

# EXHIBIT

# 6

DURHAM



1869  
CITY OF MEDICINE

**CITY OF DURHAM**

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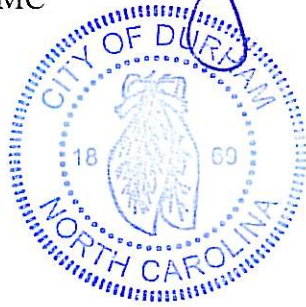
**SUBJECT: RESOLUTION TO ADOPT A POLICY TO WAIVE  
GOVERNMENTAL IMMUNITY IN LIMITED CIRCUMSTANCES**

**NORTH CAROLINA  
DURHAM COUNTY**

I, D. Ann Gray, duly appointed City Clerk of the City of Durham, North Carolina, do hereby certify that the attached Resolution #9200 is a true and accurate copy adopted by the Durham City Council at its regular meeting held on December 20, 2004, which is on file in the Office of the City Clerk at City Hall.

**WITNESS** my hand and the corporate seal of the City of Durham, North Carolina, this the 20<sup>th</sup> day of November, 2008.

  
D. Ann Gray, MMC  
City Clerk



RESOLUTION TO ADOPT A POLICY TO  
WAIVE GOVERNMENTAL IMMUNITY IN  
LIMITED CIRCUMSTANCES

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WHEREAS, while governmental immunity serves a beneficial purpose in allowing the City and its citizens to conserve public funds which might otherwise be expended in lengthy negotiations and costly lawsuits against the City, the City also recognizes that there are claims in which it is equitable and in the public interest of the City to resolve the claims by waiving immunity as to certain categories of damages; and

WHEREAS, the North Carolina General Assembly recently amended G.S. 160A-485 by granting municipalities explicit authority to waive governmental immunity through the adoption by a city council of a resolution that deems the creation of a funded reserve to be the same as the purchase of liability insurance to pay for such claims; and

WHEREAS, adoption of such a resolution by a city council under this statute waives a city's governmental immunity only to the extent specified in the council resolution and in no event greater than funds available in the funded reserve for the payment of such claims; and

WHEREAS, on December 20, 2004, the City Council adopted such a resolution and established a funded reserve in the amount of \$500,000; now, therefore,

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

The City of Durham hereby adopts the following policy on the waiver of governmental immunity for claims and judgments (hereafter collectively referred to as "claims") in the range of \$.01 to \$500,000.00. The cumulative recovery limit under this policy for all claims arising from any one accident or occurrence, whether from one or multiple persons, shall not exceed \$500,000.00.

1. The City will waive its sovereign/governmental immunity and waive immunity for public officials and officers acting in their official capacity only (hereafter collectively referred to as "governmental immunity") only to the extent and in the limited circumstances described herein. This policy is not intended to alter or expand the City's liability, limit available defenses other than governmental immunity, waive governmental immunity from any and all types of claims or damages other than as explicitly included in the waivers contained in this policy, or affect any principle of law other than waiver of governmental immunity. This policy shall be strictly construed against finding a waiver of governmental immunity and any ambiguity in the interpretation or application of this policy shall be resolved in favor of a finding that no such waiver has occurred. Except as specifically provided in this policy, the City will assert governmental immunity as a complete bar and defense in all claims and under all circumstances in accordance with applicable law.

2. In claims involving personal injury and/or property damage, and subject to Sections 5 and 6, the City will waive governmental immunity for the following categories of damages, where the City determines or a court of competent jurisdiction renders a final decision: that the injury and damages were proximately caused by the negligence of the City or its officials, officers, agents or employees while acting within the scope of their authority and the course of their employment, and that no defenses other than governmental immunity apply to the claims.

- a. property damage, but only if proximately caused by the negligent operation of a motor vehicle, machinery or equipment by officers, agents or employees of the City;
- b. medical expenses, including dental and veterinary expenses;
- c. chiropractic expenses or physical therapy expenses for no more than three consecutive months during any calendar year;
- d. lost wages for time authorized out of work by physicians licensed to practice medicine in North Carolina; and
- e. out of pocket expenses, but only if proximately caused by the negligent operation of a motor vehicle, machinery or equipment by officers, agents or employees of the City, and excluding attorney's fees and excluding all other litigation-related expenses.

3. In claims involving wrongful death under G.S. 28A-18-1 et seq., and subject to Sections 5 and 6, the City will waive governmental immunity for the following categories of damages, where the City determines or a court of competent jurisdiction renders a final decision: that the wrongful death and damages were proximately caused by the negligence of the City or its officials, officers, agents or employees while acting within the scope of their authority and the course of their employment, and that no defenses other than governmental immunity apply to the claims.

- a. expenses for care, treatment and hospitalization of the decedent incident to the injury resulting in death;
- b. reasonable funeral expenses of the decedent; and
- c. the present monetary value of the decedent to the persons entitled to receive the damages recovered which shall include and is limited to compensation for the loss of the reasonably expected
  - (1) net income of the decedent; and
  - (2) services, protection, care and assistance of the decedent, whether voluntary or obligatory, to such persons.

4. For purposes of application of this policy, a decision of a court of competent jurisdiction shall not be considered as "final" until the conclusion of any appeals of such decision to the appellate courts.

5. The City expressly retains governmental immunity for claims or damages for: (a) pain and suffering, emotional distress, mental anguish, bereavement from the death of a loved

one, loss of consortium, consequential damages, and any and all other elements or categories of damages not specifically included in Sections 2 or 3 above, as applicable; (b) any portion of damages in excess of \$500,000.00 arising from any one accident or occurrence (unless and except to the extent the City has waived its immunity pursuant to G.S. 160A-485(a) independently from this policy through the purchase of liability insurance); (c) any claim that could be addressed, or for which the City may be held liable, under any worker's compensation, unemployment compensation, or similar law or insurance; and (d) any claim that is in the nature of an insurance subrogation claim.

6. In the absence of a final decision by a court of competent jurisdiction, a condition of waiver of governmental immunity is that the claimant or plaintiff executes a release of all claims against the City and its officials, officers, employees and agents. A further condition of waiver of governmental immunity is that, pursuant to G.S. 160A-485, funds remain available in the City's funded reserve for the payment of claims.

7. This policy is effective upon adoption, and applies to all claims pending on that date as well as claims that arise thereafter. The City reserves the right to modify or terminate this policy at any time, and to have any such modification or termination apply to any claim not paid or for which there has not yet been a final decision of a court of competent jurisdiction.

8. This policy is not severable. If a court of competent jurisdiction determines that any provision of this policy or the application of such provision to any person or in any circumstance is invalid or unlawful, then this policy and the waiver of governmental immunity contained in this policy shall be deemed immediately repealed in its entirety as to all claims without further action by the City Council of the City of Durham, and governmental immunity shall apply to all claims and in all circumstances whatsoever to the fullest extent permitted by law.

9. All resolutions which conflict or are inconsistent with this resolution are modified to the extent of any such conflict or inconsistency so as to conform to the provisions and standards of this resolution.

This the 20<sup>th</sup> day of December, 2004.

**APPROVED BY  
CITY COUNCIL**

DEC 20 2004

*D. Ann Gray*  
CITY CLERK