

**REGULAR MEETING  
ASHEBORO CITY COUNCIL  
THURSDAY, MARCH 6, 2008  
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 S. Baker )  
Edward J. Burks )  
Linda H. Carter ) – Council Members Present  
Walker B. Moffitt )  
Archie B. Priest, Sr. )  
David H. Smith )  
  
J. Keith Crisco ) – Council Member Absent

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  
Mark Dawalt, Water/Sewer Maintenance Superintendent  
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  
Pamela M. Morgan, Secretary III  
R. Reynolds Neely, Jr., Planning Director  
James W. Smith, Fire Chief  
Katie L. Snuggs, Secretary I (Retired)  
Jeffrey C. Sugg, City Attorney

**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 and Invocation.**

Mayor Jarrell asked everyone to stand and repeat the Pledge of Allegiance, after which Captain Jason Hughes from the Salvation Army gave the invocation.

**3. Appearance of guests and citizens.**

Mayor Jarrell welcomed everyone in attendance.

**4. Without objection from the Council, Mayor Jarrell moved Agenda Item 11(c) ahead of the remaining agenda items.**

**11 (c) RZ-08-12: Request to rezone from B-2 (General Business), R-10 (Medium-Density Residential), and R-15 (Low-Density Residential) to CU-RA6 (Conditional Use High-Density Residential).** The property of Debra B. Setzer and Randall Burrows is located at the terminus of Oak Leaf Road, approximately 600 feet south of North Carolina Highway 49 and consists of approximately 24.3 acres of land. Randolph County Parcel Identification Number 7740936604 more specifically identifies the property.

Mayor Jarrell opened the public hearing on the following request.

Mr. Neely presented a written request by the Applicant to continue the above-referenced item to the Council's regular April meeting.

Due to a conflict of interest, Mr. Moffitt asked that he be excused from any discussion and action regarding the above-referenced item. A motion was made by Ms. Carter and seconded by Mr.

Baker to excuse Mr. Moffitt from voting. Council Members Baker, Burks, Carter, Priest, and Smith unanimously adopted this motion.

Upon motion by Mr. Smith and seconded by Ms. Carter, Council Members Baker, Burks, Carter, Priest, and Smith voted to continue the above-referenced item to the Council's regular April meeting.

5. **Consideration of formal approval of changing the location of the regular council meeting to be held on April 10, 2008, from the council chamber to the Conference Room at the City of Asheboro Public Works Facility, located at 1312 North Fayetteville Street. [Agenda Item Number 4]**

Upon motion by Mr. Priest and seconded by Ms. Carter, Council voted unanimously to change the location of its Special Meeting on Thursday, March 27, 2008 and the regular April meeting from the council chamber to the Conference Room at the City of Asheboro Public Works Facility.

6. **Recognition of Katie Snuggs for her service to the City of Asheboro. [Agenda Item Number 5]**

Mayor Jarrell presented a plaque to Ms. Katie Snuggs in recognition of her retirement from the City of Asheboro work force after many years of dedicated service to the city. Additionally, Mr. Mark Dawalt, Superintendent of the city's Water/Sewer Maintenance Department, thanked Ms. Snuggs for her loyalty and friendship while serving the City of Asheboro.

7. **Presentation by County Commissioner Phil Kemp and County Manager Richard Wells on Randolph County 1/4 Cent Sales Tax Referendum. [Agenda Item Number 6]**

Mr. Phil Kemp, Randolph County Commissioner, requested Council's support for a 1/4 Cent Sales Tax Referendum that would be voted on by the citizens during the primary election in May, 2008. This sales tax increase would provide approximately \$2.5 million in additional revenue that would be used to offset the cost of the construction and maintenance of new high schools along with the installation and extension of major water lines throughout Randolph County.

A copy of the brochure that was distributed to the Council during Mr. Kemp's presentation is on file in the City Clerk's office.

8. **Receive annual report of the police department. [Agenda Item Number 7]**

Mr. Gary L. Mason, Chief of Police, presented an overview of the Police Department's activities during 2007. A copy of the report presented by Chief Mason is on file in the City Clerk's office.

Additionally, Chief Mason encouraged everyone to attend the Drug Task Force meeting on Monday, March 10, 2008 at 6:30 p.m. at East Side Park.

9. **Consent Agenda: [Agenda Item Number 8]**

At the request of city staff, Mayor Jarrell announced that the findings of fact, conclusions of law, and order in the matter of CUP-08-06 [Consent Agenda Item (d)] had been withdrawn from consideration.

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

- (a) **The minutes of the regular meeting of the City Council that was held on February 7, 2008.**
- (b) **The minutes of the special meeting of the City Council that was held on February 21, 2008.**
- (c) **The minutes of the special meeting of the City Council that was held on February 22, 2008.**
- (d) **Findings of fact, conclusions of law, and order in the matter of CUP-08-06.**

**[The above-referenced consent agenda item was withdrawn by staff.]**

- (e) **A resolution to waive the bid procedure as allowed by NCGS Section 143-129(g) to purchase a combination vacuum and high pressure sewer pipe cleaner truck from Virginia Public Works Equipment Company at a purchase price of \$258,000.00 for the Sewer Maintenance Department, based on a bid from a public, formal bid process previously completed within the past 12 months.**

**RESOLUTION APPROVING THE PURCHASE OF A TRUCK MOUNTED COMBINATION SEWER VACUUM AND HIGH PRESSURE CLEANER**

**WHEREAS**, upon the request of the city's public works division, the City Manager has recommended to the City Council of the City of Asheboro that a new truck mounted combination sewer vacuum and high pressure cleaner be purchased; and

