

**REGULAR MEETING
ASHEBORO CITY COUNCIL
COUNCIL CHAMBER, MUNICIPAL BUILDING
THURSDAY, FEBRUARY 5, 2009
7:00 p.m.**

This being the time and place for a regular meeting of the City Council, a meeting was held with the following officials and members present:

David H. Jarrell) – Mayor Presiding

Talmadge S. Baker)
Edward J. Burks)
Linda H. Carter) – Council Members Present
Walker B. Moffitt)
Archie B. Priest, Sr.)
David H. Smith)

John N. Ogburn, III, City Manager
Edsel L. Brown, Code Enforcement Officer
Dumont Bunker, P.E., City Engineer
Richard L. Cox, Jr., Community Planning and Development Department Intern
Holly H. Doerr, City Clerk/Senior Legal Assistant
John L. Evans, Planner
R. Wendell Holland, Jr., Zoning Administrator
T. Myers Johnson, Human Resources Director
R. Reynolds Neely, Jr., Planning Director
Ralph W. Norton, Assistant Chief of Police
O. Lynn Priest, Community Development Director
Deborah P. Reaves, Finance Director
James W. Smith, Fire Chief
Jeffrey C. Sugg, City Attorney
Larry Trotter, Chief Building Inspector

1. Call to order.

Mayor Jarrell called the meeting to order for the transaction of business and business was transacted as follows.

2. Invocation and Pledge of Allegiance.

Mayor Jarrell asked everyone to stand and repeat the Pledge of Allegiance, after which Reverend Raymond Reid of First Congregational United Church of Christ gave the invocation.

3. Appearance and recognition of guests and citizens.

Mayor Jarrell welcomed everyone in attendance.

4. Consent Agenda.

Upon motion by Mr. Smith and seconded by Mr. Baker, Council voted unanimously to approve the following consent agenda items.

- (a) **The minutes of the City Council's regular meeting that was held on January 8, 2009.**
- (b) **The continuation to February 19, 2009 of the consideration of the findings of fact, conclusions of law, and order in the matter of SUP-08-06.**
- (c) **The continuation to February 19, 2009 of the consideration of the findings of fact, conclusions of law, and order in the matter of SUP-08-04.**
- (d) **The continuation to February 19, 2009 of the consideration of the findings of fact, conclusions of law, and order in the matter of CUP-08-38.**
- (e) **A request by Dr. John Rogers of the First Baptist Church for the designation of a handicapped parking space on the north side of Sunset Avenue 65.4 feet west of the center line of North Church Street.**

- (f) **Final Change Order # 3 on the water line from Park Drive to Pineview Street Project (Terry's Plumbing & Utilities, Inc.) decreasing the contract amount by \$33,086.79 to \$1,602,635.21 for adjustment of quantities as built.**

[A copy of the change order is on file in the City Clerk's office.]

5. SUB-09-01: Starmount Commercial Development. (Subdivision Variance Request.)

The applicants, Bobby and Darren Lucas, have submitted a written request for a variance from the 50-foot public right-of-way width requirement specified in Article IX of the City of Asheboro Subdivision Ordinance. The applicants would like to be able to utilize a 44-foot wide public right-of-way within the proposed Starmount Commercial Development.

The subdividers are requesting this variance in an effort to successfully develop this property while confronting topographic constraints, stream buffer constraints, and hydrologic constraints (flood storage requirements) that exist on the property. This property is located on the north side of East Dixie Drive, approximately 600 feet west of North Carolina Highway 42 North. A copy of the applicants' written request is on file in the City Clerk's office.

Mr. Neely presented the staff's analysis of the application. While noting that reducing the public right-of-way from 50 feet to 44 feet may have an impact on turning radii at intersections, especially for large commercial vehicles, city staff members did not oppose the application. The Planning Board recommended approval of the request.

The Applicant, Mr. Darren Lucas presented comments in support of the requested variance.

Upon motion by Mr. Moffitt and seconded by Mr. Priest, Council voted unanimously to approve the requested variance from of the Subdivision Ordinance.

6. Approval of appointments to Planning Board/Board of Adjustment.

- (a) **Approval of reappointment of James Lindsey to Asheboro Planning Board/Board of Adjustment for a five (5) year term, January 1, 2009 through December 31, 2013.**

Mr. Neely asked the Council to consider reappointing Mr. James Lindsey to the Asheboro Planning Board/Board of Adjustment for a five (5) year term from January 1, 2009 through December 31, 2013. Upon motion by Mr. Baker and seconded by Ms. Carter, Council voted unanimously to reappoint Mr. Lindsey to the Planning Board/Board of Adjustment for a five (5) year term from January 1, 2009 through December 31, 2013.

- (b) **Approval of Planning Board/Board of Adjustment recommendation to appoint a member to the Planning Board/Board of Adjustment for a five (5) year term January 1, 2009 through December 31, 2013.**

Mr. Neely presented the Planning Board/Board of Adjustment recommendation of appointing Mr. Steve Cofer to the Planning Board/Board of Adjustment for a five (5) year term from January 1, 2009 through December 31, 2013. Upon motion by Mr. Priest and seconded by Ms. Carter, Council voted unanimously to appoint Mr. Cofer to the Planning Board/Board of Adjustment for a five (5) year term from January 1, 2009, through December 31, 2013.

7. Public comment period.

There being no comments from the public, Mayor Jarrell closed the public comment period.

8. Receive annual report of the Building Inspection Department.

Mr. Larry Trotter, Chief Building Inspector, presented an overview of the Building Inspection Department's activities during 2008. The department's report reflected an overall decrease in residential and commercial activity. A copy of the written report submitted to the Mayor and the Council members is on file in the City Clerk's office.

9. Monroe Avenue Wastewater Project:

Due to the existence of a financial conflict of interest, upon motion by Mr. Smith, and seconded by Mr. Baker, the Council voted unanimously to excuse Mr. Moffitt from participating in the Council's consideration of agenda item number 9. Council Members Baker, Burks, Carter, Priest, and Smith voted in favor of the motion.

- (a) **Approval of the low bid received from Terry's Plumbing and Utilities, Inc. in the amount of \$217,494.00 for construction of the Monroe Avenue Sewer Pump Station and Sewer Force Main.**

Mr. Bunker submitted the bid summary for the Monroe Avenue Sewer Pump Station and Sewer Force Main. Five bids were received on January 22, 2009. The bid submitted by Terry's Plumbing and Utilities, Inc. of Asheboro, North Carolina was the low responsive bid at \$217,494.00.

Upon motion by Mr. Priest and seconded by Mr. Burks, Council voted unanimously to accept the bid by Terry's Plumbing and Utilities in the amount of \$217,494.00. Council Members Baker, Burks, Carter, Priest, and Smith adopted this motion.

- (b) **Approval of a resolution per G.S. 146.64.32 exempting the City of Asheboro from the advertisement/qualification based selection procedure to contract with Atlantic Coast Engineering and Testing, Inc. of Greensboro, North Carolina for engineering services required for geotechnical quality control testing services on the Monroe Avenue Sewer Pump Station project, at the budget estimate of \$3,000.00.**

Mr. Bunker presented and recommended adoption, by reference, of the aforementioned resolution.

Upon motion by Mr. Priest and seconded by Mr. Burks, Council voted unanimously to adopt the following resolution by reference. Council Members Baker, Burks, Carter, Priest, and Smith voted in favor of the motion.

08 RES 2-09

RESOLUTION EXEMPTING A PROJECT FROM THE PROVISIONS OF ARTICLE 3D OF CHAPTER 143 OF THE NORTH CAROLINA GENERAL STATUTES

(Geotechnical Services for the Monroe Avenue Sewer Pump Station Project)

WHEREAS, Section 143-64.31 of Chapter 143, Article 3D of the North Carolina General Statutes provides in pertinent part as follows:

It is the public policy of this State and all public subdivisions and Local Governmental Units thereof . . . to announce all requirements for architectural, engineering, surveying, and construction management at risk services, to select firms qualified to provide such services on the basis of demonstrated competence and qualification for the type of professional services required without regard to fee other than unit price information at this stage, and thereafter to negotiate a contract for those services at a fair and reasonable fee with the best qualified firm; and

WHEREAS, Section 143-64.32 of the North Carolina General Statutes provides in pertinent part as follows:

Units of local government . . . may in writing exempt particular projects from the provisions of this Article (Article 3D) in the case of:

- (a) Proposed projects where an estimated professional fee is in an amount less than thirty thousand dollars (\$30,000), or
- (b) Other particular projects exempted in the sole discretion of . . . the unit of local government, stating the reasons therefore and the circumstances attendant thereto; and

WHEREAS, the City of Asheboro has undertaken the Monroe Avenue Sewer Pump Station Project that will require engineering services in the specific form of geotechnical quality control testing services; and

WHEREAS, Atlantic Coast Engineering and Testing, Inc. of Greensboro, North Carolina has the capability to provide the geotechnical quality control testing needed by the city for this project; and

WHEREAS, Atlantic Coast Engineering and Testing, Inc. has proposed to provide the needed geotechnical quality control testing services for the project in consideration of an estimated professional fee of Three Thousand and No/100 dollars (\$3,000.00); and

WHEREAS, on the basis of the estimated professional fee for this project, the city manager and the city engineer have concluded that Atlantic Coast Engineering and Testing, Inc. should be utilized to provide the geotechnical quality control testing services needed to successfully implement and complete this construction project.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Asheboro that the Monroe Avenue Sewer Pump Station Project is hereby exempted from the provisions of Article 3D of Chapter 143 of the North Carolina General Statutes on the basis of the fact that the estimated professional fee for the needed engineering services, specifically geotechnical quality control testing services, is less than Thirty Thousand and No/100 dollars (\$30,000.00); and

BE IT FURTHER RESOLVED that the city manager is hereby authorized to execute, in accordance with the applicable laws and the city's standard contracting policies, a contract with Atlantic Coast Engineering and Testing, Inc. for the provision of the engineering services described above.

