

**REGULAR MEETING
ASHEBORO CITY COUNCIL
THURSDAY, SEPTEMBER 6, 2007
7:00 p.m.**

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

David H. Jarrell) – Mayor Presiding

Talmadge Baker)
Linda Carter)
Keith Crisco)
Nancy Hunter) – Council Members Present
Walker Moffitt)
Archie Priest)
David Smith)

John N. Ogburn, III, City Manager
Edsel L. Brown, Code Compliance Inspector
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
Richard Foster Hughes, Recreation Director
Deborah P. Juberg, Finance Director
Gary L. Mason, Chief of Police
R. Reynolds Neely, Jr., Planning Director
O. Lynn Priest, Community Development Director
Michael Rhoney, P.E., Water Resources Director
Jeffrey C. Sugg, City Attorney
Kermit D. Williamson, Sanitation Superintendent

1. Call to Order.

A quorum thus being present, Mayor Jarrell called the meeting to order for the transaction of business, and business was transacted as follows.

2. Pledge of Allegiance.

Mayor Jarrell asked everyone to stand and repeat the Pledge of Allegiance, after which, a moment of silence was observed.

3. Appearance and recognition of guests and citizens.

Mayor Jarrell welcomed everyone in attendance.

4. Presentation by Ms. Tammy O’Kelley, Director of Tourism, Randolph County Tourism Development Authority, on contract for advertising with WFMY Channel 2.

Ms. Tammy O’Kelley, Director of Tourism with Randolph County Tourism Development Authority, reported on the city’s opportunity to participate in the *Summer Fun Guide Partnership*, a program sponsored by WFMY Channel 2. This program is a great way to feature Asheboro and its attractions, including but not limited to the North Carolina Zoo, the North Carolina Aviation Museum, Bicentennial Park, and the Downtown Farmers’ Market.

Additionally, Ms. O’Kelley highlighted that the program would cost the city approximately \$8,900. A matching grant from the Randolph County Tourism Development Authority of \$5,000 may be available to the city to assist in the cost of this program. The city is expected to participate in this program during October 2007 through October 2008. The council took no formal action on this matter.

5. Consent Agenda.

Upon motion by Mr. Crisco and seconded by Ms. Carter, Council voted unanimously to approve the following consent agenda items:

- The minutes of the regular meeting of the City Council that was held on August 9, 2007.
- The closing of portions of Church Street, Sunset Avenue, Fayetteville Street, Lanier Avenue, and Academy Street for the tractor parade on October 13, 2007, at 11:00 a.m. (A copy of a sketch of the tractor parade route is on file in the City Clerk's office.)
- The following ordinance regulating parking in the public vehicular area of the car wash located at 554 East Dixie Drive.

40 ORD 9-07

**AN ORDINANCE REGULATING PARKING IN THE PUBLIC VEHICULAR AREA OF THE CAR WASH
LOCATED AT 554 EAST DIXIE DRIVE**

WHEREAS, Section 160A-301(d) of the North Carolina General Statutes provides that the city council may, by ordinance, prohibit the stopping, standing, or parking of vehicles during any specified hours in a privately owned public vehicular area when the owner or person in general charge and control of such an area requests in writing that such an ordinance be adopted; and

WHEREAS, Section 71.05 of the Code of Asheboro provides as follows:

§ 71.05 POSTING OF NO PARKING AREAS ON PRIVATE PROPERTY.

(A) *Parking in violation of signs prohibited.* No person shall stop, leave standing, or park a motor vehicle in the area specified in this section in violation of posted signs, when signs are placed, erected or installed giving notice that stopping, standing or parking is regulated, prohibited, or prohibited during certain hours, in that space or area.

(B) *Locations designated.* The following locations are designated as "no parking" spaces: (Area and time of parking restrictions to be described-- Schedule 17 of § 72.02).

(C) *Cost of signs.* The cost of erecting or installing signs, and the cost of all necessary signs as determine(d) by the Chief of Police shall be paid for by the individual requesting regulations.

(D) *Enforcement.* The provisions of this section shall be enforceable in the same manner and in accordance with G.S. § 14-4. (citations omitted); and

WHEREAS, B.I.C. Properties, L.L.C., which is a North Carolina limited liability company, owns a lot located at 554 East Dixie Drive in Asheboro; and

WHEREAS, B.I.C. Properties, L.L.C. operates a car wash on this lot located at 554 East Dixie Drive; and

WHEREAS, Mr. Charles G. Willard, Jr., who is a member/manager of B.I.C. Properties, L.L.C., has reported that certain problems have been encountered as a consequence of individuals congregating with their vehicles on the public vehicular area of the car wash; and

WHEREAS, Mr. Willard has submitted a written request, with subsequent verbal clarification and supplementation, to the city council to have the parking of vehicles in the privately owned public vehicular area located at 554 East Dixie Drive prohibited during the hours of 8:00 o'clock p.m. and 7:00 o'clock a.m. every day of the calendar week.

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

Section 1. Pursuant to Section 160A-301(d) of the North Carolina General Statutes and Section 71.05 of the Code of Asheboro, the stopping, standing, or parking of vehicles within and upon the privately owned public vehicular area of the car wash located at 554 East Dixie Drive is hereby prohibited between the hours of 8:00 o'clock p.m. and 7:00 o'clock a.m. every day of the calendar week. For the limited purpose of implementing the parking prohibition prescribed by this ordinance, the public vehicular area subject to this prohibition shall not be deemed to include the wash bays, wash bay lanes, and the area immediately adjoining vacuum cleaning units that function as integral components of the car wash business.