**WHEREAS**, pursuant to Section 143-129(g) of the North Carolina General Statutes, the City Council may waive, if the City Council determines that such an action is in the best interest of the City of Asheboro, the bid procedures specified for the purchase of equipment when the equipment is to be purchased from a vendor that can satisfy the following criteria: (i) the vendor has, within the previous twelve (12) months, completed a public, formal bid process substantially similar to the process prescribed by Article 8, Chapter 143 of the North Carolina General Statutes, (ii) the vendor has contracted, as a result of this public bid process, to furnish equipment comparable to that sought by the City of Asheboro to a political subdivision of another state, and (iii) the vendor is willing to furnish said equipment to the City of Asheboro at the same or more favorable prices, terms, and conditions as those provided to the other unit of government; and

**WHEREAS**, Virginia Public Works Equipment Company can supply a truck mounted combination sewer vacuum and high pressure cleaner that meets the specifications established by the city's public works division; and

**WHEREAS**, Virginia Public Works Equipment Company participated in March 2007 in a public, formal bid process conducted by the County of Fairfax, Virginia and, as a consequence of that bid process, the County of Fairfax issued a purchase order to Virginia Public Works Equipment Company on April 28, 2007 for a truck mounted combination sewer vacuum and high pressure cleaner comparable to the unit sought by the City of Asheboro; and

**WHEREAS**, Virginia Public Works Equipment Company is willing to furnish the City of Asheboro with a comparable truck mounted combination sewer vacuum and high pressure cleaner at the same or more favorable prices, terms, and conditions as those provided to the County of Fairfax, Virginia; and

**WHEREAS**, on February 24, 2008, notice was published in *The Courier Tribune*, a newspaper of general circulation in the Asheboro area, that the City Council would consider during its regular meeting on March 6, 2008 approving a waiver of the competitive bid procedures specified in Section 143-129 of the North Carolina General Statutes in order to contract with Virginia Public Works Equipment Company for the purchase of such a truck mounted combination sewer vacuum and high pressure cleaner.

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

**Section 1.** Pursuant to Section 143-129(g) of the North Carolina General Statutes, the City Council of the City of Asheboro does hereby waive the bid procedures prescribed by Section 143-129 of the North Carolina General Statutes in order to contract with a qualified supplier, Virginia Public Works Equipment Company, for the purchase of a truck mounted combination sewer vacuum and high pressure cleaner at the same or more favorable prices, terms, and conditions as those provided to the County of Fairfax, Virginia during a public, formal bid process held in March 2007.

**Section 2.** The purchase from Virginia Public Works Equipment Company of a truck mounted combination sewer vacuum and high pressure cleaner at a contract price not to exceed Two Hundred Fifty-Eight Thousand and No/100 Dollars (\$258,000.00) is hereby approved.

Adopted by the Asheboro City Council in regular session on the 6<sup>th</sup> day of March 2008.

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

ATTEST:

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

- (f) **A resolution to waive the bid procedure as allowed by NCGS Section 143-129(g) to purchase an automated leaf vacuum truck from Amick Equipment Company at a purchase price of \$126,743.00 for the Street Department, based on a bid from a public, formal bid process previously completed within the past 12 months.**

**RESOLUTION APPROVING THE PURCHASE OF AN AUTOMATED  
LEAF VACUUM AND CHASSIS**

**WHEREAS**, upon the request of the city's public works division, the City Manager has recommended to the City Council of the City of Asheboro that a new automated leaf vacuum and chassis be purchased; and

**WHEREAS**, pursuant to Section 143-129(g) of the North Carolina General Statutes, the City Council may waive, if the City Council determines that such an action is in the best interest of the City of Asheboro, the bid procedures specified for the purchase of equipment when the equipment is to be purchased from a vendor that can satisfy the following criteria: (i) the vendor has, within the previous twelve (12) months, completed a public, formal bid process substantially similar to the process prescribed by Article 8, Chapter 143 of the North Carolina General Statutes, (ii) the vendor has contracted, as a result of this public bid process, to furnish equipment comparable to that sought by the City of Asheboro to a political subdivision of another state, and (iii) the vendor is willing to furnish said equipment to the City of Asheboro at the same or more favorable prices, terms, and conditions as those provided to the other unit of government; and

**WHEREAS**, Amick Equipment Company can supply an automated leaf vacuum and chassis that meets the specifications established by the city's public works division; and

**WHEREAS**, Amick Equipment Company participated in January 2008 in a public, formal bid process conducted by the City of Aiken, South Carolina and, as a consequence of that bid process, the City of Aiken issued a Notice of Intent to Award Bid to Amick Equipment Company on February 14, 2008 for an automated leaf vacuum and chassis comparable to the unit sought by the City of Asheboro; and

**WHEREAS**, Amick Equipment Company is willing to furnish the City of Asheboro with a comparable automated leaf vacuum and chassis at the same or more favorable prices, terms, and conditions as those provided to the City of Aiken, South Carolina; and

**WHEREAS**, on February 24, 2008, notice was published in *The Courier Tribune*, a newspaper of general circulation in the Asheboro area, that the City Council would consider during its regular meeting on March 6, 2008 approving a waiver of the competitive bid procedures specified in Section 143-129 of the North Carolina General Statutes in order to contract with Amick Equipment Company for the purchase of an automated leaf vacuum and chassis.

