and reprints from the monthly publication, IIMC News Digest. The IIMC publications list is available at www.iimc.com/resource/120iimc_01a.html. Please note that although these reports and forms provide guidelines, municipal clerks should also consult with their local attorneys for any differences in applicable North Carolina Law.

This page intentionally left blank.

CHAPTER 11

SUBJECT MATTER INDEX

	<u>PAGE</u>
911 Information	17
911 Surcharge	74
A	
Abandoned/Unclaimed Property	50, 174
Absentee Ballots	142
Abstention from Voting	9
Accidents	see OSHA; Workers' Compensation
Accounting	53, 56, 100
Acquisition of Property	5, 50, 58, 173, 179
Address Confidentiality	18
Administration, N.C. Department of	98, 102, 103, 104, 105, 106, 107, 167
Administrative Rules, N.C.	155, 158
Ad Valorem Tax	see Taxation
Age Discrimination in Employment Act	77, 83
Agenda	3, 22, 23
Agricultural Uses	158
Airport Projects	100
Alcoholic Beverage Control Commission, N.C.	143, 159
Alcoholic Beverage Elections	143-145
Amateur Radio Antennas	158
Ambulance Service	34
Americans with Disabilities Act (ADA)	12, 35-37, 77, 83
Animal Tax	see Taxation
Annexation	14, 34, 46, 142, 147, 148, 151, 160-163, 165-166
Antennas	158, 159

Appointments, Report of Gender	170-171
Architects	100, 101, 102, 104
Archives and History, Division of	14, 15
Assessments	see Special Assessments
Attorney-Client Privilege	4, 18
Attorney General	1, 110
Auction	47, 48, 100, 107, 108, 112, 128-131
Audit, Annual	53, 57, 114, 167
Audit, Nonprofits	57-58
Auditor, N.C. Office of the State	58
B	
Bad Checks	56
Banks	56, 113, 167, 168
Bars and Taverns	158-159
Beer and Wine Tax	see Taxation
Bid Bonds	see Bonds
Bids, Bidding	see Construction and Repair Contracts; Purchasing Contracts, Sale of Municipal Property
Billing Information, Public Enterprise	17
Board of Adjustment	4, 154, 155, 156
Board of Elections, Local	14, 141, 142, 143, 145, 163
Board of Elections, State	142, 143
Bonds	
Borrowing of Funds	34, 58-60, 70-71, 148-149
Bid Bonds	95, 117, 118, 119, 120
Elections on Bonds	148-149
Fidelity Bonds	56, 58, 65
Performance and Payment Bonds	105, 118, 120
Boundary Changes	14, 160, 161, 162, 163, 165-166
Budget	9, 32, 33, 34, 45, 53-57, 61, 66

Budget Officer	54-55, 56
Budget Ordinance	9, 54, 55
Building Commission, State	102, 104
Building Permit	154
Business/Industry Location	4
C	
Cable TV	10, 73, 163, 172
Cell Towers	159
Census	142, 165-166
Census Bureau, U.S.	142, 163, 166
Challenging Qualification of Candidates	141
Change Order	99
Charter	1, 8, 9, 13, 31, 32, 33, 50, 65, 66, 70 95, 114, 141, 143, 145-147, 177, 192, 193
Charter Amendments	13, 34, 50, 141, 145-147
Checks, Checking (Payment of Funds)	56, 57, 62, 180
Citizenship and Immigration Service, U.S.	78, 79
Civil Rights Act	77, 83
Civil Rights Division, U.S. Department of Justice	148
Closed Sessions	4-5, 7, 8, 12, 16
Closing-Out Sales Licensing	19, 38-43
Code of Ordinances	1, 12
Commerce, N.C. Department of	151, 175
Community Assistance, Division of	151
Compensatory Time	79
Condemnation	113
Conditional Use Permits	8, 155, 156
Conflict of Interest	9, 112-115, 154