This resolution was adopted by the Asheboro City Council in open session during a regular meeting held on the 5th day of February 2009.

s/ David H. Jarrell
David H. Jarrell, Mayor

ATTEST:

s/ Holly H. Doerr
Holly H. Doerr, City Clerk

- (c) **Consideration of a request by Larry McKenzie of West Pointe Luxury Apartments, LLC for the City of Asheboro to reimburse West Pointe Luxury Apartments, LLC for engineering services in the amount of \$30,500 incurred for the Monroe Avenue Sewer Pump Station after the City Council's approval of the project on September 4, 2008.**

Mr. Bunker presented the aforementioned request by Mr. Larry McKenzie of West Pointe Luxury Apartments, LLC.

Upon motion by Mr. Burks and seconded by Mr. Smith, Council voted unanimously to proceed with the steps necessary to reimburse West Pointe Luxury Apartments, LLC for the design services associated with the proposed public pump station after September 4, 2008.

- (d) **Approval of budget ordinance amendments pertaining to Monroe Avenue Sewer Pump Station and Sewer Force Main.**

- (i) **Ordinance to amend East Presnell Street Project (Fund #70)**

Ms. Reaves presented and recommended adoption, by reference, of the aforementioned ordinance.

Upon motion by Mr. Priest and seconded by Ms. Carter, Council voted unanimously to adopt the following ordinance. Council Members Baker, Burks, Carter, Priest, and Smith voted in favor of the motion.

03 ORD 2-09

**ORDINANCE TO AMEND
EAST PRESNELL STREET PROJECT (FUND #70)
2008-2009**

WHEREAS, the scope of the East Presnell Street Project Fund currently encompasses sewer improvements involving the construction of a pump station for Old Cedar Falls Road and East Presnell Street, and;

WHEREAS, in order to take advantage of cost savings and to avoid a later disruption to the neighborhood and surrounding area, the City of Asheboro is making these improvements alongside the development of the area for a future industrial park by Trollinger Investment Company, and;

WHEREAS the City of Asheboro desires to continue to develop its water & sewer systems in a responsible manner and to continue to take advantage of cost savings opportunities of sharing the cost of improvements or making improvements important for future growth alongside commercial land development, and;

WHEREAS, the City of Asheboro desires to change the title of this project fund to reflect the broadened scope of activities accounted for in this fund, and;

WHEREAS, West Pointe Luxury Apartments LLC will need a sewer pumping station to service their proposed complex located at the south end of Oak Leaf Road, and;

WHEREAS, West Pointe Luxury Apartments LLC approached the City of Asheboro about moving the pump station to a location that would allow a larger area to be serviced, and;

WHEREAS, City Council and West Pointe Luxury Apartments LLC agree that the estimated cost of a private pumping station, estimated at \$78,990, will be covered by the West Pointe Luxury Apartments LLC and the additional cost associated with the upgrade to a regional pumping station and some additional engineering fees of \$30,500 will be covered by the City of Asheboro, and;

WHEREAS, with a cost of \$217,494 for a regional pumping station, in accordance with the recommended bid received on January 22, 2009, the City of Asheboro cost associated with the pump station construction is \$138,504, and;

WHEREAS, revenues and expenditures in the Fund need to be adjusted to reflect the above changes, and;

WHEREAS, the City of Asheboro desires to be in compliance with all generally accepted accounting principles.

THEREFORE, BE IT ORDAINED by the City Council of the City of Asheboro, North Carolina:

Section 1:

That the East Presnell Street Project, also currently referred to in accounting records as Project #70, be renamed to be Water and Sewer System Improvements Projects.

Section 2: That the following revenue line items be increased:

70-335-0000	Miscellaneous Contributions	\$ 78,990
70-367-3001	W&S Fund Contribution	<u>\$169,004</u>
		\$247,994

Section 3: That the following expense line item be increased:

70-840-0000	Construction	\$217,494
70-840-0001	Engineering	<u>\$ 30,500</u>
		\$ 247,994

Adopted this the 5th day of February, 2009.

s/ David H. Jarrell
David H. Jarrell, Mayor

ATTEST:

s/ Holly H. Doerr
Holly H. Doerr, City Clerk

(ii) Ordinance to amend the Water and Sewer Fund

Ms. Reaves presented and recommended adoption, by reference, of the aforementioned ordinance.

Upon motion by Mr. Baker and seconded by Mr. Burks, Council voted unanimously to adopt the following ordinance by reference.

04 ORD 2-09

**ORDINANCE TO AMEND
THE WATER & SEWER FUND
2008-2009**

WHEREAS, the City of Asheboro desires to develop its water & sewer systems in a responsible manner to allow for future growth, and;

WHEREAS, West Pointe Luxury Apartments LLC will need a sewer pumping station to service their new complex located at the south end of Oak Leaf Road, and;

WHEREAS, West Pointe Luxury Apartments LLC approached the City of Asheboro about moving the pump station to a location that would allow a larger area to be serviced, and;

WHEREAS, City Council of the City of Asheboro desires to take advantage of the cost savings associated with sharing the construction costs now while planning for future growth, and;

WHEREAS, City Council and West Pointe Luxury Apartments LLC agree that the estimated cost of a private pumping station, estimated at \$78,990, will be covered by the West Pointe Luxury Apartments LLC and the additional cost associated with the upgrade to a regional pumping station and some additional engineering fees of \$30,500 will be covered by the City of Asheboro, and;

WHEREAS, with a cost of \$217,494 for a regional pumping station, in accordance with the recommended bid received on January 22, 2009, the City of Asheboro cost associated with the pump station construction is \$138,504, and;

WHEREAS, revenues and expenditures in the Water & Sewer Fund need to be adjusted to appropriate funds for \$169,004 representing the City of Asheboro portion of the above mentioned two expenses, and;

WHEREAS, the City of Asheboro desires to be in compliance with all generally accepted accounting principles.

THEREFORE, BE IT ORDAINED by the City Council of the City of Asheboro, North Carolina:

Section 1: That the following revenue line items be increased:

30-399-0000	Fund Balance Allocation	\$169,004
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Section 2: That the following expense line item be increased:

30-850-7000	Contribution to Capital Project	\$169,004
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Adopted this the 5th day of February 2009.

s/ David H. Jarrell
David H. Jarrell, Mayor

ATTEST:

s/ Holly H. Doerr
Holly H. Doerr, City Clerk

10. Consideration of a petition received from Moffitts, Inc. requesting non-contiguous annexation of 124.377 acres along the north side of Old Humble Mill Road (Richland Village Mobile Home Park).

(a) Public Hearing

Mr. Neely presented a written request from the Applicant to withdraw the above-referenced annexation item.

(b) Ordinance to extend the corporate limits of the City of Asheboro

The above-referenced item was withdrawn by the Applicant.

(c) Resolution approving a fire protection service contract between the City and East Side Volunteer Fire Protection Association, Inc.

In light of the Applicant's withdrawal of the aforementioned annexation item, city staff withdrew the proposed fire protection service contract.

11. Consideration of a request from North Carolina Zoological Society for noncontiguous satellite annexation for land adjacent to the Zoo.

Mr. Russ Williams, Executive Director for the North Carolina Zoological Society, presented a request for legislative annexation of land owned by the North Carolina Zoological Society and located adjacent to the North Carolina Zoological Park.

Upon motion by Mr. Smith and seconded by Mr. Moffitt, Council voted unanimously to endorse the request and directed the staff to prepare a resolution, including a metes and bounds description of the property, to send to the North Carolina General Assembly.

12. Consideration of the application submitted by Community Cabs of Randolph County, Inc. for a taxicab franchise.

Mayor Jarrell opened the public hearing on this application for a certificate of convenience and necessity under Chapter 114 of the Code of Asheboro.

Mr. Sugg presented the application submitted by Community Cabs of Randolph County, Inc. to operate five (5) taxicabs within the City of Asheboro. Along with the application, Mr. Sugg also presented the proposed certificate of convenience and necessity that would be issued to Community Cabs of Randolph County, Inc. This franchise would be granted for one (1) year with an effective date of March 9, 2009 and may be renewed annually in accordance with Chapter 114 of the Code of Asheboro.

Mr. Mark Snowdon of Community Cabs of Randolph County, Inc. presented comments in support of the application.

Mr. Tim Walton, Manager of Red Bird Cab, stated that Red Bird Cab averages approximately 12-14 calls per day, with most of the calls occurring during the evening hours. He feels that the company meets the needs of the citizens of Asheboro.

There being no further comments and no opposition from the public, Mayor Jarrell closed the public hearing.

Upon motion by Mr. Burks and seconded by Mr. Moffitt, Council voted unanimously to adopt the first reading of the following ordinance.

CERTIFICATE OF CONVENIENCE AND NECESSITY

WHEREAS, Section 160A-304 of the North Carolina General Statutes provides that a city may by ordinance license and regulate all vehicles operated for hire in the city; and

WHEREAS, Section 114.10 of the Code of Asheboro provides that it is unlawful for any person to operate a taxicab upon and over the streets of the city without first applying for and securing from the city council a certificate of convenience and necessity in accordance with the provisions of Chapter 114 of the Code of Asheboro; and

WHEREAS, Section 114.17 of the Code of Asheboro provides that such a certificate of convenience and necessity shall constitute a franchise from the city for the operation of taxicabs within the city; and

WHEREAS, Section 160A-76 of the North Carolina General Statutes provides that an ordinance granting a franchise cannot be finally adopted until it has been passed at two regular meetings of the city council; and

WHEREAS, Community Cabs of Randolph County, Inc., which has its principal office located at 1430 Providence Church Road in Randleman, North Carolina, has properly submitted an application for a certificate of convenience and necessity; and

WHEREAS, a public hearing on this application by Community Cabs of Randolph County, Inc. for such a certificate was scheduled for February 5, 2009 during a regular city council meeting, and legal notice of this public hearing was published in *The Courier-Tribune* on January 17, 2009; and

WHEREAS, the city council did conduct the advertised public hearing on February 5, 2009, and the city council has considered the factors prescribed by Section 114.15 of the Code of Asheboro for determining whether the requested certificate of convenience and necessity should be granted.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Asheboro as follows:

Section 1. A certificate of convenience and necessity to operate five (5) taxicabs upon and over the streets of the City of Asheboro is hereby granted to Community Cabs of Randolph County, Inc. (hereinafter referred to as the "Grantee").