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

**Section 1.** Pursuant to Section 143-129(g) of the North Carolina General Statutes, the City Council of the City of Asheboro does hereby waive the bid procedures prescribed by Section 143-129 of the North Carolina General Statutes in order to contract with a qualified supplier, Amick Equipment Company, for the purchase of an automated leaf vacuum and chassis at the same or more favorable prices, terms, and conditions as those provided to the City of Aiken, South Carolina during a public, formal bid process conducted in January 2008.

**Section 2.** The purchase from Amick Equipment Company of an automated leaf vacuum and chassis at a contract price not to exceed One Hundred Twenty-Six Thousand Seven Hundred Forty-Three and No/100 Dollars (\$126,743.00) is hereby approved.

Adopted by the Asheboro City Council in regular session on the 6<sup>th</sup> day of March 2008.

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

ATTEST:

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

- (g) **Acceptance of the low bid received from Carolina Environmental Systems, Inc. of Kernersville, NC to provide a side loading refuse truck at the amount of \$198,988.00, not including use tax.**
- (h) **Approval of the City of Asheboro to participate with the North Carolina Department of Transportation to install automatic railroad warning devices on West Wainman Avenue, with the City of Asheboro's share of the installation cost estimated at \$15,000 (10% of the project cost) and the City of Asheboro's share of the maintenance cost estimated at \$1,290 per year (50% of the total maintenance cost).**

- (i) **A resolution deleting certain vacant positions from the city's position classification plan, amending the job description for Code Enforcement Officer, and amending certain job titles.**

11 RES 03-08

**RESOLUTION AUTHORIZING THE DELETION OF CERTAIN VACANT POSITIONS FROM THE CITY'S POSITION CLASSIFICATION PLAN, AMENDING THE JOB DESCRIPTION FOR CODE ENFORCEMENT OFFICER, AND AMENDING CERTAIN JOB TITLES**

**WHEREAS**, the City of Asheboro Personnel Policies and Procedures Manual, which was promulgated by the City Manager and approved by resolution of the City Council of the City of Asheboro on March 4, 2004, and as amended, provides in Section 1 of Article II of the said manual that a position classification plan shall be prepared by the City Manager and adopted by the City Council; and

**WHEREAS**, such a position classification plan has been duly adopted by the City Council; and

**WHEREAS**, under the adopted position classification plan, the following positions have been established:

<u>Job Title</u>	<u>Department</u>	<u>Pay Grade</u>
Accounting Specialist I	Finance	16
Accounting Specialist II	Finance	21
Assistant Finance Director	Finance	24
Code Compliance Inspector	Planning & Community Development	15
Code Enforcement Officer	Planning & Community Development	19
Legal Assistant	Legal Services	15
Community Service Coordinator	Sanitation	10
Secretary II	Water/Sewer Maintenance	10
Secretary II	Fire	10
Secretary III	Grounds Maintenance	12
Secretary III	Police	12
Secretary IV	Operations	14
Secretary IV	Division of Water Resources	14

**WHEREAS**, after a thorough examination of the city's personnel needs, the Human Resources Director and City Manager have concluded that, due to the advancement of technology, the city's operations and needs have evolved to the point that the positions of Accounting Specialist I, Assistant Finance Director, Code Compliance Inspector, Legal Assistant, and Community Service Coordinator are no longer needed; and

**WHEREAS**, the positions of Accounting Specialist I, Assistant Finance Director, Code Compliance Inspector, Legal Assistant, and Community Service Coordinator are currently vacant; and

**WHEREAS**, with the deletion of the Code Compliance Inspector position, the job description for Code Enforcement Officer should be amended in order to reflect the transfer of the responsibilities and duties of the Code Compliance Inspector to the Code Enforcement Officer; and

**WHEREAS**, the Human Resources Director has prepared a comprehensive job description, which includes these additional responsibilities, for the amended position of Code Enforcement Officer in the Planning and Community Development Department and has submitted this job description (hereinafter referred to as the "Job Description") to the City Manager for review; and

**WHEREAS**, Section 10 of Article II of the City of Asheboro Personnel Policies and Procedures Manual provides, in pertinent part, as follows:

When a new position is established or the duties of an existing position change, the department head 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; and

**WHEREAS**, upon the recommendation of the Director of Human Resources, the City Manager has approved the submitted Job Description and has concluded that the revised duties of the Code Enforcement Officer do not materially impact the current classification of the Code Enforcement Officer position under the city's position classification plan; and

**WHEREAS**, the Job Description is attached to this resolution as Exhibit 1 and is hereby incorporated into this resolution by reference as if copied fully herein; and

**WHEREAS**, with the deletion of the position of Accounting Specialist I, the Human Resources Director and City Manager have concluded that the position title of Accounting Specialist II should be amended to that of Accounting Specialist; and

**WHEREAS**, the Human Resources Director and City Manager have concluded that the job titles for the positions currently identified as Secretary II, III, and IV should be amended in order to more accurately reflect the duties specified for these positions by the respective departments and in order to maintain consistency with the position titles utilized by the majority of municipalities in the state of North Carolina.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Asheboro that the following positions are to be deleted or have their job titles amended as follows:

