

Interlocal Cooperation Agreement Between Durham County and the City of Durham

This is an Interlocal Cooperation Agreement between Durham County, a political subdivision of the State of North Carolina, and the City of Durham, a North Carolina municipal corporation. This agreement is made pursuant to Article 20 of Chapter 160A of the North Carolina General Statutes. This agreement is effective upon approval and execution by both the City and County. Durham County and the City of Durham agree as follows:

Section I. Policy

The governing bodies of Durham County and the City of Durham hereby find and declare that mutual cooperation for historic preservation is necessary. Cooperation allows for more orderly and coordinated historic preservation throughout the County. It provides a mechanism for coordinated and consistent planning for the protection of valuable historic resources, for addressing problems and seizing opportunities, and for coordinating limited resources. Therefore, mutual cooperation provides a sounder basis for policy decisions which affect either or both governmental entities. The governing bodies recognize that coordinated historic preservation planning and implementation are vital to the public interest. The purpose of this Interlocal Cooperation Agreement is to establish a joint historic planning effort and to provide for the organization necessary to effectuate that effort.

Section II. Definitions

The words defined in this section shall have the meanings indicated when used in this Interlocal Cooperation Agreement.

- A. "Board" shall mean the Board of County Commissioners of Durham County.
- B. "City" shall mean the City of Durham.
- C. "Council" shall mean the City Council of the City of Durham.
- D. "County" shall mean Durham County.
- E. "Commission" shall mean the Durham Historic Preservation Commission.
- F. "Governing Bodies" shall mean the Board of County Commissioners of Durham County and the City Council of the City of Durham collectively.

Section III. Historic Preservation Commission

A. Establishment of the Durham Historic Preservation Commission

There is hereby established, pursuant to [N.C. Gen. Stat. § 160D-303 and N.C. Gen. Stat. Chapter 160DA, Article 319, Section 303](#)~~Part 3C~~[Chapter 160D Article 9 Part 4](#), a joint commission to be known as the Durham Historic Preservation Commission.—The Commission is designated as the historic preservation advisory and quasi-judicial body for the County and City, and shall have the powers and duties described in this Agreement.—The Commission shall consist of nine (9) members [and two \(2\) alternate members](#).—~~The Commission members shall serve without compensation.~~

B. Qualification of Members

All members of the Commission shall be residents of Durham County. All members of the Commission shall have ~~a~~ demonstrated interest, competence, or knowledge in historic preservation; and a majority of members shall have demonstrated special interest, experience or education in history, architecture, historic preservation, archaeology or related fields, such as real estate or law. ~~The Commission shall include at least one of each of the following five (5) designations:~~

~~Registered Architect;~~

~~Registered Landscape Architect;~~

~~Social or Cultural Historian;~~

~~Representative of a Lending Institution or Attorney;~~

~~Real Estate Agent, Developer, or Builder.~~

~~The Commission shall include four (4) at-large members who may or may not have the background of the members representing specific professional areas above.~~

C. Membership

The regular term of office for Commission members shall be three (3) years. A member may be reappointed for a second term. After two consecutive terms, a member shall be ineligible for reappointment until one (1) calendar year has elapsed from the date of termination of his or her second term. A term shall continue until a successor is appointed by the appropriate governing body and sworn in by the City or County Clerk as appropriate.

D. Structure of Appointments

The County Board of Commissioners shall appoint five (5) at large members and one (1) alternate member. ~~and the City Council shall~~ each appoint ~~two~~four (4) at-large members, including the Mayor's Appointee, to be appointed according to City Council Procedures, Section 2.10, and one (1) alternate member. The five designated members shall be appointed as follows: The Board of County Commissioners shall appoint (a) a landscape architect, (b) a social or cultural historian and (c) a representative of a lending institution or an attorney. The City Council shall appoint (a) an architect and (b) a real estate agent, developer or builder.

In making appointments to this Commission, the Board of County Commissioners and City Council shall ensure that majority of members meet the qualifications outlined in Section III.B and shall make reasonable effort to ensure appropriate representation of both urban and rural interests. The Board of County Commissioners and the City Council shall consider recommendations for appointments from the Joint City-County Planning Committee; however, neither elected body is bound to follow any recommendations for appointment which that Committee may make.

E. Officers

The Commission shall elect its own officers. The Commission officers shall consist of a Chairperson and Vice-Chairperson to be elected annually and said officers will be encouraged to serve no more than two consecutive terms in the same office. The Commission may establish committees and subcommittees at its discretion.

F. Conduct of Business

The Commission shall adopt rules of procedure for the conduct of its business. Such rules shall be consistent with this Agreement and applicable County and City ordinances.