Section 2. This franchise is granted for a term of one (1) year from and after the 9th day of March 2009. Thereafter, applications for renewals shall be filed annually in accordance with the Code of Asheboro.

Section 3. This franchise is granted upon the following specific conditions and requirements:

- (a) Prior to the effective date of this ordinance, the Grantee shall furnish to the city clerk of the City of Asheboro a list showing the make, model, and vehicle identification number of each taxicab to be operated pursuant to this franchise.

(B) The following definitions apply in this Section:

(1) "City vehicle" – A passenger-carrying vehicle owned, leased, or otherwise controlled by the city and assigned permanently or temporarily by the city to city employees, agencies, institutions, or facilities for official city business.

(2) "Smoking" – The use or possession of a lighted cigarette, lighted cigar, lighted pipe, or any other lighted tobacco product.

(C) Notwithstanding Division (A) of this Section, the prohibition of smoking in City vehicles is not applicable to either law enforcement officers functioning in an undercover capacity or any non-employee occupants of City vehicles utilized for law enforcement purposes.

Section 2. All ordinances and clauses of ordinances in conflict with this ordinance are hereby repealed.

Section 3. This ordinance shall take effect and be in force from and after April 1, 2009.

This ordinance was adopted by the Asheboro City Council in open session during a regular meeting held on the 5th day of February 2009.

s/ David H. Jarrell
David H. Jarrell, Mayor

ATTEST:

s/ Holly H. Doerr
Holly H. Doerr, City Clerk

(b) Resolution approving the positions of public information director and marketing specialist.

Mr. Johnson presented and recommended adoption, by reference, of the aforementioned resolution.

After discussion and upon motion by Mr. Moffitt and seconded by Mr. Burks, Council voted unanimously to continue the above-referenced item to the Council's special meeting that is scheduled for February 19, 2009.

(c) Resolution approving amendments to the City of Asheboro Personnel Policies and Procedures Manual.

Mr. Johnson presented and recommended adoption, by reference, of the aforementioned resolution.

Upon motion by Mr. Smith and seconded by Mr. Burks, Council voted unanimously to adopt the following resolution by reference.

09 RES 2-09

RESOLUTION APPROVING AMENDMENTS TO THE CITY OF ASHEBORO PERSONNEL POLICIES AND PROCEDURES MANUAL

WHEREAS, the City of Asheboro Personnel Policies and Procedures Manual was originally promulgated by the city manager and approved by resolution of the Asheboro City Council on March 4, 2004; and

WHEREAS, the city manager periodically receives suggestions from the director of human resources and the personnel committee as to improvements that can be made to the city's uniform system of personnel administration; and

WHEREAS, the director of human resources and the personnel committee have recommended to the city manager that certain improvements be made to the sections of the manual addressing the following topics: (i) The general provisions of the manual that are found in Article I; (ii) The position classification plan and pay plan found in Article II and Article III; (iii) The provisions pertaining to the employment of relatives found in Article V; (iv) The military leave provisions found in Article VII; and (v) The process for approving overtime pay found in Article IX; and

WHEREAS, the city manager has agreed with these recommendations and has promulgated corresponding amendments to the City of Asheboro Personnel Policies and Procedures Manual; and

WHEREAS, these amendments are attached to this resolution as EXHIBITS 1, 2, 3, 4, and 5, and these exhibits are hereby incorporated into this resolution by reference as if copied fully herein; and

WHEREAS, the city council concurs with the city manager's decision to adopt the above-stated amendments as part of the City of Asheboro Personnel Policies and Procedures Manual.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Asheboro that the city manager's amendment of the City of Asheboro Personnel Policies and Procedures Manual as reflected by the attached exhibits is hereby approved.

This resolution was adopted by the Asheboro City Council in open session during a regular meeting held on the 5th day of February 2009.

s/ David H. Jarrell
David H. Jarrell, Mayor

ATTEST:

s/ Holly H. Doerr
Holly H. Doerr, City Clerk
EXHIBIT 1

ARTICLE I. GENERAL PROVISIONS

Section 1. Purpose

~~It is the purpose of this chapter to establish rules and regulations which can serve as a guide concerning the various personnel activities and to establish a fair and uniform system of personnel administration for all employees of the City of Asheboro under the supervision of the City Manager.~~

Section 2. Approval of Personnel Policies and Plans

~~The City Council shall have the responsibility for the approval of personnel policies, the position classification plan and the pay plan.~~

Section 3.1. Administration

The City Manager shall have the **final** responsibility for the administration of personnel ~~rules and regulations~~ **policies and procedures**. In addition, each supervisor and manager of the city has an affirmative duty to enforce the personnel ~~rules and regulations~~ **policies and procedures**.

Section 4.2. Human Resources Department

The Human Resources Department shall be under the direct supervision of the Human Resources Director. The office shall have as its primary responsibility the maintenance of all ~~employee~~ personnel records, recruiting, screening, and assisting department heads with hiring new employees, and advising employees of all policies, ~~rules, regulations,~~ benefits, and procedures.

Section 5.3. Personnel Committee

The purpose of the Personnel Committee will be to provide a representative body rough which city employees, management and non-management alike will be able to express their opinions as they relate to policies, ~~rules, regulations,~~ benefits and procedures.

Incumbents holding the following city positions shall serve as standing members of the committee: City Manager, Human Resources Director, ~~Personnel Administrator,~~ **Accounting Specialist**, and Personnel Specialist. The Human Resources Director shall serve as Chairperson of the committee and will only vote on matters presented to the committee in the case of a tie. ~~The City Attorney shall serve as the legal advisor to the committee.~~

In addition to the standing members of the committee, the Chairperson shall initially appoint ten (10) employees to serve on the committee. Ultimately, these persons shall serve staggered two (2) year terms. The Chairperson shall strive to maintain proportional representation of management and non-management employees on the committee at all times. The two (2) year term of service for each member of the committee shall commence on April 1st of the calendar year when the member is appointed. With the exception of the first five (5) members of the Personnel Committee to be appointed by the Chairperson, a member's term shall not expire until two (2) years later at midnight on March 31st. The first (5) employees appointed by the Chairperson to serve on the committee shall

serve a term of one (1) calendar year that commences on April 1, 2002, and expires at midnight on March 31, 2003. The next group of five (5) appointees shall serve a full two (2) year term that commences on April 1, 2002, and expires at midnight on March 31, 2004. Prior to the expiration of terms of the first five (5) employees appointed by the committee, five (5) new members shall be appointed by the Chairperson and confirmed by a majority of the existing committee members whose terms do not expire until midnight on March 31. The same procedure shall be followed every year subsequent to 2003 in order to replace the five (5) members whose term of office expires at midnight on March 31st of a given year. A currently serving member of the committee shall be eligible for reappointment to another term of service. However, other than standing members of the committee, no member shall serve in excess of four (4) consecutive years on the committee. In the case of a member of the committee that is terminating his or her employment with the City or resigning from the committee prior to the expiration of his or her term, the Chairperson, subject to confirmation by a majority of the existing members of the committee, shall appoint an employee to serve the remainder of the unexpired term.

Section 6. ~~Records~~

- ~~(a) The Human Resources Department shall retain records necessary to the proper administration of the personnel system.~~
- ~~(b) As stated in Chapter 160-A of the General Statutes of North Carolina, personnel records maintained by a city are subject to inspection. Personnel records shall be inspected in accordance with the following statute:~~

~~Section 160-A-168. privacy of employee personnel records.~~

- ~~(a) Notwithstanding the provisions of G.S. 132-6 or any other general law or local act concerning access to public records, personnel files of employees, former employees or applicants for employment maintained by a city are subject to inspection and may be disclosed only as provided by this section. For purposes of this section, an employee's personnel file consists of any information in any form gathered by the city with respect to that employee and, by way of illustration but not limitation, relating to his application, selection or nonselection, performance, promotions, demotions, transfers, suspension and other disciplinary actions, evaluation forms, leave, salary, and termination of employment. As used in this section, "employee" includes former employees of the city.~~
- ~~(b) The following information with respect to each city employee is a matter of public record: Name; age; date of original employment or appointment to the service; current position title; current salary; date and amount of the most recent increase or decrease in salary; date of the most recent promotion, demotion, transfer, suspension, separation, or other change in position classification; and the office to which the employee is currently assigned. The city council shall determine in what form and by whom this information will be maintained. Any person may have access to this information for the purpose of inspection, examination, and copying, during regular business hours, subject only to such rules and regulations for the safekeeping of public records as the city council may have adopted. Any person denied access to this information may apply to the appropriate division of the general court of justice for an order compelling disclosure, and the court shall have jurisdiction to issue such orders.~~
- ~~(c) All information contained in a city employee's personnel file, other than the information made public by subsection (b) of this section, is confidential and shall be open to inspection only in the following instances:
 - ~~(1) The employee or his duly authorized agent may examine all portions of his 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 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 inspection 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 official having custody of such 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 Human Resources Department 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. Before releasing the information, the Director shall determine in writing that the release is essential to maintaining public confidence in the administration of city services or to maintaining the level and quality of city services. This written determination shall be retained in the office of the manager or the city clerk, and is a record available for public inspection and shall become part of the employee's personnel file.~~

~~(c1) Even if considered part of an employee's personnel file, the following information need not be~~

~~disclosed to an employee nor to any other person:~~

~~(1) Testing or examination material used solely to determine individual qualifications for appointment, employment, or promotion in the city's 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.~~

~~(c2) The city council may permit access, subject to limitations they may impose, to selected personnel files by a professional representative of a training, research, or academic institution if that person certifies that he will not release information identifying the employees whose files are opened and that the information will be used solely for statistical, research, or teaching purposes. This certification shall be retained by the city as long as each personnel file examined is retained.~~

~~(d) The city council of a city that maintains personnel files containing information other than the information mentioned in subsection (b), this section shall establish procedures whereby an employee who objects to material in his file on grounds that it is inaccurate or misleading may seek to have the material removed from the file or may place in the file a statement relating to the material.~~

Section 7.4. Supplementary Departmental Policies

Departments may develop additional policies and procedures to meet their unique personnel requirements. Additional policies must be approved by the Human Resources Director and/or City Manager and in the event such policies conflict with the policies established herein, such additional policies and procedures shall be void.