<u>Current Job Title</u>	<u>Department</u>	<u>Amended Status or Job Title</u>
Accounting Specialist I	Finance	Deleted
Accounting Specialist II	Finance	Accounting Specialist
Assistant Finance Director	Finance	Deleted
Code Compliance Inspector	Planning & Community Development	Deleted
Code Enforcement Officer	Planning & Community Development	No change in status or job title
Legal Assistant	Legal Services	Deleted
Community Service Coordinator	Sanitation	Deleted
Secretary II	Water/Sewer Maintenance	Office Assistant - Water/Sewer Maintenance
Secretary II	Fire	Office Assistant - Fire
Secretary III	Grounds Maintenance	Office Assistant - Grounds Maintenance
Secretary III	Police	Office Assistant - Police
Secretary IV	Operations	Office Assistant - Public Works
Secretary IV	Division of Water Resources	Office Assistant - Water Resources

**BE IT FURTHER RESOLVED** by the City Council of the City of Asheboro that the amended Job Description for Code Enforcement Officer in the Planning and Community Development Department at a pay grade of 19 is hereby approved; and

**BE IT FURTHER RESOLVED** by the City Council of the City of Asheboro that the above-described position deletions, amendments of job titles, and the approval of the amended Job Description for the Code Enforcement Officer shall be effective as of April 1, 2008.

Adopted by the Asheboro City Council in regular session on the 6<sup>th</sup> day of March, 2008.

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

ATTEST:

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

## EXHIBIT 1

### CODE ENFORCEMENT OFFICER Community Planning and Development Department

F.L.S.A.  
EXEMPT

#### General Statement of Duties

Performs responsible technical work in the enforcement of the zoning code, city code and related codes and ordinances, specifically including without limitation the Minimum Housing Ordinance.

#### Distinguishing Features of the Class

An employee in this class is responsible for review and inspection of development to insure compliance with city codes, rules and regulations, specifically including without limitation the Minimum Housing Ordinance. Work includes on-site inspection of property and contact with the public to explain city codes, rules and regulations. Work is performed under the general supervision of the Planning Director and is reviewed through periodic conferences, observation, and response from the public.

#### Illustrative Examples of Work

- Receives and investigates all citizen complaints as they relate to the city code and zoning ordinance violation;
- Makes on-site inspections of existing development for zoning compliance;
- Reviews and inspects for compliance with conditions added by City Council to rezoning cases and Special Use/Conditional Use Permits;
- Reviews and inspects for compliance with conditions added by the Board of Adjustment on matters decided by them;
- Develops and implements a system of warnings and legal actions necessary for code enforcement;
- Issues letters and notices of violations of the city ordinance;
- Negotiates solutions to code violations;
- Maintains appropriate correspondence and records;
- Enforces sign ordinances; reviews and approves applications for uniform sign plans and applications;
- Enforces nuisance car ordinance;
- Keeps daily diary of work progress;
- Serves as staff liaison to the Board of Adjustment;
- Prepares materials and agenda items for the Board of Adjustment;
- Presents appeals to the Board of Adjustment;
- Explains and interprets zoning code and the city ordinance to the public, developers and others;
- Answers questions from citizens, contractors and developers pertaining to permitted, conditional and special uses, and setback requirements;
- Participates in the review and comment of plans for development and zoning requests;
- May issue zoning permits;
- Approves the installation of soil erosion measures and inspects each project for compliance;
- May testify in court as a code enforcement officer;
- Performs related work as required.

#### Knowledge, Skills, and Abilities

Thorough knowledge of zoning code and appropriate enforcement techniques;  
Thorough knowledge of applicable federal, state and local laws regarding zoning and building administration and enforcement;  
General knowledge of the principles and practices and applicable laws regarding planning, subdivisions, building permits, privilege licenses, and building code enforcement;  
General knowledge of the use of personal computers; including use of geographic information systems and preparation of presentation material;  
Ability to detect, plan and coordinate the enforcement of codes;  
Ability to read and interpret plans, specifications and blue prints;  
Skill in contacting, communicating and negotiating with property owners, developers, and the general public and in exercising firmness and tact in the enforcement of codes and ordinances;  
Ability to establish and maintain effective working relationships with other employees, the public and City officials;  
Ability to present facts and recommendations effectively in oral and written form.

**Minimum Experience and Training**

Graduation from an accredited high school. Graduation from an accredited college or university with a degree in geography, planning or related field, with extensive experience working the building trade or in code enforcement preferred, or an equivalent combination of experience and training.

**Special Requirements**

Must possess a valid North Carolina driver's license and have a safe driving record.  
Must possess or have the ability to obtain certification as a North Carolina Zoning Official.  
Must obtain a Level I Building Certificate in one (1) year.

**Physical Requirements**

Must be able to lift 5 to 10 pounds. May occasionally be required to work outdoors in varying weather conditions.

- (j) **An ordinance prohibiting any person from riding on a skateboard, roller skates, or any other type of toy vehicle on posted private property at 101 Sunset Avenue and 150 S. Fayetteville Street.**

11 ORD 03-08

**AN ORDINANCE PROHIBITING ANY PERSON FROM RIDING ON A SKATEBOARD, ROLLER SKATES, OR ANY OTHER TYPE OF TOY VEHICLE ON POSTED PRIVATE PROPERTY**

**WHEREAS**, Section 160A-174(a) of the North Carolina General Statutes provides that a city may define, prohibit, or abate by ordinance acts, omissions, or conditions that are detrimental to the health, safety, or welfare of the city's citizens and the peace and dignity of the city; and

**WHEREAS**, Section 70.53 of the Code of Asheboro restricts the use of play vehicles in the following manner:

**§ 70.53 USE OF PLAY VEHICLES RESTRICTED.**

(A) It shall be unlawful for any person riding on a skateboard, roller skates, coaster, toy vehicle or similar device to ride any of such devices on the premises of the municipal buildings, on any of the facilities or structures located in Bicentennial Park, on any municipal parking facility, or to ride any such devices on any sidewalk or street located in the central business district of the city, as designated on the City Zoning Map as a B-3 District.