Section 2. The number and type of signs necessary to lawfully implement the provisions of this ordinance shall be erected and/or installed in a manner to be determined by the Chief of Police or his designee, and the entirety of the cost of erecting and/or installing the signs deemed necessary by the Chief of Police or his designee shall be the responsibility of Mr. Charles G. Willard, Jr. The cost of installing the requisite signage shall be determined in accordance with the standard fees charged by the City of Asheboro Public Works Division for such signage, and this signage shall not be installed until payment has been received in full.

Section 3. The city clerk shall enter a description in Schedule 17 of Section 72.02 of the Code of Asheboro of the time of the parking restrictions imposed by this ordinance and a description of the public vehicular area subject to said parking restrictions.

Section 4. This ordinance shall become effective upon adoption.
Adopted in regular session by the City Council of the City of Asheboro on this 6th day of September, 2007.

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

ATTEST:

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

OLD BUSINESS

6. Consideration of an ordinance amending Chapter 116 (Health Massage Therapy) of the Code of Asheboro.

Mr. Sugg presented and recommended adoption, by reference, of an ordinance amending Chapter 116 of the Code of Asheboro.

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

41 ORD 9-07

AN ORDINANCE AMENDING CHAPTER 116 OF THE CODE OF ASHEBORO

WHEREAS, the North Carolina Massage and Bodywork Therapy Practice Act, as codified in Article 36 of Chapter 90 of the North Carolina General Statutes, prescribes the mandatory licensure requirements for the practice of massage and bodywork therapy in order to ensure minimum standards of competency and to protect the public health, safety, and welfare; and

WHEREAS, Section 90-636 provides that the provisions of the above-referenced Article 36 shall not be construed so as to prevent a county or municipality from regulating persons subject to the North Carolina Massage and Bodywork Therapy Practice Act; however, a municipality cannot impose regulations that are inconsistent with Article 36 of Chapter 90 of the North Carolina General Statutes; and

WHEREAS, Chapter 116 of the Code of Asheboro addresses the practice of "Health Massage Therapy" within the corporate limits of the City of Asheboro; and

WHEREAS, the Asheboro City Council has concluded that Chapter 116 of the Code of Asheboro must be updated.

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

Section 1. Chapter 116 of the Code of Asheboro is hereby rewritten to provide as follows:

CHAPTER 116: HEALTH MASSAGE AND BODYWORK THERAPY

§ 116.01 PURPOSE AND OBJECTIVE.

~~To protect the public health, safety, welfare and morals, the following privilege license provisions and regulations are ordained for the privilege of carrying on the business, trade or profession of health massage therapy and for the operation or carrying on of the business, trade or profession commonly known as health massage therapy establishment wherein health massage therapy or physical manipulation of the human body is carried on or practiced. The objective is to permit only the profession of massage or health massage therapy as authorized under this chapter.~~

§ 116.02 DEFINITIONS.

~~For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.~~

~~**HEALTH MASSAGE THERAPY.** Any form of manipulation of the muscles, skin or other soft tissue of the body by kneading, stroking, pressing, tapping or movement of extremities, whether applied by hand, arm, foot or aided by mechanical device.~~

~~**HEALTH MASSAGE THERAPIST.** Any person, whether male or female, who is engaged in the practice of health massage therapy, and who receives compensation for his or her services.~~

~~**HEALTH MASSAGE THERAPY ESTABLISHMENT.** Any business or establishment wherein health massage therapy is practiced.~~

~~**BUSINESS or PROFESSION OF HEALTH MASSAGE THERAPY.** Includes health massage therapy or treatment of any person for a fee or for other good or valuable consideration from the person receiving the health massage therapy.~~

~~**PRIVATE PARTS.** The penis, scrotum, mons veneris, vulva or vaginal area of a person.~~

~~§ 116.03 HOURS OF OPERATION; RESTRICTIONS; PROHIBITIONS.~~

~~(A) Hours of operation.~~

~~(1) No person licensed as a health massage therapist shall massage or treat any person, or engage in the business or profession of health massage therapy, before 7:00 a.m. or after 10:00 p.m., prevailing time.~~

~~(2) No person licensed under the provisions of this chapter shall admit customers or prospective customers, or remain open for business, or allow, permit or condone the administration of health massage therapy or treatment of any person upon the premises before 7:00 a.m. or after 10:00 p.m., prevailing time, except upon written order by a licensed physician, osteopath, chiropractor, registered physical therapist or legal guardian, such order being dated, and a true copy of such order being in the possession of the licensee before administration of any health massage therapy or treatment. A violation of this subsection shall be grounds for revocation of any license issued under this chapter.~~

~~(3) No person in charge of managing a health massage therapy business upon the premises shall allow, permit or condone any health massage therapy or treatment of any person before 7:00 a.m. or after 10:00 p.m., prevailing time.~~

~~(B) Patronage of health massage therapy establishments by minors.~~

~~(1) No person licensed as a health massage therapist shall administer health massage therapy or treat any person under the age of 18 upon the licensed premises, except upon written order by a licensed physician, osteopath, chiropractor, registered physical therapist, or legal guardian, such order being dated and in the possession of the health massage therapist giving the health massage therapy or treatment. A violation of this division shall be grounds for revocation of any license issued under this chapter.~~

~~(2) No person licensed as a health massage therapist under the provisions of this chapter shall allow, permit or condone the administration of health massage therapy or treatment of any person under the age of 18 upon the licensed premises, except upon written order by a licensed physician, osteopath, chiropractor, registered physical therapist or legal guardian, such order being dated, and a true copy of such order being in the possession of the licensee before administration of any health massage therapy or treatment. A violation of this division shall be grounds for revocation of any license issued under this chapter.~~