G. Meetings

The Commission shall establish a regular meeting time and shall meet at least quarterly and more often as it shall deem necessary. All meetings shall be open to the public and shall conform to the North Carolina Open Meetings Law, N.C.G.S. Chapter 143, Article 33C. The Commission shall keep permanent minutes of its meeting. The minutes shall include the attendance of its members and its resolutions, findings, recommendations, and other actions.

H. Attendance

It is expected that members appointed to the Commission will regularly attend its meetings. The Commission shall establish within its By-Laws conditions which constitute an excused absence. Members may forfeit the remainder of their terms and may be replaced under the following conditions:

1. Any member who has two (2) unexcused absences of regular Commission meetings within a one-year period of time.
2. A member who has missed forty percent of regular Commission meetings within a one-year period of time counting both excused and unexcused absences.

When it is determined that a member has not met the attendance requirements or has violated the ethics or conflict of interest standards set forth herein, the Chairperson shall notify the appointing governing body or other appointing entity so that appropriate action can be taken.

I. Annual Report

The Commission shall prepare an annual report and submit it to the Board of County Commissioners and the City Council by March 1 of each year. The annual report shall include a comprehensive review of the Commission's activities, problems and actions of the Commission and any budget requests or other recommendations.

J. Expenses

~~Members shall may serve with or without pay. —Members may apply to the City or County for the respective stipend program, should they be eligible.~~ Expenses for all members may be reimbursed if provided for in the approved budget and if within available funds provided by the governing bodies for the operation of the Planning Department, and if prior authorization for reimbursement is given by the Planning Director.

K. Ethics and Conflict of Interest

All appointees to the Commission are subject to the applicable state statutes regarding conflicts of interest in voting, and, in addition, to the adopted Durham County Ethics Policy. The Commission's Rules of Procedure shall set forth the circumstances that constitute a conflict, consistent with statute, the County Ethics Policy, and case law; the procedures for recusal in event of a conflict of interest or fixed opinion that is not susceptible to change; and requirements regarding disclosure of ex parte communications concerning quasi-judicial matters.

Ethical violations are cause for removal of a Commission member.

Section IV. Powers and Duties of the Commission

The Commission is authorized to actions reasonably necessary or convenient to conduct its duties and responsibilities as outlined in this Agreement, ~~and N.C. Gen. Stat. Chapter 160DA, Article 9319, Part 3CSection 303Part 4, and N.C. Gen. Stat. § 160D-303~~, including but not limited to the following:

A. General Responsibilities of the Commission

The Commission shall act to promote, enhance, and preserve the character and heritage of the Durham community.

B. Specific Authority and Powers

~~1. The commission established may, within the planning and development regulation jurisdiction of the City and County of Durham, do any of the following:~~

- ~~1. Undertake an inventory of properties of historical, prehistorical, architectural, and/or cultural significance.~~
- ~~2. Recommend to the governing bodies areas to be designated by ordinance as "Historic Districts" and individual structures, buildings, sites, areas, or objects to be designated by ordinance as "Landmarks."~~
- ~~3. Acquire by any lawful means the fee or any lesser included interest, including options to purchase, to properties within established districts or to any such properties designated as landmarks to hold, manage, preserve, restore, and improve such properties, and to exchange or dispose of the property by public or private sale, lease or otherwise, subject to covenants or other legally binding restrictions that will secure appropriate rights of public access and promote the preservation of the property.~~
- ~~4. Restore, preserve, and operate historic properties.~~
- ~~5. Recommend to the governing boards that designation of any area as a historic district or part thereof, or designation of any building, structure, site, area, or object as a landmark, be revoked or removed for cause.~~
- ~~6. Conduct and sponsor educational programs regarding historic properties, districts, and landmarks within its jurisdiction.~~
- ~~7. Cooperate with the State, federal, and local governments in pursuance of this Agreement.~~
- ~~8. Enter, solely in performance of its official duties and only at reasonable times, upon private lands for examination or survey thereof. However, no member, employee, or agent of the commission may enter any private building or structure without the express consent of the owner or occupant thereof.~~
- ~~9. Prepare and recommend the official adoption of a preservation element as part of the local government's comprehensive plan.~~
- ~~10. Review and consider applications for Certificate of Appropriateness in Historic Districts or Historic Landmarks and act upon, grant or deny, such proposals for alterations, demolitions, or new construction within historic districts, or for the alteration or demolition of designated landmarks.~~
- ~~11. Negotiate at any time with the owner of a building, structure, site, area, or object for its acquisition or its preservation, when such action is reasonably necessary or appropriate.~~
- ~~12. Give advice to property owners concerning the treatment of the historical and visual characteristics of his or her property located within any Historic District and at the owner's request, regarding an Historic Landmark. Such items include color schemes, gardens and landscape features, and minor decorative elements~~

13. Propose to the Governing Bodies changes to this Agreement or any related County and City ordinances, and to propose new ordinances relating to historic preservation.