(B) It shall be unlawful for any person riding on a skateboard, roller skate or any other toy vehicle to ride on a roadway except while crossing a street at a crosswalk or intersection; provided, that this section shall not apply upon streets set aside as play streets.

(C) It shall be unlawful for any person to ride on a skateboard, roller skates, or any other toy vehicle on private property when signs are placed, erected, or installed giving notice that skateboarding, roller skating or riding any other toy vehicle is regulated, prohibited, or prohibited during certain hours, in that space or area; and

**WHEREAS**, Mr. Craig Hames, who is the Facilities Manager for CommunityOne Bank, N.A., has properly petitioned the City Council of the City of Asheboro in his official capacity to have the bank's property located at 101 Sunset Avenue and at 150 South Fayetteville Street posted in order to prohibit, in accordance with Section 70.53 (C) of the Code of Asheboro, the riding by any person of a skateboard, roller skates, or any other toy vehicle on the premises of CommunityOne Bank, N.A.

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

**Section 1.** Pursuant to and in accordance with Section 70.53 (C) of the Code of Asheboro, it is hereby declared to be unlawful for any person to ride on a skateboard, roller skates, or any other toy vehicle in the public vehicular areas or upon any other portion of the outdoor premises of CommunityOne Bank, N.A. at 101 Sunset Avenue and at 150 South Fayetteville Street in Asheboro, North Carolina.

**Section 2.** The number and type of signs necessary to lawfully implement the provisions of Section 1 of this ordinance shall be erected or installed in a manner to be determined by the chief of police or his designee, and the entirety of the cost of erecting or installing the necessary signs shall be paid by CommunityOne Bank, N.A. as the entity that has requested, by and through Craig Hames, the adoption of this ordinance.

**Section 3.** The city clerk shall enter a description in Schedule 19 of Chapter 72 of the Code of Asheboro of the type of prohibition imposed by this ordinance and a description of the private property subject to said prohibition.

**Section 4.** This ordinance shall become effective upon adoption.

Adopted in regular session by the Asheboro City Council on the 6<sup>th</sup> day of March, 2008.

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

ATTEST:

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

#### OLD BUSINESS

#### 10. Consideration of a solid waste transportation agreement. [Agenda Item Number 9]

Mr. Sugg presented and recommended adoption by reference of a resolution approving a solid waste transportation agreement with Eric Clapp Hauling, Incorporated.

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

**12 RES 03-08**

#### **RESOLUTION APPROVING A SOLID WASTE TRANSPORTATION AGREEMENT WITH ERIC CLAPP HAULING, INCORPORATED**

**WHEREAS**, the City of Asheboro operates a transfer station that receives non-hazardous solid waste collected by the city's sanitation department and then loads this solid waste onto trailers that are staged for transport to a landfill; and

**WHEREAS**, Eric Clapp Hauling, Inc., a North Carolina corporation, currently transports solid waste received at the city's transfer station to a landfill designated by the city; and

**WHEREAS**, Eric Clapp Hauling, Inc. (hereinafter referred to as the "Contractor") wishes to enter into a new contract with the city in order to continue to transport non-hazardous solid waste from the city's transfer station to the designated landfill; and

**WHEREAS**, city staff members have recommended to the City Council that a new contract be entered into by and between the city and the Contractor in order to continue utilizing the Contractor's solid waste transportation services; and

**WHEREAS**, the proposed contract has been attached to this resolution as Exhibit 1 and is hereby incorporated into this resolution by reference as if copied fully herein; and

**WHEREAS**, the City Council has determined that the terms and conditions of the proposed contract are satisfactory.

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

**Section 1.** The proposed contract that is attached to this resolution as Exhibit 1 is hereby approved.

**Section 2.** The City Manager is hereby authorized and directed to execute on behalf of the City of Asheboro a contract that conforms to Exhibit 1.

Adopted by the Asheboro City Council in regular session on the 6<sup>th</sup> day of March, 2008.

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

ATTEST:

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

EXHIBIT 1

STATE OF NORTH CAROLINA

**SOLID WASTE TRANSPORTATION  
AGREEMENT**

COUNTY OF RANDOLPH

**THIS SOLID WASTE TRANSPORTATION AGREEMENT** (hereinafter referred to as the "Agreement") is made this \_\_\_ day of \_\_\_\_\_, 2008, by and between the City of Asheboro, North Carolina (hereinafter referred to as the "City"), a North Carolina municipal corporation, and Eric Clapp Hauling, Inc. (hereinafter referred to as the "Contractor"), a North Carolina corporation.

**WITNESSETH:**

**WHEREAS**, the City operates a solid waste transfer station (hereinafter referred to as the "Transfer Station"); and

**WHEREAS**, the City desires to dispose of solid waste delivered to its Transfer Station by transferring said waste to a designated landfill; and

**WHEREAS**, the Contractor desires to transport to the designated landfill, upon the terms and conditions set forth herein, the solid waste received at the Transfer Station.