~~(C) Massage of private parts for hire prohibited. It shall be unlawful for any person to massage or to offer to massage the private parts of another for hire.~~

~~§ 116.04 EXEMPTIONS.~~

~~(A) The practice of health massage therapy shall not include and is distinct from the practice of medicine, surgery, osteopathy, chiropractic, physical therapy or pediatry. Requirements of this chapter shall have no application to the following:~~

~~(1) Physicians, surgeons, chiropractors, osteopaths, physical therapists or podiatrists duly licensed to practice in this state.~~

~~(2) Registered or licensed practical nurses working under the supervision of a licensed physician, chiropractor, osteopath or podiatrist.~~

- ~~(3) Athletic directors or trainers who are affiliated with an approved educational institution or professional sports team, and whose work is limited to athletic team members.~~
- ~~(4) Licensed cosmetologists, barbers or beauty culturists who do not give, or hold themselves out to give, massages other than are customarily given in such establishments, solely for the purposes of beautification.~~
- ~~(B) Other persons not duly qualified and licensed as a health massage therapist under this chapter, whether employed by physicians, chiropractors, osteopaths, pediatricists, or not, may not render health massage therapy.~~

~~§ 116.05 LICENSING OF HEALTH MASSAGE THERAPISTS.~~

~~(A) No person shall engage in the business or profession of health massage therapy unless such person shall have first applied for and received the privilege license provided by this section.~~

~~(B) Applicants are required to have a minimum of 150 hours of professional training in health massage therapy, to be obtained through an institute or school of health massage, therapy, college level courses, workshops and seminars, or apprenticeship with a licensed health massage therapist. On and after January 1, 1993, all applicants shall be required to have a minimum of 325 hours of professional training in health massage therapy. On and after January 1, 1994, all applicants shall be required to have a minimum of 500 hours of professional training. These requirements shall apply to all applicants and no applicant shall be exempted therefrom except as expressly provided in § 116.04 of this chapter. Until the applicant has attained 500 hours of training as hereinabove set forth, each applicant shall respectively submit on or before January 1, 1993 and January 1, 1994 a written, notarized certification stating the number of hours of completed professional health massage therapy training. Such training, whether from one or several sources, must meet the following criteria:~~

- ~~(1) At least 50% of the total training, provided by a licensed health massage therapist to be in hands-on health massage therapy techniques, massage treatment principles and theory;~~
- ~~(2) At least 20% of total training to be in the area of anatomy and physiology; and~~
- ~~(3) The balance of the total training to be in other health-related areas, such as hydrotherapy, movement and nutrition.~~

~~(C) The application for the license required by this section shall be upon a form approved by the City Manager and shall be filed with the City Clerk. Such application shall be given under oath and shall contain the following information:~~

- ~~(1) The name, age and residence of the applicant;~~
- ~~(2) A complete statement of the previous business or occupation of the applicant for the two years immediately preceding the date of application;~~
- ~~(3) The date and place of applicant's birth and the residence address or addresses of the applicant for the three years immediately preceding the date of application;~~
- ~~(4) A complete statement of all convictions of the applicant for any offense involving sexual misconduct, including G.S. §§ 14-177 through G.S. 14-202.1, Article 26 (offenses against public morality and decency), and G.S. §§ 14-203 through 14-208, Article 27 (prostitution), or of any violation of any law or ordinance of any governmental unit concerning or related to the business or profession of massage;~~
- ~~(5) A complete statement of any revocation of any license granted by any governmental unit to the applicant to engage in the business or profession of massage or health massage therapy;~~
- ~~(6) Applicant must furnish the following proof of training:
 - ~~(a) A diploma or certificate of graduation from an institute or school of massage whose curriculum is approved by the American Massage Therapy Association; or~~
 - ~~(b) A diploma, transcript, or certificate of completion from a school or other institution of learning, or a workshop/seminar leader, which indicates the subjects studied and number of hours of hands-on experience and classroom hours taken.~~~~
- ~~(7) In addition to subdivisions (6)(a) or (b), all applicants shall have submitted two written, notarized recommendations from two members in good standing with the American Massage Therapy Association or from two persons or instructors from other schools or institutions of~~

learning, attesting to the qualifications and good standing of any such applicant for a license hereunder; and

~~(8) The city reserves the right to request submission of any additional information deemed necessary to process any such application.~~

~~(D) Upon payment of the application fee, as set out in § 116.04 herein, and upon submission of all the information required by the application under this chapter, the City Clerk shall transmit a copy of the application to the chief of police for an investigative report which shall contain a background investigation regarding any convictions for crimes of sexual misconduct or other offenses against public morality. The chief of police shall report the results of the investigation to the City Clerk within a reasonable time, not to exceed 30 days. Unless it appears that any such applicant is under the age of 18 years, has deliberately falsified the application, has had a previously issued license for engaging in the business or profession of health massage therapy revoked, or the record of such applicant reveals a conviction as set out in division (C)(4), a license shall be granted immediately by the City Clerk if all requirements described herein are met.~~

~~§ 116.06 LICENSING OF HEALTH MASSAGE THERAPY ESTABLISHMENTS.~~

~~(A) No person, partnership, corporation or association shall operate a health massage therapy establishment as herein defined unless such person, partnership, corporation or association shall have first applied for and received the privilege license provided by this section.~~

~~(B) Every application for the privilege license prescribed herein shall be upon a form approved by the City Manager and shall be filed with the City Clerk. Every such application shall be made under oath and shall contain the following information:~~