Section 5. Employment at Will

The policies and procedures set forth in this manual do not entitle any employee to be or remain employed by the City of Asheboro. Employees of the City of Asheboro are subject to the employment at will doctrine.

EXHIBIT 2

ARTICLE II. POSITION CLASSIFICATION PLAN

Section 1. ~~Adeoption~~ Allocation of Positions

~~The position classification plan shall be prepared by the City Manager and shall be adopted by the City Council.~~

The City Manager shall be the approving authority for the City of Asheboro classification and salary plan developed by the Human Resources Department. The Director of Human Resources shall allocate each class title to the appropriate class code in the position classification plan.

Section 2. ~~Purpose~~

~~The position classification plan shall include a complete inventory of all authorized full-time positions in the City of Asheboro. Positions shall be allocated to its appropriate class standardizing job titles by duties and responsibilities.~~

Section ~~3~~2. "Full Time Employees" Defined

"Full-time employees" are those who are in positions for which an average work week consists of 40 hours or more and continuous employment of 12 months is required by the City. Layoff and authorized leave-without-pay do not interrupt continuous employment for purposes of this section.

Section ~~4~~3. "Part-Time Employees" Defined

"Part-time employees" are those who are in positions for which an average work week consists of less than 40 hours and the employee receives no benefits. If a part-time employee should occasionally work over 40 hours in a single week they would be paid according to Fair Labor Standard Act (FLSA) requirements.

Section ~~5~~4. "Seasonal Recreational Employees" Defined.

"Seasonal Recreational employees" are those who are employed in a recreational establishment in an interim position for less than six (6) full months in any one calendar year. Seasonal employees are exempt from Fair Labor Standards Act overtime requirements and this policy's Article V Section 3, Employment of Relatives requirement.

Section ~~6~~5. "Regular Employees" Defined.

All full-time and part-time employees who have successfully completed their probation periods shall be considered regular employees.

All City positions are subject to budget review and approval each year, and employees must meet established standards of conduct and job performance. Reference to "regular employees" or "regular positions" should not be construed as a right or contract to perpetual funding or employment.

Section 7. ~~Composition~~

~~The classification plan shall consist of the following:~~

- ~~(a) Grouping of positions in classes which are approximately equal in difficulty and responsibility which call for the same general qualifications and which can be equitably compensated within the same range of pay under similar working conditions.~~
- ~~(b) Class titles descriptive of the work of the class which identify the class.~~
- ~~(c) Written specifications for each class of positions.~~

Section 8. ~~Use of Position Classification Plan~~

~~The position classification plan is to be used:~~

- ~~(a) As a guide in recruiting and examining applicants for employment;~~
- ~~(b) In determining salary to be paid for various types of work;~~
- ~~(c) In determining personal service items in departmental budgets;~~

~~_____ (d) _____ In determining lines of promotion and in development of employee training programs; _____ and~~

~~_____ (e) _____ In providing uniform job terminology.~~

~~**Section 9. _____ Administration of the Position Classification Plan**~~

~~The City Manager shall be responsible for the administration of the position classification plan, and shall review periodically the entire position classification plan and recommend appropriate changes to the City Council. The Human Resources Department shall have the responsibility for the implementation of the plan.~~

~~**Section 10. _____ Allocation of Position**~~

~~When a new position is established or the duties of an existing position change, department heads shall submit in writing a comprehensive job description describing in detail the duties of such a position. The city manager shall investigate the actual or suggested duties and recommend the appropriate class allocation or the establishment of a new class to the City Council for approval.~~

~~**Section 11. _____ Request for Reclassification**~~

~~Any employee who considers the position in which he is classified to be in error shall submit a request in writing for reclassification to his immediate supervisor, who shall immediately forward the request to the department head. The department head in consultation with the Human Resources Department shall review the request and proceed as follows:~~

~~_____ (a) _____ If it is determined that there is merit to the request, the Human Resources Department shall immediately forward a recommendation in writing to the City Manager, or~~

~~_____ (b) _____ If it is determined that there is not merit to the request, the Human Resources Department shall inform the employee in writing and also of the employee's right to appeal this finding under the grievance procedure.~~

Section 6. Administration

The Human Resources Department shall administer and maintain the position classification plan.

(a) Department Heads shall be responsible for bringing to the attention of the Director of Human Resources the need for additional or fewer positions and significant changes in the nature of duties, responsibilities, or working conditions affecting a position.

(b) The City Manager shall approve assigning the new position to an existing class title or amending the position classification plan to establish a new class title.

(c) The Human Resources Department shall establish a schedule to audit one third of the class titles in the position classification plan each year.

(d) When the Human Resources Department determines that a substantial change has occurred in the nature of duties, responsibilities, or working conditions of an existing class title, the existing job description shall be revised by the Human Resources Director. Any such revisions shall be subject to the approval of the City Manager.

Section 7. Amendment of the Position Classification Plan

The City Manager may approve amendments recommended by the Director of Human Resources to the position classification plan that change the assigned salary range of the existing class title, reassign the position to the appropriate class title within the existing position classification plan, or establish a new class title.

ARTICLE III. PAY PLAN

Section 1. General

The pay plan includes the basic salary schedule adopted and amended by the City Council. The salary schedule shall consist of minimum and maximum rates of pay and intermediate steps for all classes of positions included in the position classification plan.

Section 2. Maintenance of Pay Plan

The Human Resources Department under the direction of the City Manager shall be responsible for the maintenance and administration of the pay plan. The pay plan is intended to provide equitable

compensation for all positions when considered in relation to each other, to general rates of pay for similar employment in the private sector and in other public jurisdictions in the area, to changes in cost of living, to financial conditions of the area and other factors. The Human Resources Department will periodically make comparative studies of all factors affecting the level of salary ranges and will recommend to the City Manager ~~for council consideration~~ such changes in salary ranges as appear to be pertinent. Adjustments to the assigned salary level for the class of employees affected ~~will be recommended~~ will be subject to approval by the City Manager. ~~for council approval.~~

Section 3. Transition to a New Pay Plan

The following provisions shall govern the transition to a new pay plan.

- pay
- (a) No employee shall receive a salary reduction as a result of the transition to a new plan.
 - (b) An employee being paid at a rate lower than the minimum rate established for such employee's class shall be raised to a salary at or above the new minimum for the class.
 - (c) An employee being paid at a rate above the maximum rate established for such employee's class shall remain at such rate until their salary falls within the established salary range for the classification.

Section 4. Use of Salary Ranges

Salary ranges are intended to furnish administrative flexibility in recognizing individual differences among positions allocated to the same class, in providing employee incentive and in rewarding employees for meritorious service. All employees covered by the pay plan shall be paid at a listed rate within the salary ranges established for their perspective job classes except for employees in a trainee status.

Section 5. Starting Salaries

The minimum rate established for the class shall be the normal hiring rate, except in cases where unusual circumstances warrant appointment at a higher rate. On the recommendation of the department head with the approval of the City Manager approval of a rate above the minimum may be made when it is deemed to be in the best interest of the City. Approval will be based on the qualifications of the applicant in excess of the requirements for the class; where there is a shortage of qualified applicants available at the minimum step; and when qualified applicants decline employment at the minimum step.

EXHIBIT 3

ARTICLE V. CONDITIONS OF EMPLOYMENT

Section 1. Workweek - Generally

The standard or basic workweek of employees of the city shall be 40 hours per week.

Section 2. Workweek - Police and Fire Shift Personnel

The basic workweek for police, fire and shift personnel will be without reference to the number of hours per day or days of the week but shall be the number of hours established by the council as scheduled by the City Manager and in accordance with the Fair Labor Standards Act.

Section 3. Employment of Relatives

The City prohibits the hiring of relatives within the same department; however, related persons may work for the City in different departments. Subsequent to the hiring process, the permissibility of related persons working in the same department will be evaluated on a case-by-case basis. While not expressly prohibited, such a situation is discouraged. An employee may not serve as a direct supervisor for a related employee under any circumstances.

For the purpose of this section relatives shall be deemed to include spouse, mother, father, guardian, children, sister, brother, grandparents, grandchildren, plus the various combinations of half, step, in-law and adopted relationships that can be derived from those named.

Seasonal Recreational and Part-Time employees in the Parks and Recreation Department are exempted from this requirement.

Section 4. Probationary Period of Employment

New employees, promoted employees, or any employee transferred to another position shall serve a probationary period of 6 months. New employees may be dismissed during the probationary period at any time. A new probationary employee dismissed may not appeal such action. The new employee must be given notice of dismissal in writing.