Consent Agenda	3, 23
Construction or Repair Contracts	45, 95-97, 99-100, 101-107, 117-119, 166, 167
Construction Manager at Risk	99, 104, 105, 167
Construction, Office of State	102, 105
Contracts, Construction or Repair	see Construction or Repair Contracts
Contracts, Purchasing	see Purchasing Contracts
Contracts, Sale	see Sale of Municipal Property
Contractors, Licensed	102
Copy Fees	16
Corporate Limits, Changes to	see Boundary Changes
Council of Government	151
Criminal Background Check	78
Criminal Investigations	5, 16
Cultural Resources, N.C. Department of	14
D	
Data Center, N.C.	142
Day of Introduction	9, 33
Deaf and Hard of Hearing, Division of Services for	37
Debt Setoff	56, 63
Defense of Officers, Employees	82
Deposit for Bids	see Bonds-Bid Bonds
Deposit of Funds	55, 56, 57, 167-168
Depositories	56, 57, 62, 167, 168
Deputy City Clerk	1
Design-Build	105
Design Requirements (Public Buildings)	101-102
Development Agreements	49, 152, 155
Disabilities	see Americans with Disabilities Act

Disbursement of Funds	56-57
Discrimination	35-37, 77-78, 83, 159
Dismissal of Employees	see Termination
Disorderly Conduct (Public Meeting)	11
Displacement of Solid Waste Collection Firms	50
Disposition of Municipal Property	see Sale of Municipal Property
Dispute Resolution	102
Disruption of Meeting	11
Distress Sales Licensing	19, 38-43
Domestic Violence	77, 78
Donation of Municipal Property	48, 111-112
Dual Bidding	104
E	
E-Verify	78
Economic Development	4, 18, 34, 45
Elections	141-149
Elections, Local Board of	see Board of Elections
Elections, State Board of	see Board of Elections
Electoral Districts	14, 142, 147
Electric System Report	175
Electronic Auction	47, 48, 108
Electronic Bids	101
Electronic Meeting	10
Electronic Payments	56
Electronic Records	15, 16
Emergency Meetings	3, 44
Employees, Defense of	82

Employment	
Application	87-91
At Will	83
Contracts	83
Eligibility Verification	78
References	78
Spouse	113
Employment Security Commission	174, 175
Energy Savings Contract	100
Engineers	100, 101, 102
Environment and Natural Resources, N.C. Department of	158
Environmental Rules	158
Equal Employment Opportunity	77, 83
Equal Employment Opportunity Commission	36, 77
Ethics	see Conflict of Interest
Ethics Commission, N.C.	115
Exchange of Municipal Property	48, 107, 109, 132-134
Excuse from Voting	8, 9, 32, 112, 153
Extraterritorial Jurisdiction (ETJ)	48, 156-157, 158, 182
F	
Facsimile Signatures	56, 62
Fair Labor Standards Act	79, 83, 84
Family Care Homes	159
Family/Parental Leave	82
Family and Medical Leave Act	82, 83
Federal Contract (Purchasing)	98
Fidelity Bonds	see Bonds
Filing Fees (Candidates)	142
Finance Officer	54, 55-58, 65, 167, 168, 169
Financial Report(s)	57, 167-168

Financing Agreements	58-59
Fire Department Reports	168-169
Fire Limits	14
Fire Marshall, Office of State	102, 169
Fire Safety Approval (Public Buildings)	102
Firemen's Association, N.C.	168
Firemen's and Rescue Squad Worker' Pension Fund	80, 171
Force Account Work	99
Forestry	159
Formal Bids	95-97, 98, 99, 101
Franchise Ordinances	10, 34
Franchise Tax	see Taxation
Freedom of Information Act	15
Fringe Benefits	81
Fuel, Purchase of	98
Fuel Tax Refund	see Taxation
G	
Garages	101
Gasoline Tax	see Taxation-Powell Bill; Taxation-Fuel Tax Refunds
Gas System Report	175
Gender Equity Appointment Reports	170-171
General Contractors	102
General Services Administration	98
Genetic Testing and Information	77, 78
Gifts to Public Officials	114
Group Homes	159
Group Purchase	99

H

Health and Human Services, N.C. Department of	37
Health Insurance	81
Hemoglobin C Trait	77
Historic Districts	50, 151, 159
Historically Underutilized Businesses, N.C. Office for	107, 166, 167 see Minority Business
Home Rule Elections	145-147
Homeland Security, U.S. Department of	78
Housing Codes	151
Housing, Lease of Land for	111