~~(1) If the applicant is a person, the name and residence of such person. If the applicant is a partnership, corporation or association, the name and residence address of all persons having any legal or beneficial interest in such applicant;~~

~~(2) The address of the premises where the health massage therapy establishment shall be located;~~

~~(3) A complete statement of all convictions of any person whose name is required to be given in subdivision (1) above for any offense as previously set out in § 116.05 (C)(4);~~

~~(4) A complete statement of any revocation, by any governmental unit, of any license to operate a health massage therapy establishment or to engage in the business or profession of massage held by any person whose name is required to be given in division (B)(1) above;~~

~~(5) The name and address of any massage establishment or other establishment owned or operated by any person whose name is required to be given in division (B)(1) above wherein the business or profession of massage is carried on;~~

~~(6) A description of any other business to be operated on the same premises or on adjoining premises owned or controlled by the applicant; and~~

~~(7) The city reserves the right to request submission of any additional information deemed necessary to process any such application.~~

~~(C) The City Clerk shall transmit a copy of the application to the chief of police for an investigative report; to the building inspector to determine compliance with all building regulations and ordinances; to the planning department to determine compliance with all zoning regulations and ordinances; and to the fire department to determine compliance with any law relating to fire protection. The chief of police, fire department, building inspector, and the planning department shall, within a reasonable time, not to exceed 30 days, report the results of their investigation to the City Clerk.~~

~~(D) An application in proper form, accompanied by all reports required by this section and by the application fee as required by § 116.12 herein, shall be submitted to the City Clerk who shall approve such application if the City Clerk determines that:~~

~~(1) The application contains no misstatement of fact;~~

~~(2) The applicant, and any person having legal or beneficial ownership interest in the applicant, is over the age of 18 years and has not been convicted of any crime involving sexual misconduct, as set out in § 116.05 (C)(4);~~

~~(3) The applicant conforms to all requirements of applicable zoning building and fire prevention codes; and~~

~~(4) The applicant, or any person having a legal or beneficial ownership interest in the applicant, has not, for the three-year period preceding the application, had a previously issued license for engaging in the business or profession of massage or health massage therapy or a license to operate a health massage therapy establishment or massage business revoked.~~

~~§ 116.07 DENIAL OF LICENSE.~~

~~Any person denied a license pursuant to the provisions in §§ 116.05 and/or 116.06 may appeal to the City Council in writing stating reasons why the license should be granted. The City Council may grant or deny the license. The City Council may also review any determination of the granting or denial of a license on its own motion. All licenses issued hereunder are nontransferable.~~

~~§ 116.08 FACILITIES REQUIRED FOR A HEALTH MASSAGE THERAPY ESTABLISHMENT.~~

~~No license to conduct a health massage therapy establishment shall be issued unless an inspection discloses that the establishment complies with all of the minimum requirements of the North Carolina State Building Code and all the state laws and regulations relating to health and sanitation governing health-related facilities. The city reserves the right to impose additional conditions for reasons of public health and safety.~~

~~§ 116.09 REVOCATION.~~

~~(A) Notice and hearing. No license under this chapter shall be revoked until after due notice and a hearing shall have been held before the City Manager to determine just cause for such revocation. Notice of such hearing shall be given in writing and served at least ten days prior to the date of the hearing thereon. The notice shall state the grounds of the complaint against the holder of such license, and shall designate the time and place where such hearing will be held.~~

~~(B) Method of notice. Said notice shall be served upon the license holder by delivering the same personally or by leaving such notice at the place of business or residence of the license holder in the custody of a person of suitable age and discretion. In the event the license holder cannot be found and the service of such notice cannot be otherwise made in the manner herein provided, a copy of such notice shall be mailed, registered or certified, postage fully prepaid, addressed to the license holder at his or her place of business or residence at least ten days prior to the date of such hearing.~~

~~(C) Revocation of health massage therapist license. Grounds for revocation shall not be limited to, but shall include:~~

- ~~(1) The licensee has violated any provision of this chapter;~~
- ~~(2) The licensee has been convicted of a crime involving sexual misconduct, or has become a habitual criminal offender;~~
- ~~(3) The licensee is guilty of fraudulent, false, misleading or deceptive advertising, including the use of the term "massage" to describe, promote or advertise any type of business activity or service offered which is expressly not health massage therapy as herein defined;~~
- ~~(4) The licensee has fraudulently obtained a license pursuant to the provisions of this chapter;~~
- ~~(5) The licensee allows the use of his or her license by an unlicensed person;~~

~~or~~

~~(6) The licensee is addicted to the habitual use of alcohol, narcotics or other drugs, to such an extent as to incapacitate such person for the safe and normal performance of his or her professional duties.~~

~~(D) Revocation of health massage therapy establishment license. Grounds for revocation shall not be limited to, but shall include:~~

- ~~(1) The licensee has violated any provision of this chapter;~~
- ~~(2) The licensee, or any agent of the licensee, employs or permits to be on the premises of the applicant's health massage therapy establishment any person who has not been issued the privilege license required by this chapter;~~
- ~~(3) The licensee, or the legal or beneficial owner of any interest in the licensee is convicted of any crime involving sexual misconduct;~~
- ~~(4) The licensee is guilty of fraudulent, false, misleading or deceptive advertising, including the use of the term "health massage" or health massage therapy to describe, promote or advertise any type of business activity or service offered which is expressly not health massage therapy as defined by this chapter, or has otherwise fraudulently engaged in the business or profession of health massage therapy; or~~
- ~~(5) The licensee violates any zoning, building or fire prevention ordinance or other local, state or federal laws.~~