1.14. Recommend to the Governing Bodies other means of preservation and intervention at such times as vital historic resources appear, in the view of the Commission, to be threatened by neglect, use, demolition, alteration, etc.

15. Undertake any other activities authorized by state law, if approved by the City and County.

~~To undertake inventories in Durham of properties of historical, architectural, or archaeological significance.~~

~~2. To recommend to the Board of County Commissioners and/or the City Council areas to be designated by ordinance as Historic Districts.~~

~~3. To recommend to the Board of County Commissioners and/or the City Council that designation of any Historic District be revoked or removed.~~

~~4. To recommend to the Board of County Commissioners and/or the City Council buildings, structures, sites, areas, or objects within their respective areas of zoning jurisdiction to be designated by ordinance as Historic Landmarks.~~

~~5. To recommend to the Board of County Commissioners and/or the City Council that the designation of any building, structure, site, area, or object as an Historic Landmark be removed.~~

~~6. To sponsor or conduct educational programs on Historic Districts and Historic Landmarks.~~

~~7. To give advice to property owners concerning the treatment of the historical and visual characteristics of his or her property located within any Historic District and at the owner's request, regarding an Historic Landmark. Such items include color schemes, gardens and landscape features, and minor decorative elements.~~

~~8. To cooperate with the State, Federal, and local governments, and citizens in pursuance of the purposes of this Agreement.~~

~~9. To consider and grant or deny applications for Certificates of Appropriateness in Historic Districts or Historic Landmarks in accordance with City and/or County ordinances.~~

~~10. To enter, solely in the performance of its official duties and only at reasonable times, and only with the consent of the property owner or tenant, upon private land for the examination or survey thereof.~~

~~11. To recommend to the Board of County Commissioners and/or to the City Council other means of preservation and intervention at such times as vital historic resources appear, in the view of the Commission, to be threatened by neglect, use, demolition, alteration, etc.~~

~~12. To propose to the Board of County Commissioners and/or the City Council changes to this Agreement or any related County and City ordinances, and to propose new ordinances relating to historic preservation.~~

~~13. To undertake any other activities authorized by state law, if approved by the City and County.~~

Section V.—General Terms of Agreement.

A. Term

This agreement shall be effective as of the date it is passed by both Governing Bodies. Unless terminated sooner, it shall expire at 12:01 AM, January 1, ~~2033~~~~2011~~~~2021~~~~16~~. If the Agreement is not reauthorized or replaced as of the termination date, the Agreement shall continue unless the City or the County, through its respective manager, indicates in writing the intent of their respective jurisdictions to terminate the Agreement, as hereafter provided. This Agreement may be amended from time to time upon mutual consent of the governing bodies expressed in writing. Either the County or the City may terminate this Agreement.

B. Personnel/Financing

Paid staff necessary to provide support for the Commission's work shall be provided by the ~~Durham Planning agency~~City-County Planning Department as established by the Interlocal Cooperation Agreement approved by the Board and Council in 1988. The financing of this undertaking is provided for as part of the consolidated City/County Planning Agency, as described in the above agreement.

C. Legal Representation

Legal representation shall be provided to the Commission in accordance with the obligations regarding legal representation and liability set forth in the governing bodies' interlocal agreement regarding the Planning Department and the commissions and boards staffed by the Department.

D. Notice to Governing Bodies Regarding Proposals

Information regarding the proposed designation of historic landmarks and historic districts shall be provided to members of the Governing Body that does not have jurisdiction over the matter prior to action by the Governing Body that has jurisdiction.

Section VI.—Amendments

This Agreement may be amended at any time upon mutual written agreement of the City and County. The Commission may recommend to the Governing Bodies amendments to this agreement. The City Council and County Commissioners shall be the final authority in approving all amendments.

Section VII.—Termination of Agreement

Either the City or County may terminate this agreement by giving written notice of such termination to the other party at ~~least ninety (90)~~one hundred and eighty (180) days prior to the beginning of the fiscal year in which termination will take effect.

Section VIII. Entire Agreement

This document contains the entire agreement of the parties, and there are no additional terms or conditions except those reflected herein. This Agreement supersedes all prior understandings and agreements relating to the subject matter hereof.

Section IX. Governing Law

This agreement shall be governed by the laws of the State of North Carolina and all actions regarding the Agreement shall be brought in the General Court of Justice in the County of Durham.

Section X. Agreement Not Divisible

This agreement is not divisible. The obligations exchanged by the parties constitute consideration for each and every part of this Agreement.

Section XI. Headings

The headings within this Agreement are included for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions.

[Signatures begin on the following pages.]

In Witness Whereof, the parties have authorized this Agreement to be executed and attested by their undersigned officers, to be effective from and after the date above.

CITY OF DURHAM

BY _____

Attest:

City Clerk

DURHAM COUNTY

BY _____

Attest:

Clerk to the Board