**NOW, THEREFORE**, for and in consideration of the foregoing and the mutual covenants set forth herein, the City and the Contractor, intending to be legally bound, hereby agree as follows:

**Article 1. Definitions.** In addition to the words and terms defined elsewhere herein, the following words and terms shall have the respective meanings set forth below:

(a) "Agreement" means this solid waste transportation agreement between the City and the Contractor, as modified, supplemented, or restated from time to time upon mutual written consent.

(b) "Applicable Laws" means any statute, law, constitution, charter, ordinance, resolution, judgment, order, decree, rule, regulation, directive, standard, applicable permit(s), or similarly binding authority relating to the transportation of solid waste between the Transfer Station and the Landfill that has been enacted, adopted, promulgated, issued, or enforced by any Governmental Body.

(c) "City" means the City of Asheboro, North Carolina.

(d) "Change in Law" means any amendment to, adoption, issuance or promulgation of, or change in the interpretation or enforcement of any Applicable Laws, after the date of this Agreement, which adversely affects in a material manner the transportation of City Waste Material to the Landfill.

Excluded from the above definition is any change that was officially proposed by the responsible agency and published in final form in the Federal Register or other state, federal, or local publication as of the effective date of this Agreement and which hereafter becomes effective without further action. Also, any change in the federal, state, or local income or withholding tax laws is excluded from the definition provided in the immediately preceding paragraph.

Change in Law shall not be deemed to include any action which is a result of willful misconduct, negligent action(s), or the omission or lack of reasonable diligence on the part of the City or the Contractor, whichever is asserting the occurrence of a change in law; provided, however, the contesting in good faith or the failure in good faith to so contest such action shall not constitute or be construed as willful misconduct, negligent action(s), or the omission or lack of reasonable diligence.

(e) "City Waste Material" means any and all solid waste received by the City at the Transfer Station.

(f) "Contractor" means Eric Clapp Hauling, Inc., a North Carolina corporation.

(g) "Force Majeure" means any event that has a direct and materially adverse impact on the transportation of City Waste Material from the Transfer Station to the Landfill, and the cause of such an event is not the result of willful, intentional, or negligent act(s) or omission(s) by the party relying thereon as justification for not performing in accordance with this Agreement.

Such events shall include, but shall not be limited to, the following:

- (A) An act of God, lightning, earthquake, fire, epidemic, landslide, drought, hurricane, tornado, storm, explosion, partial or entire failure of utilities, flood, nuclear radiation, act of a public enemy, war, blockade, insurrection, riot or civil disturbance, labor strike or interruption, extortion, sabotage, or similar occurrence, or any exercise of the power of eminent domain, condemnation, or

other taking by the action of any Governmental Body on behalf of any public, quasi-public, or private entity;

(B) Any Change in Law.

(h) "Governmental Body" means: (1) the United States of America; (2) one or several of the fifty states; (3) any county; (4) any municipal corporation; or (5) any agency, authority, regulatory body, or subdivision of (1), (2), (3), or (4), as may have jurisdiction over or power and authority to regulate the Transfer Station, the City, the Contractor, or the Landfill.

(i) "Landfill" means that certain landfill designated by the City as the facility to which City Waste Material is to be transported from the Transfer Station.

(j) "Permits" means any and all permits, licenses, approvals, certificates of public convenience and necessity, franchises, authorizations, or other designation which must be issued by any Governmental Body having jurisdiction thereof to legally enable the transport of City Waste Material from the Transfer Station to the Landfill.

(k) "State" means the State of North Carolina.

(l) "Ton" means 2,000 pounds.

(n) "Transfer Station" means the City of Asheboro Recycling and Waste Transfer Station located at 630 Transfer Station Place, Asheboro, North Carolina 27203. The Transfer Station operates under permit # 76-05-T.

**Article 2. Term of Agreement.** Unless terminated earlier, the initial term of this Agreement shall begin at 12:01 a.m. on April 1, 2008, and shall end at midnight on June 30, 2010. The parties shall have the right to extend the terms of this Agreement for two (2) additional two (2) year terms upon the mutual agreement of both of the parties, and such renewal terms shall be upon the same terms and conditions set out in this Agreement. If a party hereto, with or without cause, does not wish to extend this Agreement, such party must provide to the other party, at least ninety (90) days prior to the expiration of the then current term of the Agreement, written notice of the intent not to renew the Agreement. Once the notice referenced in the preceding sentence is properly given, this Agreement shall terminate at the expiration of the then current term without further action by either party.

**Article 3. Fee.**

3.01 The City shall pay the Contractor the following fixed amounts per Ton for services rendered:

- a. Thirteen and 88/100 Dollars (\$13.88) per Ton when the City Waste Material is transported from the Transfer Station to Uwharrie Environmental, 500 Landfill Road, Mt. Gilead, North Carolina 27306.
- b. Fifteen and 79/100 Dollars (\$15.79) per Ton when the City Waste Material is transported from the Transfer Station to BFI CMS Landfill, 5105 Morehead Road, Concord, North Carolina 28027.
- c. Seventeen and 86/100 Dollars (\$17.86) per Ton when the City Waste Material is transported from the Transfer Station to Anson Solid Waste Management Facility, Route 1, Box 325, Highway 74 West, Polkton, North Carolina 28135.