~~(E) Any person whose license is revoked hereunder may appeal to the City Council in writing stating why the license should not be revoked. The City~~

~~Council after due notice shall conduct a hearing, at which hearing the City Council shall affirm the revocation or authorize the reissuance of any such license.~~

~~**§ 116.10 POSTING OF LICENSE.**~~

~~(A) Every health massage therapist licensed under § 116.05 shall post the license required by this chapter in his or her work area at all times.~~

~~(B) Every person, corporation, partnership or association licensed under § 116.06 herein as a health massage therapy establishment shall display such license in a prominent place at all times.~~

~~**§ 116.11 LOCATION.**~~

~~All health massage therapy or treatment shall be administered in a health massage therapy establishment duly licensed under this chapter and in a location permitted under the zoning code.~~

~~**§ 116.12 APPLICATION FEES.**~~

~~(A) The application fee for a privilege license for a health massage therapist as set out in § 116.05 herein shall be \$15.~~

~~(B) The application fee for a privilege license for a health massage therapist establishment pursuant to § 116.06 herein shall be \$25.~~

~~**§ 116.13 ANNUAL PRIVILEGE LICENSE.**~~

~~The licenses required under this chapter are annual privilege licenses. Such licenses shall be due and payable in the same manner as prescribed for other privilege licenses issued by the building inspections department pursuant to Chapter 11 of the City Code.~~

~~(A) Health massage therapist privilege license: _____ \$25~~

~~(B) Health massage therapist establishment privilege license: _____ \$50~~

§ 116.01 DECLARATION OF PURPOSE

The City of Asheboro recognizes that the improper practice of massage and bodywork therapy is potentially harmful to the public. Therefore, in order to protect the public health, safety, and welfare, the provisions and regulations of this chapter are ordained for the privilege of carrying on the business of massage and bodywork therapy.

§ 116.02 DEFINITIONS

The following definitions shall apply in this chapter.

(1) *Massage and bodywork therapy.* Systems of activity applied to the soft tissues of the human body for therapeutic, educational, or relaxation purposes. The application may include:

- a. *Pressure, friction, stroking, rocking, kneading, percussion, or passive or active stretching within the normal anatomical range of movement.*
- b. *Complementary methods, including the external application of water, heat, cold, lubricants, and other topical preparations.*
- c. *The use of mechanical devices that mimic or enhance actions that may possibly be done by the hands.*

(2) *Practice of massage and bodywork therapy.* The application of massage and bodywork therapy to any person for a fee or other consideration. "Practice of massage and bodywork therapy" does not include the diagnosis of illness or disease, medical procedures, chiropractic adjustive procedures, electrical stimulation, ultrasound, prescription of medicines, or the use of modalities for which a license to practice medicine, chiropractic, nursing, physical therapy, occupational therapy, acupuncture, or podiatry is required by law.

(3) *Massage and bodywork therapist.* A person licensed under Article 36 of Chapter 90 of the North Carolina General Statutes.

§ 116.03 PROHIBITIONS

A person shall not:

(A) Employ, contract with, or otherwise hire a person to carry on the practice of massage and bodywork therapy unless such employee, contractor, or hired person is properly licensed to practice massage and bodywork therapy under Article 36 of Chapter 90 of the North Carolina General Statutes.

(B) Lease, rent, or otherwise knowingly allow the use of any premises by any person for the purpose of carrying on the profession or business of massage and bodywork therapy unless such lessee, renter, or user is properly licensed to practice massage and bodywork therapy under Article 36 of Chapter 90 of the North Carolina General Statutes.

§ 116.04 PRIVILEGE LICENSE REQUIREMENTS

(A) Any person properly licensed as a massage and bodywork therapist pursuant to Article 36 of Chapter 90 of the North Carolina General Statutes is exempt from the city privilege license tax.

(B) Any person who is not a properly licensed massage and bodywork therapist and who hires, contracts with, or otherwise employs others to engage in the practice of massage and bodywork therapy shall be subject to a city privilege license tax in the amount of Fifty and No/100 Dollars (\$50.00).

(C) Any person or entity applying for a massage and bodywork therapy business privilege license shall be required to submit with the license application a list of each and every employee, contract worker, or hiree who is to engage in the practice of massage and bodywork therapy. This listing of employees, contractors, and hirees shall include the name and address of the massage and bodywork therapist as well as a copy of the most current license issued to the therapist pursuant to Article 36 of Chapter 90 of the North Carolina General Statutes. When a privilege license is to be renewed, the applicant shall provide a list of all employees, contract workers, and hirees who engaged in the practice of massage and bodywork therapy on the business premises during the ninety (90) days immediately preceding the date of the application for the privilege license.

§ 116.05 EXEMPTIONS

Nothing in this Chapter shall be construed to prohibit or affect:

(A) The practice of a profession by persons who are licensed, certified, or registered under other laws of the State of North Carolina and who are performing services within their authorized scope of practice.

(B) The practice of massage and bodywork therapy by a person employed by the government of the United States while the person is engaged in the performance of duties prescribed by the laws and regulations of the United States.

(C) The practice of massage and bodywork therapy by persons duly licensed, registered, or certified in another state, territory, the District of Columbia, or a foreign country when incidentally called into this State to teach a course related to massage and bodywork therapy or to consult with a person licensed under Article 36 of Chapter 90 of the North Carolina General Statutes.

(D) Students enrolled in a school approved by the North Carolina Board of Massage and Bodywork Therapy while completing a clinical requirement for graduation that is performed under the supervision of a person licensed under Article 36 of Chapter 90 of the North Carolina General Statutes.

(E) A person giving massage and bodywork therapy to members of that person's immediate family.