I

Immigration Reform and Control Act	78
Immigration Status (Employees)	78
Income Tax Withholding	80, 171
Incorporation	13, 75, 145, 177
Indexing of Computer Databases	16
Indexing of Minutes and Ordinances	12
Informal Bids	97, 106
Information Technology Purchases	99
Information Technology Services, State Office of	00
Initiative Power	147
Injuries and Illnesses (Record of)	83
Installment Financing	34, 45
Insurance	see Health; Public Officers' Liability; Unemployment; Workers' Compensation
Insurance, N.C. Department of	102, 168, 169
Intangible Property Tax	see Taxation
Internal Revenue Code	80, 171, 173

Internal Revenue Service	80, 170, 173
Interpreters	35, 36, 37
Investment of Funds	57, 167
J	
Job References	78
Justice, U.S. Department of	14, 36, 148
L	
Labor, N.C. Department of	79, 83
Labor, U.S. Department of	79, 83
Land Use	see Zoning
Landfills	34
Law Enforcement Officers Separation Allowance	81
Lawful Products, Lawful Use of	77
Lease of Municipal Property	48, 110, 111, 137-139
Leave of Absence	9
Legal Advertising (See Notice)	
Legal Claims	4
Legislative Library	13, 147
Liability Insurance	see Public Officers Liability Insurance
License Tax	see Taxation
Life Insurance	81
Lobbyists	115
Local Act of General Assembly	12, 13, 141, 143, 146, 147, 156, 160, 163
Local Government Commission	53, 56, 57, 58, 59, 60, 65, 84, 149, 167, 168
Local Governmental Employees Retirement System	see Retirement
M	
Manufactured Housing	159
Map of Corporate Limits, ETJ	14, 157, 162, 163
Mayor, Election of	10-11

Mayor Pro Tempore	10
Medical Examination	35
Meetings of Public Body	1, 2 see also Notice; Open Meetings Law
Microfilming of Records	15
Military	
Bases	48, 49, 153
Duty (Public Officials)	9
Family Leave	82
Personnel, Taxation of	66-67
Service Registration	78
Minimum Housing Codes	151
Minimum Wage	79
Minority Business Participation (Construction)	97, 104, 105-107, 166, 167
Minutes	4, 5, 6-8, 10, 12, 16, 25-30, 55, 113
Minutes Book	6, 12
Moratorium on Development	49, 159-160
Motor Vehicle Tax	see Taxation
Municipal Board of Control	13
Multiple-Prime Bidding	see Separate Prime
Municipal Service District	34, 50, 59, 71
N	
Naming of Streets	191
National Guard	78, 82
Natural Gas District	51
Newspaper of General Circulation (Definition)	19
Nonprofit Work Center	99
Nonprofits, Audit of	57-58
Nonprofits, Sale to	see Sale of Municipal Property
Notice of Meetings and Public Hearings	1, 2-3, 11, 19, 36, 44-51, 55, 59, 61, 106, 107, 114, 151-153, 155, 156-157, 159-160, 162, 164, 182

Numbering of Properties	191
O	
Oath of Office, Administration of	1, 10-11
Oath of Office, Form of	21, 65
Oaths of Witnesses (Quasi-Judicial Hearings)	155
Official Meetings (Definition)	3-4
Open Meetings Law	2, 3-6, 10, 55, 114
ORBIT System	80
Ordinances	
Adoption of	9, 32, 33
Book	12
Code	see Code
Enforcement of	12
Form of	28
Organizational Meeting of Governing Body	10-11
Occupational Safety and Health (OSHA)	78, 83
Overtime Pay	79
P	
Parliamentary Procedure	8
Parks and Recreation, Records of Minors	17
Parking Authority	34, 51
Payment Bonds	see Bonds
Pay and Classification Plans	79
Payroll Deduction	80, 81
PEG Channels	73, 172
Performance Bonds	see Bonds
Personal Identifying Information	17
Personnel	5, 16, 77-86, 143
Personnel Records	84-86, 93
Piggyback Contracts	98
Planning	see Zoning