3.02 The amount of the fee prescribed by Section 3.01 of this Agreement may be adjusted on an annual basis in accordance with the Consumer Price Index - All Urban Consumers (South Region, All Items, Not Seasonally Adjusted) as published by the U. S. Department of Labor, Bureau of Labor Statistics with an index base period of 1982-84 = 100. Such an adjustment shall be made on the 1<sup>st</sup> day of July of each year that this Agreement is in full force and effect. On the adjustment date, the Disposal Rate may be increased by a percentage equal to the percent change, if any, in the above-referenced index during the twelve (12) month period preceding March 1<sup>st</sup> of the calendar year in which the adjustment is to be made. If the Consumer Price Index (hereinafter referred to as the "CPI") ceases to use as the basis of calculation the standard of 1982-84 = 100, or if a change is made in the items contained in the CPI, or if the CPI is altered, modified, converted, or revised in any other manner, then the foregoing computations shall be made with the use of such conversion factor, formula, or table for converting the CPI as may be published by the Bureau of Labor Statistics. If the Bureau of Labor Statistics does not publish such conversion information, then the foregoing computations shall be made with the use of a conversion factor that adjusts the modified CPI to the figure that would have been calculated had the manner of computing the CPI not been altered.

3.03 The amount of tonnage for which payment is due from the City shall be determined on the basis of the tonnage loaded into the Contractor's trailers and weighed by the City at the Transfer Station; provided, however, that notwithstanding the actual tonnage loaded into the Contractor's trailers, in no event, other than an event of Force Majeure, shall the sum due to the Contractor for a particular load be less than that of the twenty (20) Ton fee calculated for the particular waste management facility for which the load is destined. The weighing of the Contractor's vehicles at the Transfer Station shall be

conducted on the City's scales. The Contractor may inspect the City's scales and test the accuracy thereof at reasonable times and intervals selected by the Contractor.

3.04 In the event that the Landfill refuses to accept City Waste Material transported from the Transfer Station to the Landfill, the Contractor will be allowed to collect a fee based on the amount of City Waste Material that has to be transported back to the Transfer Station from the Landfill. The Contractor may receive a maximum of Five and No/100 Dollars (\$5.00) per Ton of City Waste Material returned from Uwharrie Environmental, 500 Landfill Road, Mt. Gilead, North Carolina 27306, Six and No/100 Dollars (\$6.00.) per Ton of City Waste Material returned from BFI CMS Landfill, 5105 Morehead Road, Concord, North Carolina 28027, and Seven and No/100 Dollars (\$7.00) per Ton of City Waste Material returned from Anson Solid Waste Management Facility, Route 1, Box 325, Highway 74 West, Polkton, North Carolina 28135. The Contractor is entitled to a fee for the return of waste material to the Transfer Station if, and only if, all of the following conditions are met:

- a. The waste material that was rejected by the operator of the Landfill was City Waste Material. The City will not pay any form of fee for the transport of waste material to the Transfer Station in situations where the waste material delivered to the Landfill contains any material other than City Waste Material. To further clarify, the City will not pay for any tonnage in excess of the tonnage calculated with the City's scales prior to the departure of the Contractor's trailer with the waste material destined for the Landfill; and
- b. The waste material was rejected by the operator of the Landfill due to no fault of any kind or to any degree by the Contractor; and
- c. The Contractor presents satisfactory documentation from the Landfill as to the weight of the waste material that was delivered to the Landfill for disposal.

3.05 If the Contractor is unable to unload from its trailer the entirety of the City Waste Material transported to the Landfill from the Transfer Station, the Contractor shall not return to the Transfer Station with the City Waste Material. If such a situation arises, the Contractor shall be responsible for determining and undertaking the actions necessary to resolve the situation in accordance with the Applicable Laws and the regulations of the Landfill. The City will reimburse the Contractor for any expenses directly related to the remedial measures taken to unload its trailer at the Landfill if, and only if, all of the following conditions are met:

- a. The City Waste Material will not unload from the Contractor's trailer at the Landfill due solely to the manner in which the City's officials and employees loaded the material onto the trailer; and
- b. The waste material that will not unload at the landfill contains exclusively City Waste Material loaded by the City's officials and employees at the Transfer Station; and
- c. The problem with unloading the waste material from the trailer is due to no fault of any kind or to any degree of the Contractor; and
- d. If the Contractor alleges that a problem with unloading a trailer at the Landfill is due to the actions of the City, an authorized representative of the City's Sanitation Department Superintendent must be allowed to physically inspect the trailer with the alleged problem and verify the existence of fault on the part of the City before any actions are taken that will prevent such an inspection from occurring. If such an opportunity to conduct an inspection and make a determination of fault is denied by the Contractor for any reason or by any means to an authorized representative of the City's Sanitation Department Superintendent, the Contractor shall be deemed to have waived its claim for reimbursement.

3.06 During the term of this Agreement, the amount of the fee to be paid to the Contractor per Ton of City Waste Material transported to the Landfill shall be adjusted on a monthly basis to reflect certain increases or decreases in fuel costs. Beginning the first week of May 2008, the Energy Information Administration's "On-Highway Diesel Price Survey" shall be utilized to determine if a monthly adjustment of the Contractor's per Ton fee for the City Waste Material transported during the preceding month must be adjusted. On each and every first Monday of the calendar month, the Energy Information Administration's Retail On-Highway Diesel Prices for the Lower Atlantic area shall be used by the City's Sanitation Department Superintendent or his designee to compute the average price per gallon for fuel during the previous month. This average price per gallon for the preceding month will be compared with the base line price of \$3.275 per gallon (the price listed for February 4, 2008). For each five cent increase or decrease in the price per gallon as compared to the base line, the fee owed to the Contractor per Ton of City Waste Material transported to the Landfill during the preceding month shall be adjusted by the City in increments of one-half percent for every 5 cent increase or decrease in the average price per gallon of fuel so as to reflect the increase or decrease in fuel costs as compared to the stated base line.