(F) The practice of movement educators such as dance therapists or teachers, yoga teachers, personal trainers, martial arts instructors, movement repatterning practitioners, and other such professionals.

(G) The practice of techniques specifically intended to affect the human energy field.

(H) A person employed by or contracting with a not-for-profit community service organization to perform massage and bodywork therapy on persons who are members of the not-for-profit community service organization and are of the same gender as the person giving the massage or bodywork therapy.

§ 116.06 ENFORCEMENT

(A) Any person or entity found to be in violation of any of this Chapter's provisions shall be guilty of a Class 3 misdemeanor and shall be fined five hundred dollars (\$500.00) for each day the violation is not corrected. Each day of violation shall be a separate offense and subject to additional fines.

(B) The use of any remedy set out in Section 160A-175 of the North Carolina General Statutes is hereby authorized to enforce the provisions of this Chapter.

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

Section 3. This ordinance shall become effective upon adoption.

Adopted by the Asheboro City Council in regular session on the 6th day of September, 2007.

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

ATTEST:

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

NEW BUSINESS

7. Land Use Issues.

(a) SUP-07-07: Request for a Special Use Permit for a Multi-Family Development with a Floor Area Ratio of up to 22%. The property of W.W. Partnership is located at 2230 North Fayetteville Street and consists of approximately 24.08 acres of land. Randolph County Parcel Identification Number 7763133665 more specifically describes the property.

Mayor Jarrell opened the public hearing on the following request.

Mr. Neely affirmed his testimony and presented the staff's analysis of the proposed site plan and the request by Phillips Management Group for a Special Use Permit for a multi-family development with a Floor Area Ratio not to exceed 22 percent.

On behalf of the Applicant, Mr. Jonathan Megerian, Esq. was sworn in and addressed the four standard tests. Mr. Keith Phillips was available to answer questions.

Mr. Richard Lamb, a neighboring property owner, was sworn in and presented comments and concerns in opposition to the request. Mr. Lamb was concerned that the additional apartment buildings would negatively affect his property located on Hickory Forest Drive. Mr. Lamb's concerns were heightened by a recent apartment complex fire.

There being no further comments, nor opposition from the public, Mayor Jarrell closed the public hearing. An audio tape recording of the testimony presented during the public hearing is on file in the City Clerk's office.

Upon motion by Mr. Moffitt and seconded by Mr. Crisco, Council voted unanimously to approve the requested Special Use Permit. The issuance of this permit was based on the four standard tests being met.

The formal findings of fact, conclusions of law, and order authorizing the Special Use Permit will be entered by the Council in regular session on October 4, 2007. This order will reflect certain conditions imposed upon this permit as a consequence of the testimony presented during the hearing of this matter.

- (b) RZ/CUP-07-27: Request to rezone from I-1 Light Industrial to CU-B2 Commercial and issue a Conditional Use Permit for a Professional Residential Facility (Structured Environment). The property of Randolph Fellowship Home, Inc. is located along the north side of East Pritchard Street, approximately 180 feet east of Farr Street, and consists of approximately 0.63 of an acre of land. Randolph County Parcel Identification Number 7761372135 more specifically describes the property.

Mayor Jarrell opened the public hearing on the following request.

Mr. Neely affirmed his testimony and presented the staff's analysis of the applicant's combined request for the Council to rezone the entirety of the above-described property from I-1 Light Industrial to CU-B2 Conditional Use General Business and issue a Conditional Use Permit for a Professional Residential Facility (Structured Environment) to be located on the property.

The Planning Department Staff and the Planning Board recommended approval of the applicant's request for a legislative rezoning based on the following:

"Although the land development plan map proposes industrial use on this property, current land use patterns indicate a mix of institutional, industrial, and multi-family use in the immediate area. Additionally, the property is in close proximity to residential land use and a B-2 zoning district can serve as a transitional district between industrial and residential land uses. The applicant has simultaneously requested a conditional use permit for a professional residential facility. The conditional use permitting process gives Council the ability to place reasonable conditions on the use of the property to ensure the use will be in harmony with the adjoining properties. Therefore, the request generally complies with the text of the land development plan, and staff believes the request is within the public interest in encouraging a reasonable use of the property."

Mr. Sam Cranford affirmed his testimony and spoke in support of the Applicant's request.

There being no further comments nor opposition from the public, Mayor Jarrell closed the public hearing. An audiotape of the testimony presented during this hearing is on file in the City Clerk's office.

Upon motion by Mr. Priest and seconded by Mr. Smith, Council voted unanimously to adopt the recommendation of the Planning Board and placed the above-described property in a CU-B2 zoning district.

Upon motion by Mr. Crisco and seconded by Mr. Baker, Council voted unanimously to approve the requested Conditional Use Permit to allow a Professional Residential Facility (Structured Environment) to be located on the above-described property. The issuance of this permit was based on the four standard tests being met.

The formal findings of fact, conclusions of law, and order will be entered by the Council in regular session on October 4, 2007.

- (c) RZ-07-28: Request to rezone from R7.5 (Medium Density Residential) to O & I (Office and Institutional). The property of Paul Shane and Tina Asbill is located at 1112 South Cox Street and consists of approximately 19,264 square feet of land. Randolph County Parcel Identification Number 7750876592 more specifically describes the property.

Mayor Jarrell opened the public hearing on the following request.

Mr. Neely presented the staff's analysis of the request by Paul Shane Asbill to rezone the above-described property from R7.5 Medium Density Residential to O & I Office and Institutional. The Planning Department Staff and the Planning Board recommended approval of the request in that the request complies with the Land Development Plan.