Planning Board	4, 156
Political Activity, Employees	143
Position Classification Studies	79
Powell Bill	see Taxation
Pre-Audit Certificate	57
Preclearance (Voting Rights Act)	14, 147-148, 163
Pregnancy	77, 83
Privacy of Employee Personnel Records	84-86, 93
Privilege License Tax	see Taxation
Project Development Financing	34, 45, 59-60
Property	
Numbering	191
Purchase of	see Purchasing Contracts; Acquisition of Property
Sale of	see Sale of Municipal Property
Tax on	see Taxation - Ad Valorem Tax
Tax Election	147
Transaction Report	173
Protest Petitions, Zoning	153
Proxy Voting	10
Public Assistance	113
Public Body (Definition)	3-4
Public Comment Period	11
Public Enterprise Billing Records	17
Public Hearings	10, 11, 19, 34, 44-51, 55, 59, 61, 106, 146, 151-152, 153, 154, 156-157, 159-160, 162, 164, 182, 191
Public Notice	see Notice
Public Officer	1
Public Officers and Employees Liability Insurance	82
Public Records	see Records
Public Security Plans and Information	18

Purchase and Contract, Division of	98
Purchasing Contracts (Materials, Supplies, Equipment)	45, 95-99, 100-101, 117-119, 120-121
Purchase of Real Property	see Acquisition of Property
Q	
Quasi-Judicial Matters	8, 9, 154, 155
Quorum	8, 31
R	
Reasonable Accommodation	35-37
Recall Elections	147
Recessed Meetings	3, 44
Records	12-19, 84-86
Records Retention Schedule	14-15
Redevelopment	50, 51, 107
Redistricting	142
Referenda (Special Elections)	143-146
Register of Deeds	1, 14, 16, 157, 162
Regular Meetings	2, 11, 44
Reimbursements for Lost Revenue	see Taxation
Reports, State and Federal	165-175
Residency (Voters, Candidates)	141
Resign to Run	143
Resolutions	12
Resolutions, Form of	30
Retainage	103
Retaliation in Employment	78
Retirement	80-81, 171-172
Retirement Systems Division	80, 171
Revenue, N.C. Department of	66, 69, 72, 80, 166, 169, 171, 172, 173

Revenue Neutral Tax Rate	54
Reverse Auction	100
Robert's Rules of Order	8
Rules of Procedure (Governing Body)	8
S	
Sale of Municipal Property	47, 107-112
Discarding Property	110
Donation	111-112
Entities Carrying Out Public Purpose, Sale to	111
Governmental Units, Sale to	110
Nonprofits, Sale to	107
Personal Property, Simplified Procedures for	110, 135-136
Private Sale	107, 122-123
Sealed Bids	107, 108, 1240125
Seized Property	112
Upset Bids	107, 108, 126-127
Volunteer Fire Departments, Sale to	111
Weapons	112
Sales Tax	see Taxation
Schedule of Meetings	2
Secret Ballots	10
Secretary of State, N.C. Department of	13, 115, 146, 162, 163, 170-171
Seized Property, Disposition of	see Sale of Municipal Property
Selective Service Registration	78
Self-Dealing	see Conflict of Interest
Separate Prime Bidding	104
Services, Contracts for	100
Shared Revenues	see State Shared Taxes
Sheds	101
Sickle Cell Trait	77
Signatures	56
Single Prime Bidding	104

Small Town Exception (Conflict of Interest)	113
Social Gathering	4
Social Security Administration, U.S.	78
Social Security Numbers	17
Sole Source Purchasing	98, 120, 121
Solid Waste Collection	50, 100
Solid Waste Disposal Tax	see Taxation
Solid Waste Facilities	100
Special Assessments	34, 47, 70-71, 192
Special Elections	
Special Meetings	2, 44
Special Separation Allowance (Police Officers)	81
Special Use Permits	8, 153, 155, 156
State Budget and Management, N.C. Office of	142, 163, 165
State Buildings and Land	159
State Contract (Purchasing)	98
State Shared Taxes and Revenues	71-75, 165
Stormwater Fees	34, 50
Streets and Road	100, 177-192
Closing Procedures	34, 46, 182-190
Fiscal Data Report	174
Naming	191
Powell Bill Funds	see Taxation
Subdivision Regulation	158
Sunday-Closing Ordinances	34, 50
Sunshine List	2, 44
Surplus Property	see Sale of Municipal Property