Promoted or transferred employees may be reassigned at any time during the probationary period to comparable positions if the department head feels they are not satisfactorily progressing on the new assignment. Such reassignments are not subject to appeal.

No vacation or sick leave may be taken by a new probationary employee nor will a new probationary employee be paid for any accrued vacation or sick leave if employment is terminated during the probationary period. If a probationary employee is injured on the job they may use any accrued time during the seven (7) day waiting period imposed by Worker's Compensation.

New probationary full-time employees are eligible for general salary increases as authorized by the city council. Upon the successful completion of the probationary status, a salary increase will be granted when they become regular employees.

Section 5. Gifts and Favors

No official or employee of the city shall accept any valuable gift whether in the form of service, loan, thing or promise from any person who, to their knowledge, is interested directly or indirectly in any manner whatsoever in doing business with the city which may tend to influence the discharge of duties, or grant any improper favor, service, or thing of value in the performance of their duties.

EXHIBIT 4

ARTICLE VII. LEAVES OF ABSENCE

Section 21. Military Leave

An employee who is a member of the National Guard or the Armed Forces Reserve will be allowed ten (10) working days of military training leave annually, with partial compensation. If the compensation received while on military leaves is less than the salary that would have been earned during the same period as an active employee, the employee shall receive partial compensation equal to the difference between the base salary earned as a reservist and the salary that would have been earned during this same period as a city employee. The effect will be to maintain the employee's salary at the normal level during this period of ten (10) working days. If such military duty is required beyond this period of ten (10) working days, the employee shall be eligible to take accumulated annual leave or be placed on leave-without pay status.

While on military leave with partial pay or without pay, the employee's leave credits and other benefits shall continue to accrue as if the employee remained with the city during this period. Employees who are reservists have all applicable job rights specified in the Veterans Readjustment Assistance Act.

Notwithstanding the above stated provisions, all compensation and benefits authorized by this section shall be paid or accrued in strict accordance with the applicable laws and regulations, specifically including without limitation, the Internal Revenue Service regulations.

EXHIBIT 5

ARTICLE IX. FAIR LABOR STANDARDS

Section 1. Pay Rate, Workweek, Overtime and Compensatory Time Policies Adopted.

- (e) Overtime. Overtime work shall be that work performed by a nonexempt employee which exceeds the number of hours constituting the established workweek for that employee's position. Supervisors shall arrange the work schedules of their departments so as to accomplish the required work within the standard work period. Employees should be required to work overtime only in cases of emergencies. If overtime work occurs, the nonexempt employee will receive compensatory time-off, in lieu of overtime pay, at a rate of one and one-half hours for each hour of overtime worked. Compensatory time-off shall be granted by the department head within a reasonable period after it is requested if the use of the compensatory time does not unduly disrupt the operations of the department. Accumulated compensatory time will be paid upon termination of employment and shall be calculated at the average regular rate of pay for the final three (3) years of employment, or the final regular rate received by the employee, whichever is higher. The maximum number of hours that can be accumulated for regular forty-hour employees is two hundred

forty (240) (not more than one hundred sixty (160) hours of actual overtime hours worked.) Eligible employees who qualify for the Section 7k exemption in the police department and the fire department can accumulate up to four hundred eighty (480) hours (not more than three hundred twenty (320) hours of actual overtime hours worked). If any nonexempt employee has already accrued the 240 hour maximum for regular 40-hour employees or the 480 hour maximum for employees affected by the Section 7k exemption, such employee shall receive compensation for overtime worked at an hourly rate of 1.5 times his/her regular rate for overtime hours worked. The overtime compensation described in the preceding sentence shall be paid automatically when the excess hours are accrued, so long as the employee maintains the maximum number of compensatory hours that can be accumulated by regular 40 hour employees and employees subject to the 7k exemption. Regardless of the number of compensatory hours accrued by an employee, the department head, in consultation with the City Manager, may approve the payment of overtime worked at the rate of one and one-half (1 ½) hours for each hour of overtime worked in extreme emergencies or in an unusual work situation. In order to receive a discretionary payment for overtime work as described in the immediately preceding sentence, the department head for whom the affected employee works shall, prior to submission of the department's time sheets to the accounting specialist, indicate on said employee's time sheet whether the employee is classified as an exempt or non-exempt employee and ~~obtain the City Manager's written approval on said time sheet of payment for overtime work.~~

14. Monthly water billing:

(a) Progress report on the proposed transition to monthly billing.

Ms. Reaves presented a PowerPoint presentation on the proposed transition to monthly water billing. Currently, residential water customers are billed every two months and business and industrial customers are billed monthly. Beginning in April of 2009, all water customers will be billed on a monthly basis.

[A copy of the PowerPoint presentation utilized by Ms. Reaves is on file in the City Clerk's office.]

(b) Ordinance amending Chapter 50 (Water and Sewers) of the Code of Asheboro

Mr. Sugg presented and recommended adoption, by reference, of the aforementioned ordinance.

Upon motion by Ms. Carter and seconded by Mr. Priest, Council voted unanimously to adopt the following ordinance by reference.

06 ORD 2-09

AN ORDINANCE AMENDING CHAPTER 50 OF THE CODE OF ASHEBORO

WHEREAS, Chapter 50 of the Code of Asheboro prescribes general water and sewer regulations for the City of Asheboro; and

WHEREAS, the Asheboro City Council has concluded that the city's water and sewer regulations need to be amended in order to allow the city's water and sewer utility to update its billing practices so as to satisfactorily address the utility's current operational and legal needs.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Asheboro as follows:

Section 1. Section 50.005 of the Code of Asheboro, which is entitled "**BILLING PERIODS**," is hereby rewritten to provide as follows:

§ 50.005 BILLING PERIODS.

Text of section effective until April 1, 2009. See, also, section effective April 1, 2009.

(A) All industrial and commercial accounts shall be billed monthly, based approximately on a 30-day usage period. For purposes of this section and throughout Chapter 50, a commercial account is hereby defined as any account that is a non-residential account or a non-industrial account.

(B) Billing to all residential accounts shall be a two-month billing, representing a usage period of approximately 60 days. These accounts will be billed on a two-cycle basis, that is, one-half of such accounts will be billed on alternate months.

(C) All accounts, including industrial and commercial accounts, will be scheduled to receive bills only at the end of the month on or about the thirtieth of the month.

§ 50.005 BILLING PERIODS.

Text of section effective April 1, 2009. See, also, section effective until April 1, 2009.

~~(A) All industrial and commercial accounts shall be billed monthly, based approximately on a 30-day usage period. All residential, industrial, and commercial accounts shall be billed monthly, and all accounts will be scheduled to receive bills only at the end of the month on or about the thirtieth of the month.~~ For purposes of this section and throughout Chapter 50, a commercial account is hereby defined as any account that is a non-residential account or a non-industrial account.

~~(B) Billing to all residential accounts shall be a two-month billing, representing a usage period of approximately 60 days. These accounts will be billed on a two-cycle basis, that is, one-half of such accounts will be billed on alternate months.~~

~~(C) All accounts, including industrial and commercial accounts, will be scheduled to receive bills only at the end of the month on or about the thirtieth of the month.~~

Section 2. Section 50.006 of the Code of Asheboro, which is entitled "**PAYING SERVICE CHARGES**," is hereby rewritten to provide as follows:

(A) Water and sewer accounts are payable to the City Water Department, 146 North Church Street, Asheboro, North Carolina. ~~With the payment of a convenience fee equal to 1.5% of the amount owed, customers may pay outstanding balances on their accounts with credit cards accepted by the Water Department.~~ All bills are due and payable on receipt, and, subject to division (C) of this section, all accounts for which payment is not received by the Water Department within 15 days from the billing date indicated on the bill shall be considered delinquent. Once an account becomes delinquent, a \$10.00 fee shall be assessed against the account as a first tier late fee. If an account remains in a state of delinquency as of the 25th day from the billing date indicated on the bill, an additional \$35.00 fee shall be assessed against the account as a second tier late fee. Upon assessment, any and all late fees shall be immediately due and payable. For all delinquent accounts, a reminder notice shall be mailed which shall specify a final date, not prior to ten days after the delinquent date, by which payment must be remitted or service will be discontinued pursuant to § 50.007. The reminder notice shall also provide notice that customers may submit disputed bills to the water and sewer billing and collections department supervisor for review; the supervisor or his deputy shall be authorized to make adjustments to the billing amount in accordance with § 50.021 if such is deemed proper following the review and the bill is unpaid. The notice shall specify the hours during which a customer may call or come by for a review of disputed unpaid bills. After the review process, any customer who does not pay or make arrangements to pay the adjusted amount shall be entered on the list of delinquent customers whose services are to be terminated pursuant to § 50.007.

(B) If notification is received that a check has not been honored and has been returned due to insufficient funds or for any other reason, a charge of \$25.00 shall be added to the customer's current bill, and such charge shall become immediately due and payable. Additionally, if payment in full with good funds has not been received within 15 days from the billing date indicated on the customer's bill, the account shall be considered delinquent. In the event an account becomes delinquent due to a financial institution not honoring a check, a \$10.00 late fee shall be assessed against the account as a first tier late fee. If the account is or remains in a state of delinquency as of the 25th day from the billing date, an additional \$35.00 fee shall be assessed against the account as a second tier late fee. A customer shall have five (5) business days from the date of notification to the city that the customer's check has not been honored to make payment in full, including any assessed fees, with good funds to the City Water Department. If the outstanding balance is not paid in full with good funds within the time period specified in the preceding sentence or by the 25th day of the month in which the bill is first due and payable, whichever is later, the customer's water service ~~will be discontinued without further notice pursuant to § 50.007. shall be discontinued without further notice.~~ Whenever within any 12-month period the city is notified on two (2) separate occasions that a customer's check has been returned due to insufficient funds in the account or for any other reason, such a customer shall be required to make payment in good funds for twelve (12) consecutive billing periods before such a customer is eligible to make payments in any other form.