Mr. Paul Shane Asbill presented comments in support of the requested rezoning.

There being no further comments nor opposition from the public, Mayor Jarrell closed the public hearing.

Upon motion by Mr. Baker and seconded by Ms. Carter, Council voted unanimously to adopt the recommendation of the Planning Board and placed the above-described property in an O & I Office and Institutional zoning district.

- (d) CUP-07-09: Request for a modification of an existing Conditional Use Permit (for Major Motor Vehicle Repair). The property of Joseph B. Shuping is located at 1339 East Salisbury Street and consists of approximately 1.521 acres of land. Randolph County Parcel Identification Number 7761429387 more specifically describes the property.

Mayor Jarrell opened the public hearing on the following request.

Mr. Neely affirmed his testimony and presented the staff's analysis of the Applicant's request, including the submitted site revised plan. The Applicant, Mr. Joseph Shuping, requested a Conditional Use Permit that modifies the existing site plan by deleting the sidewalk originally proposed for construction by the Applicant along East Salisbury Street.

Mr. Shuping affirmed his testimony and addressed the four standard tests.

There being no further comments nor opposition from the public, Mayor Jarrell closed the public hearing. An audiotape of the testimony presented during this hearing is on file in the City Clerk's office.

Upon motion by Mr. Smith and seconded by Ms. Carter, Council voted unanimously to approve the requested Conditional Use Permit. The issuance of this Conditional Use Permit was based on the four standard tests being met.

The formal Findings of Fact, Conclusions of Law, and Order granting the Conditional Use Permit will be entered by the Council during regular session on October 4, 2007. This order will reflect certain conditions imposed upon this permit as a consequence of the testimony presented during the hearing of this matter.

8. Public Comment Period.

Mr. Neely reminded everyone of the Pedestrian Plan Open House that is scheduled for Thursday, September 13, 2007 at the Sunset Theatre. Additionally, Mr. Neely announced that a memorial ceremony for the victims of September 11 at the main Fire Station is scheduled for Tuesday, September 11, 2007 at 4:00 p.m.

Mr. Neely recognized and welcomed Mr. Richard Cox, an intern who is working as a part time employee for the Planning Department.

9. Update of Parks and Recreation Department Policies/Issues.

- (a) Consideration of a resolution exempting the Sunset Theatre Renovation Project from the provisions of Article 3D of Chapter 143 of the North Carolina General Statutes and authorizing the award of a design contract to Architect S.W. Cofer.

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

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

43 RES 9-07

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

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 . . . 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 authorizes units of local government to exempt, in the sole discretion of the unit of government, identified projects from the provisions of the above-cited Article 3D so long as the circumstances and reasons for the granting of the exemption are stated when the written exemption is granted; and

WHEREAS, the City of Asheboro desires to renovate the city-owned Sunset Theatre building as well as the adjoining city-owned buildings on either side of the original theater building as part of the city's on-going effort to preserve the character of downtown Asheboro while revitalizing this critical area of the city; and

WHEREAS, on the basis of the professional qualifications of Architect S.W. Cofer, his unique understanding of the city's goals for the revitalization of downtown Asheboro, his local proximity, and his demonstrated suitability for this particular project, the city's professional staff has recommended to the city council that the services of Architect S.W. Cofer, PLLC be utilized to provide the architectural services needed to successfully complete the Sunset Theatre Renovation Project; and

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Asheboro that the aforementioned Sunset Theatre Renovation Project is hereby exempted on the basis of the above-cited factors from the provisions of Article 3D of Chapter 143 of the North Carolina General Statutes; and

BE IT FURTHER RESOLVED that the city's professional staff is hereby directed to enter into negotiations with Architect S.W. Cofer to procure the professional design services needed to fully implement in a timely manner the complete renovation of the entirety of the city-owned properties that are to be renovated as part of the Sunset Theatre Renovation Project.

Adopted by the Asheboro City Council in regular session on the 6th day of September, 2007.

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

ATTEST:

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

- (b) Consideration of an ordinance amending the Parks and Recreation Department Policy Manual.

Mr. Hughes presented and recommended adoption by reference of the aforementioned ordinance in order to update city regulations pertaining to the use of the city tennis center for private lessons, clarify the field rental policies, and add regulations for the city's new disc golf course.

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

42 ORD 9-07

**ORDINANCE AMENDING THE PARKS AND RECREATION
DEPARTMENT POLICY MANUAL**

WHEREAS, Section 98.01 of the Code of Asheboro provides that the Parks and Recreation Department Policy Manual, adopted March 5, 1998, and as amended, has been adopted by reference as a part of the Code of Asheboro; and

WHEREAS, the Parks and Recreation Director, with the concurrence of the City Manager, has recommended to the City Council that the Parks and Recreation Department Policy Manual be amended in order to update the said manual and enhance the operations of the Parks and Recreation Department; and

WHEREAS, the requested amendments to the Parks and Recreation Department Policy Manual are attached hereto as EXHIBIT 1, and EXHIBIT 1 is hereby incorporated into this ordinance by reference as if copied fully herein; and

WHEREAS, the City Council concurs with the recommendations made by the Parks and Recreation Director.

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

Section 1. The Parks and Recreation Department Policy Manual is hereby amended to provide as specified in EXHIBIT 1. All articles, sections, and provisions of the said manual that are not expressly addressed by EXHIBIT 1 will continue in full force and effect without alteration.

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

Section 3. This ordinance will become effective upon adoption.

Adopted by the Asheboro City Council in regular session on the 6th day of September, 2007.