T

Tapes of Meetings	7, 75, 155
Taxation	
911 Surcharge	74
Ad Valorem Property Tax	45, 54, 55, 66-68, 147
Admissions Tax	71
Animal Tax	70
Beer/Wine Excise Tax	73, 75, 166
Cable Franchise Tax	73
Food Stamp Sales Tax	74
Franchise Tax	73, 75
Fuel Tax Refunds (State and Federal)	169-170
Government Property	67
Heavy Equipment Rental Tax	69
Hold Harmless	72
Homestead Exclusions	67-68
Income Tax Withholding	80, 171
Intangible Property Tax	74
Inventory Tax	74
Meals Tax	71
Motor Vehicle License Tax	69
Motor Vehicle Property Tax	68
Municipal Service District Tax	71
Natural Gas Excise Tax	73
Occupancy Tax	71
PEG Channel Funds	73, 172
Powell Bill	74, 75, 161, 172-173, 174, 177-181, 191, 192
Prepared Food and Beverage Tax	see Meals Tax
Privilege License Tax	68
Property Tax	see Ad Valorem Tax
Reimbursements for Lost Revenue	74
Rental Car Tax	69
Sales Tax	71-73, 75, 173
Scrap Tire Tax	74
Solid Waste Disposal Tax	74
State Shared and Collected Taxes	71-75, 165
Telecommunications Tax	73, 75
Use Value	68
Utilities Franchise Tax	see Franchise Tax
Video Programming Tax	73
White Goods Tax	74

Tax Collector	58, 65
Tax Increment Financing	see Project Development Financing
Tax Liens	45, 65, 66
Tax Records	17
Tax Withholding	see Income Tax Withholding
Technical Codes and Ordinances	10
Telephone System Report	175
Termination of Employees	83
Terrorism Response	5
Trade Secrets	17
Trade-In, Purchase with	101
Transportation Authorities	99
Transportation, N.C. Department of	100, 157, 172, 177, 178, 182, 191
Transportation, U.S. Department of	98
Treasurer, N.C. Department of State	53, 80, 84, 149, 168, 172, 173, 174
Trial Preparation Materials	18
U	
Unclaimed Property	50, 174
Unemployment Compensation Insurance	81, 83, 174
Upset Bids	see Sale of Municipal Property
Used Items, Purchase of	99
Utilities Commission, N.C.	175
Utilities Franchise Tax	see Taxation - Franchise Tax
V	
Vacancies	8-9
Variances	8, 155, 156
Vested Rights	154-155, 161
Voting (Governing Body)	9-10, 32, 33, 55, 112, 154

Voting Rights Act, Federal	14, 147-148, 163
W	
Ward Boundaries	14, 142, 147
Weapons, Disposition of	see Sale of Municipal Property
Wireless Telecommunications Facilities	159
Work Permits (Youth)	78
Workers' Compensation Benefits and Insurance	78, 82, 83
Workplace Posting Requirements	77, 79, 82, 83
Written Ballots	10
Z	
Zoning	9, 34, 48, 49, 151-160

GENERAL STATUTES INDEX

	<u>PAGE</u>
G.S. Chapter 1 - Civil Procedure	
G.S. 1-539.12	78
G.S. 1-597	19, 95, 107
G.S. Chapter 11 - Oaths	
G.S. 11-7.1	1, 11, 21
G.S. Chapter 14 - Criminal Law	
Article 52A (-402 through -409)	112
G.S. 14-234	9, 112, 113, 114
G.S. 14-269.1	112
G.S. Chapter 15 - Criminal Procedure	
Article 2 (-11 through -17)	112
G.S. Chapter 18B - Alcoholic Beverages	158
G.S. 18B-100	158
G.S. 18B-600	143, 144, 145
G.S. 18B-601	145
G.S. 18B-901	159
G.S. Chapter 20 - Motor Vehicles	
G.S. 20-97	69
G.S. 20-187.2	112
G.S. Chapter 25 – Uniform Commercial Code	
G.S. 25-3-506	56
G.S. Chapter 44A - Statutory Liens and Charges	
G.S. 44A-26	105
G.S. 44A-32	105
G.S. 44A-33	105
G.S. Chapter 47 - Probate and Registration	
G.S. 47-30	163
G.S. Chapter 50B – Domestic Violence	
G.S. 50B-5.5	77
G.S. Chapter 58 - Insurance	
Article 85 (-85-1 through -85-30)	80
G.S. 58-31-40	102
G.S. 58-84-40	169
G.S. 58-84-46	169
G.S. 58-86-25	168
G.S. Chapter 62 - Public Utilities	
G.S. 62-47	175
G.S. Chapter 62A – Public Safety/Wireless Telephone Service	
G.S. 62A-46	74