(C) As with all other customers, water and sewer accounts that are paid by means of automatic draft are payable to the City Water Department, 146 North Church Street, Asheboro, North Carolina. Customers who choose to make payments on their water and sewer accounts by means of automatic draft may make arrangements with the City Water Department to have an appropriate account at a financial institution drafted for payment in full of a regular billing on the 10th day, 15th day, 20th day, or 25th day of the month in which a bill is due and payable. If notification is received that an attempted automatic draft of a payment has failed due to insufficient funds in a customer's designated account or for any other reason, a charge of \$25.00 shall be added to the customer's current bill, and such charge shall become immediately due and payable. Additionally, if any attempted automatic draft of a customer's account fails and payment in full with good funds has not been received within 15 days from the billing date indicated on the customer's bill, the account shall be considered delinquent. In the event an account becomes delinquent, a \$10.00 late fee shall be assessed against the account as a first tier late fee. If the account is or remains in a state of delinquency as of the 25th day from the billing date, an additional \$35.00 fee shall be assessed against the account as a second tier late fee. A customer shall have five (5) business days from the date of notification to the City Water Department that an automatic draft of the customer's designated account has not been honored to make payment in full, including any assessed fees, with good funds to the City Water Department. If the outstanding balance is not paid in full with good funds within the time period specified in the preceding sentence or by the 25th day of the month in which the bill is first due and payable, whichever is later, the customer's water service ~~will be discontinued without further notice pursuant to § 50.007.~~ **will be discontinued without further notice pursuant to § 50.007.** Whenever within any 12-month period the City Water Department is notified on two (2) separate occasions that an attempt to automatically draft a customer's designated account for payment has failed due to insufficient funds in the account or for any other reason, such a customer shall be required to make payment in good funds only for twelve (12) consecutive billing periods before such a customer is eligible to make payments to the city in any form other than good funds.

Section 3. Section 50.007 of the Code of Asheboro, which is entitled "**DISCONTINUANCE OF SERVICE FOR DELINQUENT ACCOUNTS; RESTORATION FEE,**" is hereby rewritten to provide as follows:

~~(A) Subject to the provisions of Section 50.006 pertaining to failed automatic draft attempts and checks that are returned due to insufficient funds or other reasons, any~~ **Any** customer whose water and sewer service bill shows that payment is due for the current month and one preceding month shall have his water service discontinued if the account is not paid within 25 days from the billing date indicated on the bill.

~~(B) Tampering with a water meter or any device attached thereto is hereby expressly declared to be unlawful and will result in a charge and other enforcement actions as hereinafter set out. Within any twelve calendar month period, there will be a charge of one hundred fifty dollars (\$150.00) for the first offense, five hundred dollars (\$500.00) for the second offense, and criminal penalties, including without limitation a fine of five hundred dollars (\$500.00), shall be instituted thereafter in accordance with Section 14-4 of the North Carolina General Statutes. By way of illustration and without limitation, a customer shall be deemed to have tampered with a water meter if, without authorization from the Water and Sewer Department, water service for any premises is restored after having been turned off by order of the Water and Sewer Department, the water meter or any device attached thereto has been damaged to any degree by an individual not employed by or acting on behalf of the city while attempting to manipulate or operate some physical component of or attachment to the water meter, or if the water meter has been relocated in some manner. Nothing contained within this division shall release a person found guilty of tampering with a water meter or any other aspect of the city's water supply and distribution system from liability for so doing, and the provisions of this division shall not preclude the city from pursuing any other remedy available at law or equity for such unlawful conduct.~~

~~(C)~~ **(B)** Any customer who has had service disconnected and who applies for restoration of service shall be considered a new customer; provided, however, that the restoration of service for such a customer shall not relieve the customer of any of his or her obligations and liabilities to the City of Asheboro for any and all outstanding balances, specifically including without limitation any assessed fees, still owed to the City of Asheboro as a consequence of the individual's or entity's past relationship with the City of Asheboro as a customer of the Water and Sewer Department. Furthermore, the provisions of this division of § 50.007 shall not be construed so as to provide relief from restrictions as to the form of payment that will be accepted from a customer when that customer has had water service discontinued pursuant to division (F) of this section and § 50.006(B) of this Chapter. Prior to the restoration of service to an individual or entity as a new customer under the provisions of this division of § 50.007, such a customer must pay the deposit

amount required of a new customer, if the previous deposit was applied to an outstanding balance, plus a minimum of one-half (½) of the total outstanding balance, including any and all service fees and other assessed fees, owed by the individual or entity to the City of Asheboro as a former customer. The remaining balance of the outstanding debt shall be billed to the customer on the customer's next billing and shall be subject to collection in the same manner as prescribed for any regular bill.

~~(D)~~ (C) (1) When water service has been discontinued to a customer and the customer does not remit payment on his account, the Water and Sewer Billing Department shall send a letter to the last known address of the customer informing him that this matter will be turned over to a collection agency in 30 days of the date of the letter if the account balance is not paid in full within that time period. There will be no set format for this letter. The envelope in which the letter is mailed will bear a request for the Post Office to forward it to any known proper address of the customer.

(2) If the account balance is not settled within 30 days of the mailing of the above letter, the account is to be turned over to a collection service to be recorded on the customer's credit record. The city shall authorize the collection service to make their best effort to collect the balance due. Any account turned over to the collection service shall be noted by a flag on the customer's record on the city's computer records, so that if an amount is collected, the portion due the collection service under the city's contract with them can be remitted as required. The City Council's approval shall be required before the city can enter into any contract for collection services with a collection agency.

Section 4. Section 50.045 of the Code of Asheboro, which is entitled "**TAMPERING WITH FIXTURES PROHIBITED**," is hereby rewritten to provide as follows:

(A) It shall be unlawful for any person to deface, tamper with or injure any house, reservoir, valve cock, wheel, fire plug or other fixture connected with or pertaining to the city water system, or to place any building material, rubbish or other matter or substance on any valve, stop cock, meter box, water main or service pipe, or to obstruct access to any fixture connected with the city water system, or to remove, tamper with or injure any pipe, fire plug, hydrant, valve or cock or to open any of them, except when due authority has been given therefore by the Water and Sewer Department.

(B) Tampering with a water meter or any device attached thereto is hereby expressly declared to be unlawful and will result in a charge and other enforcement actions as hereinafter set out. Within any twelve calendar month period, there will be a charge of one hundred fifty dollars (\$150.00) for the first offense, five hundred dollars (\$500.00) for the second offense, and criminal penalties, including without limitation a fine of five hundred dollars (\$500.00), shall be instituted thereafter in accordance with Section 14-4 of the North Carolina General Statutes. By way of illustration and without limitation, a customer shall be deemed to have tampered with a water meter if, without authorization from the Water and Sewer Department, water service for any premises is restored after having been turned off by order of the Water and Sewer Department, the water meter or any device attached thereto has been damaged to any degree by an individual not employed by or acting on behalf of the city while attempting to manipulate or operate some physical component of or attachment to the water meter, or if the water meter has been relocated in some manner. Nothing contained within this division shall release a person found guilty of tampering with a water meter or any other aspect of the city's water supply and distribution system from liability for so doing, and the provisions of this division shall not preclude the city from pursuing any other remedy available at law or equity for such unlawful conduct.

Section 5. Section 50.020 of the Code of Asheboro, which is entitled "**PERSONS NOT ENTITLED TO SERVICE**," is hereby rewritten to provide as follows:

(A) It shall be unlawful for any consumer of water from the city water system to supply water to any person whose supply has been cut off by the Water and Sewer Department for nonpayment of the water bill or for any other violation of this chapter or other provision of this Code, or for the consumer to permit any such person to take water from the fixtures on the consumer's premises.

(B) It shall be unlawful for any person not entitled to be supplied with water from the City Water System to take water from any fixture thereof.

~~**(C)** No person shall be entitled to be supplied with water from the city water system unless that person is in full compliance with the laws, ordinances, and regulations enforced by the city's Inspection Department and is also in full compliance with the Asheboro Zoning Ordinance. The term "person" shall be deemed to include natural persons and any other type of legal entity. Determinations as to whether or not a person is in full compliance with the State Building Code and the other ordinances and regulations administered by the city's Inspections Department shall be made by the Chief~~

~~Building Inspector, and the Zoning Administrator shall make determinations as to whether or not a person has complied with the Asheboro Zoning Ordinance. In those cases where an application for water service and the required deposit have been accepted by the Water and Sewer Billing Department prior to that department's receipt of notification of a determination of non-compliance by the Chief Building Inspector and/or the Zoning Administrator, water service for the person and location in question shall be immediately discontinued by the Water and Sewer Department upon receipt of said notification. Upon discontinuance of water service pursuant to this division, the person that applied for water service may make a written election to withdraw the previously submitted application for water service and receive a refund of any portion of the deposit previously tendered to the Water and Sewer Billing Department that is not needed to satisfy all or a portion of the payment owed to the city for water consumed prior to the discontinuance of service. In the absence of a written election to withdraw the previously submitted application for service and the accompanying deposit, said application and deposit will be held by the Water and Sewer Billing Department until the Chief Building Inspector and Zoning Administrator notify the Water and Sewer Billing Department that all of the regulatory compliance issues have been resolved. No interest or other form of credit will accrue in favor of any person that leaves a deposit in the custody of the city while regulatory compliance issues are resolved with the Inspections Department or the Zoning Administrator.~~

Section 6. Section 50.065 of the Code of Asheboro, which is entitled "RATES WITHIN THE CITY," is hereby rewritten to provide as follows:

§ 50.065 RATES WITHIN CITY.

Text of section effective until April 1, 2009. See, also, section effective April 1, 2009.