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

ATTEST:

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

(Exhibit 1 that is referred to in the above-referenced ordinance is attached to the original ordinance on file in the City Clerk's office.)

- (c) Consideration of a revised Schedule of Deposits, Fees, and Charges administered by the Parks and Recreation Department.

Mr. Hughes presented and recommended adoption, by reference, of a revised Parks and Recreation Department Schedule of Deposits, Fees, and Charges to reflect the disc golf course rental fees and the fees charged to private instructors utilizing the tennis center.

Upon motion by Mr. Priest and seconded by Ms. Hunter, Council voted unanimously to adopt the above-referenced schedule of fees. A copy of the Schedule of Deposits, Fees, and Charges is on file in the City Clerk's office.

10. Consideration of a recycling contract between the City of Asheboro and Markham Metals, Inc. d/b/a Asheboro Recycling Center.

Mr. Kermit Williamson, Sanitation Superintendent, presented the terms of a proposed recycling contract between the City of Asheboro and Markham Metals, Inc. Mr. Williamson recommended approval of the aforementioned contract.

Upon motion by Mr. Smith and seconded by Mr. Priest, Council voted unanimously to approve the aforementioned contract.

(A hard copy of the proposed contract is on file in the City Clerk's office.)

11. Consideration of a contract between the City of Asheboro and Dr. Stephen Straus of Developmental Associates for the development and implementation of assessment centers for the positions of Captain, Lieutenant, and Sergeant in the Asheboro Police Department.

Chief Mason presented the terms of a proposed contract between the City of Asheboro and Dr. Stephen Straus of Developmental Associates. Chief Mason highlighted that the implementation of assessment centers for certain positions would provide an effective promotional process for the most qualified individuals.

Upon motion by Mr. Crisco and seconded by Mr. Priest, Council voted unanimously to approve the contract.

(A copy of the proposal submitted by Dr. Straus is on file in the City Clerk's office.)

12. Update on Water Utility Issues.

- (a) Receive report on raw water supply status and lake levels from Michael Rhoney, P.E., Director of Water Resources.

Mr. Rhoney reported that, due to recent weather patterns and the continuing drought conditions, the city's lakes have dropped to levels that present water treatment problems. The combination of drought conditions and the city's usage of Lake Reese as its raw water supply for a significant period of time has lowered the lake level to such a degree as to necessitate switching to a lower intake point than is normally used. The raw water at this level is more difficult to treat due to the presence of certain minerals that affect the taste, not safety, of treated water. Additionally, the extra treatment needed for such water is more expensive.

Consequently, the Division of Water Resources is now obtaining raw water from Lake Lucas. At the present time, the normal treatment process is working well with the water from Lake Lucas. Shortly, the Division of Water Resources will begin working to supplement the raw water drawn from Lake Lucas with raw water from Lake Bunch and Lake McCrary.

As a precautionary measure, the city has already implemented an internal water conservation program by reviewing and curtailing, where feasible, practices such as irrigation of landscaping and street cleaning. Assuming no additional rainfall, the city has a supply of treatable water that would last approximately 244 days.

The council received this report and took no formal action at this time.

- (b) Review of terms of a potential agreement with the City of Randleman to purchase treated water from the City of Asheboro.

Mr. Ogburn reported that he met with officials from the City of Randleman on August 27, 2007. The existing contract with the City of Randleman provides that the City of Asheboro will set aside a million gallons per day of treated water capacity for purchase by the City of Randleman at a price of 1 ¼ times the inside rate charged to Asheboro's citizens. In order to assist the City of Randleman as it copes with water supply and treatment problems while simultaneously providing a firm footing for the sustained viability of the City of Asheboro's water system, Mr. Ogburn has communicated to Randleman officials the willingness of the City of Asheboro to undertake a renegotiation of the existing water supply contract to allow Randleman to purchase its treated water from Asheboro at a price equal to 90% of the inside rate until the Piedmont Triad Water Authority (PTWA) is able to supply treated water to Randleman. When PTWA comes on-line with treated water, Asheboro would supply some of Randleman's citizens on the southern side of Randleman at a price equal to Asheboro's inside rate. Additionally, when PTWA comes on-line with treated water, the right to 750,000 gallons of treated water capacity from the City of Asheboro would be relinquished by Randleman.

The council took no action on this item because the City of Randleman must decide what its preferred course of action is prior to negotiations proceeding any further.

- 13. Consideration of a request by Progress Energy Carolinas, Inc. for a Temporary Easement Agreement between the City of Asheboro and Carolina Power & Light d/b/a Progress Energy Carolinas, Inc. for Progress Energy to temporarily relocate a power line onto City of Asheboro property at the North Asheboro Park during construction of a new bridge by the N.C. Department of Transportation on West Central Avenue (NCSR 1504) across Hasketts Creek.**

Upon motion by Mr. Smith and seconded by Ms. Hunter, Council voted unanimously to approve the above-referenced temporary easement agreement.

(A copy of the above-referenced temporary easement agreement is on file in the City Clerk's office.)

- 14. Special City Council work session on Tuesday, September 18, 2007, 8:30 a.m. – 12:15 p.m. at Public Works.**

Mayor Jarrell and Mr. Ogburn reminded council members of the half-day planning retreat that is scheduled for Tuesday, September 18, 2007 at 8:30 a.m.

- 15. Discussion of items not on the agenda.**

- Monday, September 24, 2007 – 4:00 p.m. – 5:30 p.m. – Mayor Jarrell's Clean Up Day.
- Tuesday, September 25, 2007 – 7:30 p.m. – NCDOT Public Meeting at North Asheboro Middle School.

There being no further business, the meeting was adjourned at 9:17 p.m.