G.S. Chapter 63 - Aeronautics	
G.S. 63-54	100
G.S. Chapter 66 - Commerce and Business	
Article 17 (-76 through -83)	41, 42
G.S. 66-76	38, 40
G.S. 66-77	19, 38-43
G.S. 66-78	39
G.S. 66-80	39
G.S. 66-351	10
G.S. Chapter 75 – Monopolies, Trusts and Consumer Protection	
G.S. 75-65	17
G.S. Chapter 87 - Contractors	
Article 1 (-1 through -15.4)	102
G.S. 87-1.1	102
G.S. 87-15	102
G.S. Chapter 95 - Department of Labor & Labor Regulations	
G.S. 95-25.5	78
G.S. 95-28.1	77
G.S. 95-28.1A	77
G.S. 95-28.2	77
G.S. 95-28.3	82
G.S. 95-241	78
G.S. Chapter 96 - Employment Security	
G.S. 96-9	175
G.S. Chapter 97 - Workers' Compensation	82
G.S. Chapter 105 - Taxation	
Article 5E (-187.40 through -187.47)	73
Articles 11 through 30 (Machinery Act)	65
Article 39 (-463 through -474)	72
Article 40 (-480 through -487)	72
Article 42 (-495 through -502)	72
Article 44 (-515 through -523)	72
Article 46 (-535 through -538)	72
G.S. 105-113.82	73, 166
G.S. 105-116.1	73
G.S. 105-163.6	80
G.S. 105-163.7	171
G.S. 105-164.14	173
G.S. 105-164.44F	73
G.S. 105-164.44I	73
G.S. 105-164.44J	172
G.S. 105-187.19	74
G.S. 105-187.24	74
G.S. 105-187.63	75
G.S. 105-277.1	67
G.S. 105-277.1B	67
G.S. 105-277.1C	67

G.S. 105-277.2	68
G.S. 105-277.7	68
G.S. 105-277.15	68
G.S. 105-278.1	67
G.S. 105-330.2	68
G.S. 105-349	65
G.S. 105-366	66
G.S. 105-367	66
G.S. 105-368	66
G.S. 105-369	45, 65, 66
G.S. 105-374	66
G.S. 105-375	66
G.S. 105-449.88	169
G.S. 105-449.105	169
G.S. 105-449.108	169
G.S. 105-521	74
G.S. 105-522	72
G.S. Chapter 105A – Setoff Debt Collection Act	63
G.S. Chapter 114 – Department of Justice	
G.S. 114-19.14	78
G.S. Chapter 116B – Escheats and Abandoned Property	
G.S. 116B-59	50, 174
G.S. 116B-60	174
G.S. Chapter 120 - General Assembly	
G.S. 120-30.9F	147
G.S. Chapter 120C - Lobbying	115
G.S. Chapter 121 - Archives and History	
G.S. 121-5	14, 15
G.S. Chapter 127A – Militia	
G.S. 127A-202.1	78
G.S. Chapter 128 - Offices and Public Officers	
G.S. 128-41	9
G.S. 128-42	9
G.S. Chapter 130A – Public Health	
G.S. 130A-294	34
G.S. Chapter 132 - Public Records	
G.S. 132-1	15
G.S. 132-1.1	17, 18
G.S. 132-1.2	17, 96
G.S. 132-1.4	16
G.S. 132-1.5	17
G.S. 132-1.7	18
G.S. 132-1.9	18
G.S. 132-1.10	17
G.S. 132-1.11	18