The minimum rate for residential customers within the city limits for each billing cycle (two months for residential customers) shall be \$15.34 for 300 cubic feet of water or less. The minimum rate for all other customers within the city limits for each billing cycle (one month) shall be \$12.27 for 300 cubic feet of water or less. In addition to the minimum rates prescribed by this section, all customers within the city limits using more than 300 cubic feet of water per billing cycle shall be charged at the rate of \$2.51 per 100 cubic feet, or any portion thereof, (1 cubic foot of water equals approximately 7½ gallons of water) in excess of 300 cubic feet of water.

§ 50.065 RATES WITHIN CITY.

Text of section effective April 1, 2009. See, also, section effective until April 1, 2009.

~~The minimum rate for residential customers within the city limits for each billing cycle (two months for residential customers) shall be \$15.34 for 300 cubic feet of water or less. The minimum rate for all other customers within the city limits for each billing cycle (one month) shall be \$12.27 for 300 cubic feet of water or less. In addition to the minimum rates prescribed by this section, all customers within the city limits using more than 300 cubic feet of water per billing cycle shall be charged at the rate of \$2.51 per 100 cubic feet, or any portion thereof, (1 cubic foot of water equals approximately 7½ gallons of water) in excess of 300 cubic feet of water.~~

The rate structure for the monthly billing, regardless of the actual number of days within the usage period reflected on the bill, for water made available to the city water utility's non-bulk customers located within the corporate limits of the City of Asheboro is as follows:

	<u>Residential Customer</u>	<u>Commercial Customer</u>	<u>Industrial Customer</u>
<u>Minimum Charge</u>	<u>\$7.67 for water usage in the range of 0 to 150 cubic feet</u>	<u>\$12.27 for water usage in the range of 0 to 300 cubic feet</u>	<u>\$12.27 for water usage in the range of 0 to 300 cubic feet</u>
<u>Consumption Charge</u>	<u>\$2.51 per 100 cubic feet of water, or portion thereof, used in excess of the minimum of 150 cubic feet</u>	<u>\$2.51 per 100 cubic feet of water, or portion thereof, used in excess of the minimum of 300 cubic feet</u>	<u>\$2.51 per 100 cubic feet of water, or portion thereof, used in excess of the minimum of 300 cubic feet</u>

Section 7. Section 50.066 of the Code of Asheboro, which is entitled “**RATES FOR CUSTOMERS OUTSIDE CITY,**” is hereby rewritten to provide as follows:

§ 50.066 RATES FOR CUSTOMERS OUTSIDE CITY.

Text of section effective until April 1, 2009. See, also, section effective April 1, 2009.

The rates to consumers of water outside the city limits shall be 2.5 times the rates in § 50.065.

§ 50.066 RATES FOR CUSTOMERS OUTSIDE CITY.

Text of section effective April 1, 2009. See, also, section effective until April 1, 2009.

~~The rates to consumers of water outside the city limits shall be 2.5 times the rates in § 50.065.~~

~~The rate structure for the monthly billing, regardless of the actual number of days within the usage period reflected on the bill, for water made available to the city water utility's non-bulk customers located outside the corporate limits of the City of Asheboro is as follows:~~

	<u>Residential Customer</u>	<u>Commercial Customer</u>	<u>Industrial Customer</u>
<u>Minimum Charge</u>	<u>\$19.18 for water usage in the range of 0 to 150 cubic feet</u>	<u>\$30.68 for water usage in the range of 0 to 300 cubic feet</u>	<u>\$30.68 for water usage in the range of 0 to 300 cubic feet</u>
<u>Consumption Charge</u>	<u>\$6.28 per 100 cubic feet of water, or portion thereof, used in excess of the minimum of 150 cubic feet</u>	<u>\$6.28 per 100 cubic feet of water, or portion thereof, used in excess of the minimum of 300 cubic feet</u>	<u>\$6.28 per 100 cubic feet of water, or portion thereof, used in excess of the minimum of 300 cubic feet</u>

Section 8. Section 50.110 of the Code of Asheboro, which is entitled “**SEWER RATES,**” is hereby rewritten to provide as follows:

§ 50.110 SEWER RATES.

Text of section effective until April 1, 2009. See, also, section effective April 1, 2009.

(A) For the privilege of discharging into the wastewater disposal system, a service charge is hereby imposed upon and shall be collected from all users. Except as provided in § 50.111, § 50.112, § 50.115, and division (B) of this section, the service charge imposed upon and collected from a person availing himself or herself of the wastewater disposal system shall be based on the amount of water such a person uses from the city water supply system. The minimum sewer rate for residential customers within the city limits for each billing cycle (two months for residential customers) shall be \$19.25 for 300 cubic feet or less of water used from the city water supply system. The minimum rate for all other customers within the city limits for each billing cycle (one month) shall be \$12.27 for 300 cubic feet or less of water used from the city water supply system. In addition to the minimum sewer rates prescribed by this section, all users within the city limits using more than 300 cubic feet of water per billing cycle from the city water supply system shall be charged for use of the city wastewater disposal system at the rate of \$2.51 per 100 cubic feet of water, or any portion thereof, used in excess of the minimum amount of 300 cubic feet. The rates to users outside of the city limits shall be 2.5 times the rates of inside users.

(B) The rate for residential customers located inside the corporate limits and connected to only the municipal sanitary sewer system shall be \$36.19 for each billing cycle (two months for residential customers) and \$72.38 for each billing cycle if the sewer only residential customer is located outside the corporate limits. The rate for non-residential customers located inside the corporate limits and connected to only the municipal sanitary sewer system shall be \$25.50 for each billing cycle (one month for

non-residential customers) and \$51.00 for each billing cycle if the sewer only non-residential customer is located outside the corporate limits.

§ 50.110 SEWER RATES.

Text of section effective April 1, 2009. See, also, section effective until April 1, 2009.

(A) For the privilege of discharging into the wastewater disposal system, a service charge is hereby imposed upon and shall be collected from all users. Except as provided in § 50.111, § 50.112, § 50.115, and division (B) of this section, the service charge imposed upon and collected from a person availing himself or herself of the wastewater disposal system shall be based on the amount of water such a person uses from the city water supply system. The minimum sewer rate for residential customers within the city limits for each billing cycle (two months for residential customers) shall be \$19.25 for 300 cubic feet or less of water used from the city water supply system. The minimum rate for all other customers within the city limits for each billing cycle (one month) shall be \$12.27 for 300 cubic feet or less of water used from the city water supply system. In addition to the minimum sewer rates prescribed by this section, all users within the city limits using more than 300 cubic feet of water per billing cycle from the city water supply system shall be charged for use of the city wastewater disposal system at the rate of \$2.51 per 100 cubic feet of water, or any portion thereof, used in excess of the minimum amount of 300 cubic feet. The rates to users outside of the city limits shall be 2.5 times the rates of inside users.

(B) The rate for residential customers located inside the corporate limits and connected to only the municipal sanitary sewer system shall be \$36.19 for each billing cycle (two months for residential customers) and \$72.38 for each billing cycle if the sewer only residential customer is located outside the corporate limits. The rate for non-residential customers located inside the corporate limits and connected to only the municipal sanitary sewer system shall be \$25.50 for each billing cycle (one month for non-residential customers) and \$51.00 for each billing cycle if the sewer only non-residential customer is located outside the corporate limits.

(A) For the privilege of discharging into the wastewater disposal system, a service charge is hereby imposed upon and shall be collected from all users. Except as provided in § 50.111, § 50.112, § 50.115, and division (D) of this section, the service charge imposed upon and collected from a person availing himself or herself of the wastewater disposal system shall be based on the amount of water such a person uses from the city water supply system.

(B) The rate structure for the monthly billing of city sewer utility customers located within the corporate limits of the City of Asheboro for discharging wastewater into the city sewer utility, regardless of the actual number of days within the usage period reflected on the bill, is as follows:

	<u>Residential Customer</u>	<u>Commercial Customer</u>	<u>Industrial Customer</u>
<u>Minimum Charge</u>	<u>\$9.63 for water usage in the range of 0 to 150 cubic feet</u>	<u>\$12.27 for water usage in the range of 0 to 300 cubic feet</u>	<u>\$12.27 for water usage in the range of 0 to 300 cubic feet</u>
<u>Consumption Charge</u>	<u>\$2.51 per 100 cubic feet of water, or portion thereof, used in excess of the minimum of 150 cubic feet</u>	<u>\$2.51 per 100 cubic feet of water, or portion thereof, used in excess of the minimum of 300 cubic feet</u>	<u>\$2.51 per 100 cubic feet of water, or portion thereof, used in excess of the minimum of 300 cubic feet</u>

(C) The rate structure for the monthly billing of city sewer utility customers located outside the corporate limits of the City of Asheboro for discharging wastewater into the city sewer utility, regardless of the actual number of days within the usage period reflected on the bill, is as follows:

	<u>Residential Customer</u>	<u>Commercial Customer</u>	<u>Industrial Customer</u>
<u>Minimum Charge</u>	<u>\$24.08 for water usage in the range of 0 to</u>	<u>\$30.68 for water usage in the range of 0 to</u>	<u>\$30.68 for water usage in the range of 0 to</u>

	150 cubic feet	300 cubic feet	300 cubic feet
<u>Consumption Charge</u>	<u>\$6.28 per 100 cubic feet of water, or portion thereof, used in excess of the minimum of 150 cubic feet</u>	<u>\$6.28 per 100 cubic feet of water, or portion thereof, used in excess of the minimum of 300 cubic feet</u>	<u>\$6.28 per 100 cubic feet of water, or portion thereof, used in excess of the minimum of 300 cubic feet</u>

(D) The sewer rate for residential customers located inside the corporate limits and connected to only the municipal sanitary sewer system shall be \$18.10 for each monthly bill and \$36.19 for each monthly bill if the sewer only residential customer is located outside the corporate limits. The rate for non-residential customers located inside the corporate limits and connected to only the municipal sanitary sewer system is \$25.50 for each billing cycle (one month for non-residential customers) and \$51.00 for each billing cycle if the sewer only non-residential customer is located outside the corporate limits.