G.S. 132-1.12	17
G.S. 132-2	14
G.S. 132-2	14
G.S. 132-6	15, 18
G.S. 132-6.1	16
G.S. 132-6.2	16
G.S. 132-7	14
G.S. 132-9	18, 19
G.S. Chapter 133 - Public Works	
G.S. 133-1.1	101
G.S. 133-32	114
G.S. Chapter 138A – State Government Ethics Act	114
G.S. 138A-32	115
G.S. Chapter 136 - Roads and Highways	
G.S. 136-41.1	74, 172, 177
G.S. 136-41.2	75, 177
G.S. 136-41.2A	177
G.S. 136-41.3	74, 100, 172, 173, 177
G.S. 136-41.1	74
G.S. 136-96	183
G.S. 136-136	157
G.S. 136-153	157
G.S. Chapter 143 - State Government	
Article 3B (-64.10 through -64.17K)	100
Article 8 (-128 through -135.9)	101, 114
G.S. 143-64.31	100, 104, 167
G.S. 143-64.32	100, 104
G.S. 143-64.34	100, 104
G.S. 143-128	102, 103, 167
G.S. 143-128.1	104
G.S. 143-128.2	104, 106
G.S. 143-128.3	166
G.S. 143-128.4	105
G.S. 143-129	45, 95, 96, 97, 98, 99, 100, 105, 107, 120, 121
G.S. 143-129.1	97
G.S. 143-129.2	100
G.S. 143-129.5	99
G.S. 143-129.7	101
G.S. 143-129.8	99
G.S. 143-129.9	100, 101
G.S. 143-131	97, 166
G.S. 143-132	96
G.S. 143-133	95, 97
G.S. 143-134.1	103
G.S. 143-135	100
G.S. 143-135.9	99
G.S. 143-135.26	104-105
G.S. 143-157.1	170
G.S. 143-166.41	81
G.S. 143-166.42	81
G.S. 143-318.10	3, 7, 16

G.S. 143-318.11	4, 5
G.S. 143-318.12	2, 3, 44
G.S. 143-318.13	10
G.S. 143-318.16	6
G.S. 143-318.16B	6
G.S. 143-318.17	11
G.S. Chapter 143B - Executive Organization Act of 1973	
G.S. 143B-421.1	78
G.S. Chapter 158 – Local Development	
G.S. 158-7.1	34, 45, 107
G.S. 158-7.3	34, 45, 59, 60
G.S. Chapter 159 - Local Government Finance	
Article 3 (-7 through -42)	53, 54
Article 6 (-101 through -113)	59
Subchapter IV (-43 through -210)	148
G.S. 159-8	54
G.S. 159-9	54
G.S. 159-10	54
G.S. 159-11	54
G.S. 159-12	34, 45, 55
G.S. 159-13	54, 55
G.S. 159-13.1	54
G.S. 159-13.2	54
G.S. 159-15	55, 66
G.S. 159-16	55
G.S. 159-17	9, 32, 33, 55
G.S. 159-24	55
G.S. 159-25	55, 56, 57, 62
G.S. 159-28	57, 62
G.S. 159-28.1	56, 62
G.S. 159-29	58, 65
G.S. 159-30	56, 57
G.S. 159-31	56
G.S. 159-32	56
G.S. 159-32.1	56
G.S. 159-33	57, 168
G.S. 159-33.1	57, 168
G.S. 159-34	57, 167
G.S. 159-40	57
G.S. 159-49	148
G.S. 159-57	34
G.S. 159-148	59
G.S. Chapter 160A - Cities and Towns	
Article 10 (-216 through -238)	70, 192
Article 10A (-239.1 through -239.6)	70
Article 12 (-265 through -280)	135
Article 19 (-360 through -459)	151, 156
Article 19, Part 3C (-400.1 through -400.14)	159
Article 19, Part 3D (-400.20 through -400.32)	155
Article 19, Part 3E (-400.50 through -400.53)	159
Article 23 (-535 through -544)	71

G.S. 160A-1	13
G.S. 160A-17.1	106
G.S. 160A-20	34, 45
G.S. 160A-22	14, 162
G.S. 160A-23	14, 142
G.S. 160A-23.1	142
G.S. 160A-29	14, 162
G.S. 160A-31	34, 46, 161,
G.S. 160A-33	161
G.S. 160A-37	34, 46
G.S. 160A-39	14
G.S. 160A-42	161
G.S. 160A-45	161
G.S. 160A-49	34, 46
G.S. 160A-54	161
G.S. 160A-58	46
G.S. 160A-58.1	161
G.S. 160A-58.2	34, 161
G.S. 160A-58.7	162
G.S. 160A-58.24	34, 46
G.S. 160A-61	1, 10
G.S. 160A-63	8
G.S. 160A-68	10
G.S. 160A-70	10
G.S. 160A-71	2, 44
G.S. 160A-72	6
G.S. 160A-74	8, 31
G.S. 160A-75	9, 10, 32, 33, 112
G.S. 160A-76	10
G.S. 160A-77	12
G.S. 160A-78	12
G.S. 160A-79	12
G.S. 160A-81	11
G.S. 160A-81.1	11
G.S. 160A-101	13, 141, 145, 146, 147
G.S. 160A-102	34, 50, 146
G.S. 160A-103	146
G.S. 160A-104	146
G.S. 160A-106	141
G.S. 160A-111	141, 146, 147
G.S. 160A-162	79, 81
G.S. 160A-163	80, 171
G.S. 160A-164.2	78
G.S. 160A-167	82
G.S. 160A-168	16, 84, 86, 93
G.S. 160A-169	143
G.S. 160A-171	1, 6, 14
G.S. 160A-172	1
G.S. 160A-191	34, 50
G.S. 160A-208.1	17
G.S. 160A-209	66, 147
G.S. 160A-211	68
G.S. 160A-212	70
G.S. 160A-213	69
G.S. 160A-214.1	71

G.S. 160A-215	71
G.S. 160A-215.1	69
G.S. 160A-215.2	69
G.S. 160A-217	70, 192
G.S. 160A-224	47
G.S. 160A-225	34
G.S. 160A-226.1	70
G.S. 160A-227	47
G.S. 160A-228	34, 47
G.S. 160A-229	47
G.S. 160A-266	107, 110, 136
G.S. 160A-267	47, 111, 122, 123
G.S. 160A-268	47, 107, 124, 125
G.S. 160A-269	47, 108, 126, 127
G.S. 160A-270	47, 48, 108, 109, 128-131
G.S. 160A-271	48, 109, 132, 133
G.S. 160A-272	48, 110, 137
G.S. 160A-274	110, 111
G.S. 160A-277	48, 111
G.S. 160A-278	48, 110, 111
G.S. 160A-279	47, 107, 111
G.S. 160A-280	48, 111
G.S. 160A-288.1	14
G.S. 160A-296	191
G.S. 160A-299	34, 46, 182, 183, 186, 187, 189
G.S. 160A-299.1	46
G.S. 160A-311	17
G.S. 160A-314	34, 50
G.S. 160A-319	10
G.S. 160A-327	50
G.S. 160A-360	48, 156, 157
G.S. 160A-361	156
G.S. 160A-362	157
G.S. 160A-364	34, 48, 49, 151, 152, 156
G.S. 160A-371	158
G.S. 160A-372	158
G.S. 160A-376	158
G.S. 160A-381	9, 49, 152, 159
G.S. 160A-383.1	159
G.S. 160A-383.2	158
G.S. 160A-383.3	158
G.S. 160A-384	49, 152
G.S. 160A-385	152, 154
G.S. 160A-385.1	155
G.S. 160A-386	152
G.S. 160A-387	156
G.S. 160A-388	9, 152, 156
G.S. 160A-392	159
G.S. 160A-400.6	50
G.S. 160A-400.24	49
G.S. 160A-400.26	155
G.S. 160A-400.29	155
G.S. 160A-403	107
G.S. 160A-418	154
G.S. 160A-435	14

G.S. 160A-457	34, 48, 50, 107
G.S. 160A-458.5	159
G.S. 160A-513	51
G.S. 160A-514	107
G.S. 160A-515.1	34, 45, 59, 60
G.S. 160A-536	71
G.S. 160A-537	34, 50
G.S. 160A-538	50
G.S. 160A-539	50
G.S. 160A-540	50
G.S. 160A-542	71
G.S. 160A-552	34, 51
G.S. 160A-663	51
G.S. 160A-672	51
G.S. 160A-676	51
 G.S. Chapter 161 - Register of Deeds	
G.S. 161-10	16
 G.S. Chapter 163 - Elections	
Article 11B (-127.1 through -127.6)	141
Article 23 (-279 through -290)	141
Article 24 (-291 through -306)	141
G.S. 163-157	141
G.S. 163-280.1	141
G.S. 163-287	143
G.S. 163-288.1	142, 163
G.S. 163-290	141
G.S. 163-291	141
G.S. 163-292	141
G.S. 163-293	141
G.S. 163-294	141
G.S. 163-294.2	141, 142
G.S. 163-302	142
 G.S. Chapter 168 –Persons With Disabilities	
G.S. 168-22	159
 N.C. Administrative Code	
01 NCAC 30I.0102	106
01 NCAC 30I.0306	167
 N.C. Constitution	
Article VI, Section 7	1, 21
 N.C. Session Laws	
SL 2001-274	141
SL 2001-508	66