Section 9. All ordinances and clauses of ordinances in conflict with this ordinance are hereby repealed.

Section 10. This ordinance shall take effect and be in force from and after February 5, 2009.

This ordinance was adopted by the Asheboro City Council in open session during a regular meeting held on the 5th day of February 2009.

s/ David H. Jarrell
David H. Jarrell, Mayor

ATTEST:

s/ Holly H. Doerr
Holly H. Doerr, City Clerk

15. ABC Items:

(a) Finance director's report on ABC revenues.

Ms. Reaves reported that the beer and wine tax is an excise tax that is collected from distributors and is paid to the North Carolina Department of Revenue. The department of revenue calculates and distributes the revenues based on per capita and eligible areas. Ms. Reaves further reported that, based on the prior year's collections, the City of Asheboro is only eligible for a percentage of the distribution in 2009 because the city did not have alcoholic beverage sales for the entire distribution year, beginning April 1st through March 31st. The city may receive approximately \$72,083 for this year.

Additionally, Ms. Reaves presented sales figures for the ABC store from November 2008 through January 2009. The local ABC board is not in a position to make distributions to the city at this time.

(b) Discussion of monthly stipend for ABC Board members.

Mr. Ogburn presented a list identifying compensation for ABC Boards throughout North Carolina. Based on this list, Council Members discussed the monthly stipend for the local ABC Board members.

Mr. Smith moved to set a stipend at \$150 per month for the City of Asheboro ABC Board. Mr. Moffitt seconded the motion. Council Members Baker, Moffitt, and Smith voted in favor of the motion. Council Members Burks, Carter, and Priest voted no. Mayor Jarrell broke the tie by voting no.

Upon motion by Mr. Burks and seconded by Ms. Carter, Council voted unanimously to direct the City Attorney to prepare a formal resolution setting the compensation for members of the Asheboro ABC Board at \$1,200.00 per year.

(c) Ordinance authorizing the Asheboro Police Department to seek state access to SBI/DCI criminal record information for ABC permit applicants.

Mr. Sugg presented and recommended adoption, by reference, of the aforementioned ordinance.

Upon motion by Mr. Priest and seconded by Mr. Moffitt, Council voted unanimously to adopt the following ordinance by reference.

07 ORD 2-09

AN ORDINANCE AUTHORIZING THE ASHEBORO POLICE DEPARTMENT TO SEEK STATE ACCESS TO SBI/DCI CRIMINAL RECORD INFORMATION FOR ABC PERMIT APPLICANTS

WHEREAS, Section 18B-904(f) of the North Carolina General Statutes authorizes the Asheboro City Council to designate a city official to make recommendations to the North Carolina Alcoholic Beverage Control Commission on behalf of the city concerning the suitability of an applicant for ABC permit(s) when the establishment for which a permit is sought is located within the city's corporate limits; and

WHEREAS, the Asheboro City Council has designated the city manager as the city official authorized to notify the North Carolina Alcoholic Beverage Control Commission of the recommendations of the City of Asheboro regarding the suitability of persons and locations for ABC permits within its jurisdiction; and

WHEREAS, the city manager relies upon a review by the Asheboro Police Department of the available law enforcement records for such persons and locations when making a recommendation about the suitability of persons and locations for ABC permits; and

WHEREAS, the Asheboro Police Department desires state access to the SBI/DCI Criminal History Record Information in order to obtain criminal history information on all persons applying for ABC permits for establishments located within the corporate limits of the City of Asheboro; and

WHEREAS, the Asheboro Police Department will access each applicant's criminal history information by utilizing the applicant's identifying information that is provided on the forms created by the North Carolina Alcoholic Beverage Control Commission for use during the permit application process; and

WHEREAS, if the said criminal history information for an applicant reveals that the person has been convicted of any felony or a misdemeanor involving alcoholic beverages, controlled substances, gambling, prostitution, assault, disorderly conduct, or any violation of Article 26 of Chapter 14 of the North Carolina General Statutes, the Asheboro Police Department will notify the city manager of such conviction(s) so that this information can be considered by the manager when he decides whether to file an objection to the application with the North Carolina Alcoholic Beverage Control Commission, which is the government agency responsible for the issuance of ABC permits; and

WHEREAS, prior to filing an objection to an application for ABC permit(s) on the basis of criminal history record information received from the Asheboro Police Department, the city manager will verify the existence of a record by obtaining either a certified public record or by submitting a fingerprint card of the individual to the Criminal Information and Identification Section of the North Carolina State Bureau of Investigation for verification that the criminal history record information belongs to the individual.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Asheboro as follows:

Section 1. Section 34.79 of the Code of Asheboro is hereby enacted as follows:

§ 34.79 Police Department Authority Regarding Criminal History Information for ABC Permit Applicants.

(A) The Asheboro Police Department is authorized to seek state access to SBI/DCI Criminal History Record Information in order to obtain criminal history information on all persons applying for ABC permits for establishments located within the corporate limits of the City of Asheboro.

(B) Prior to acting on the basis of criminal history record information obtained pursuant to the authorization found in Division (A) of this Section and submitting an objection to the North Carolina Alcoholic Beverage Control Commission on behalf of the City of Asheboro with regard to an application for ABC permit(s), the city manager shall verify the existence of a record by obtaining either a certified public record or by submitting a fingerprint card of the individual to the Criminal Information and Identification Section of the North Carolina State Bureau of Investigation for verification that the criminal history record information belongs to the individual to which the city manager is objecting.

Section 2. All ordinances and clauses of ordinances in conflict with this ordinance are hereby repealed.

Section 3. If any provision of this ordinance is declared invalid or unconstitutional by any court of competent jurisdiction, such declaration shall not affect the validity of the ordinance as a whole or any part therefore that is not specifically declared to be invalid or unconstitutional.

Section 4. This ordinance shall be in full force and effect upon and after the 5th day of February 2009.

This ordinance was adopted by the Asheboro City Council in open session during a regular meeting of the council on the 5th day of February 2009.

s/ David H. Jarrell
David H. Jarrell, Mayor

ATTEST:

s/ Holly H. Doerr
Holly H. Doerr, City Clerk

16. Notice of a special council meeting on February 19, 2009 at 7:00 p.m. in the Council Chamber.

Mayor Jarrell announced that there will be a special City Council meeting on Thursday, February 19, 2009 at 7:00 p.m. in the Council Chamber.

17. Consideration of a resolution appointing Dr. Stuart B. Fountain to the Asheboro City Council.

Mayor Jarrell presented a resolution appointing Dr. Stuart B. Fountain to the Asheboro City Council.

Upon motion by Mr. Baker and seconded by Ms. Carter, Council voted unanimously to adopt the following resolution.

10 RES 2-09

RESOLUTION APPOINTING DR. STUART B. FOUNTAIN TO SERVE AS A COUNCILMEMBER FOR THE REMAINDER OF J. KEITH CRISCO'S UNEXPIRED TERM ON THE ASHEBORO CITY COUNCIL

WHEREAS, during a regular meeting of the council on January 8, 2009, Mr. J. Keith Crisco resigned from his office as councilmember on the Asheboro City Council in order to assume his duties as Secretary of the North Carolina Department of Commerce; and

WHEREAS, Section 3.3 of the Charter of the City of Asheboro provides, in pertinent part, that "if there shall be any vacancy in the office of mayor or councilmember after election and qualification, the remaining members of the council shall by majority vote appoint some qualified person to serve for the unexpired term" with the same authority as if the appointed person had been regularly elected; and

WHEREAS, after discussing, in open session during a special meeting of the council on January 15, 2009, the vacancy created by Mr. Crisco's resignation from his councilmember office prior to the expiration of his term of office in 2011, the remaining members of the council formed a consensus opinion that Dr. Stuart B. Fountain is properly qualified to serve as councilmember for the remainder of Mr. Crisco's unexpired term; and

WHEREAS, during the special council meeting on January 15, 2009, Dr. Fountain expressed his willingness and ability to serve as a councilmember for the remainder of the unexpired term beginning on and after March 1, 2009.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Asheboro that, pursuant to Article III of the Charter of the City of Asheboro, Dr. Stuart B. Fountain is hereby appointed to serve for the remainder of the unexpired term of the councilmember office vacated by J. Keith Crisco on January 8, 2009; and

BE IT FURTHER RESOLVED that this appointment shall become effective as of March 1, 2009.

This resolution was unanimously adopted by the Asheboro City Council in open session during a regular meeting held on the 5th day of February 2009.

s/ David H. Jarrell
David H. Jarrell, Mayor

ATTEST:

s/ Holly H. Doerr
Holly H. Doerr, City Clerk

18. Upcoming Events.

- (a) Welcome reception for Chief Rickey Wilson and Major Ralph Norton on Friday, February 6, 2009 from 2:00 p.m until 4:00 p.m. in the conference room at the Public Works Facility.
- (b) The North Carolina Department of Transportation will hold a Citizen Information Workshop on February 10, 2009 between 5:00 p.m. and 7:00 p.m. at the Asheboro Public Works Facility located at 1312 North Fayetteville Street.

19. Items not on the agenda.

Mayor Jarrell asked that the Council give him the authority to appoint a nine (9) member committee to serve as the Sunset Theatre advisory committee. It was the general consensus of the Council that the Mayor should appoint the nine (9) member committee without further council action.

There being no further business, the meeting was adjourned at 10:42 p.m.

s/ Holly H. Doerr
Holly H. Doerr, City Clerk

s/ David H. Jarrell
David H. Jarrell, Mayor