3.07 Invoices submitted to the City in accordance with Section 3.08 of this Agreement shall be subject to adjustment by the City in accordance with Section 4.03 of this Agreement.

3.08 On the 10<sup>th</sup> day of each calendar month, or the next business day if the 10<sup>th</sup> day of the month falls on a Saturday, Sunday, or legal holiday, the Contractor shall bill the City for the City Waste

Material transported since the date of the immediately preceding invoice's delivery to the City. After adjusting, in strict accordance with this Article, the amount billed to the City by the Contractor, the City shall make payment to the Contractor within the first twenty (20) days of the City's receipt of billing for waste materials transported during the time period specified in the invoice. If the Contractor disagrees with the adjustment made by the City to the amount billed, the Contractor shall provide written notice of such objection to the City prior to the next regularly scheduled billing date and engage in good faith negotiations with the City to resolve the stated objection. The Contractor's failure to give such notice of objection within the specified time frame, and time is of the essence, shall constitute a waiver of any claim for additional fees or compensation of any sort arising from the services rendered by the Contractor during the time period in question. The City acknowledges that a late fee consisting of the lesser of (i) one and one-half (1.5) percent per month or (ii) the maximum amount permitted by law shall be charged for all undisputed accounts remaining unpaid for 30 days after receipt of billing.

**Article 4. Obligations of the Contractor.**

4.01 The Contractor shall accept and transport to a Landfill all City Waste Material loaded onto trailers and staged at the Transfer Station for transport. The Contractor shall perform these transport services in accordance with all Applicable Laws. Ownership of all City Waste Material loaded into a trailer for transport to the Landfill shall transfer to the Contractor at the time the Contractor actually hooks a trailer containing City Waste Material to its tractor for transport to the Landfill. Unless the City employee designated as the operator of the Transfer Station gives written instructions to the contrary, the Contractor shall deliver all City Waste Material to Uwharrie Environmental, 500 Landfill Road, Mt. Gilead, North Carolina 27306. As requested by Uwharrie Environmental, the City does ask that Contractor take note of the fact that the Town of Troy would like for haulers not to use Rt. # 134 and would prefer the use of Rt. # 220 or 24/27.

4.02 The Contractor shall dedicate a minimum number of four (4) trailers to this Transfer Station. Regardless of the total number of trailers dedicated to the Transfer Station, a minimum number of three (3) empty trailers must be on-site at the Transfer Station and available for use at the beginning of each day of operation for the Transfer Station. Upon receiving notice from the City that the number of trailers dedicated by the Contractor to the Transfer Station and available for use at the beginning of each day of operation will need to be increased from the requirements currently contained within this Agreement in order to accommodate the acceptance of increased amounts of waste material at the Transfer Station, the Contractor shall engage in good faith negotiations with the City to provide the additional trailers on mutually acceptable terms and conditions.

4.03 The Contractor shall remove loaded trailers on a daily basis. At the end of the Transfer Station's operational day, a maximum of one (1) loaded trailer that is staged for transport may be left on the premises of the facility until the beginning of the next operational day. The failure of the Contractor to remove any additional trailers that are loaded and staged for transport prior to the end of the Transfer Station's operational day will constitute a material breach of this Agreement. Such a breach of this Agreement places the City in jeopardy of violating regulations administered by the State of North Carolina and punishable by means of a maximum fine of Five Thousand and No/100 Dollars (\$5,000.00) per day. The damages caused by a failure of the Contractor to remove loaded trailers in accordance with this Section of the Agreement are extremely difficult to determine due to the discretion that may be exercised by state regulators and the intangible nature of the damage caused by the undermining of the City's effort to function as a role model for compliance with environmental regulations. Therefore, the Contractor and the City agree that in the event of a breach by the Contractor of its duty to perform in compliance with this Section of the Agreement, the Contractor shall pay to the City either Two Hundred Fifty and No/100 Dollars (\$250.00) for each day that the Contractor violates its performance obligations under this Section or the amount of the fine levied against the City by the State of North Carolina as a direct result of the Contractor's breach of duty, whichever amount is greater.

4.04 The trailers supplied by the Contractor shall be a maximum of twelve feet six inches (12'6") in height and a maximum of fifty-four feet (54') in length. The trailers supplied by the Contractor in compliance with this Agreement shall be welded aluminum sided refuse type trailers with Keith or Hallco high impact floors designed for refuse handling.

4.05 When the Contractor is transporting these trailers, the tops of the trailers shall be properly and securely covered with the tarpaulins in order to ensure that no litter blows or falls from the vehicles. In the event any spillage occurs, the Contractor shall immediately clean up the litter. Such clean up shall be at the sole expense of the Contractor and shall be performed in compliance with all Applicable Laws.

4.06 The obligations of the Contractor may not be delegated or transferred to any person, firm, or corporation without the prior express written consent of the City to such delegation or transfer.

4.07 The Contractor shall perform the obligations imposed by this contract in a manner that accommodates the Transfer Station's operational hours on Monday through Friday of each week. The City will provide the Contractor with written notice of the operational hours of the Transfer Station thirty (30) days in advance of the effective date of said operational hours.

4.08 The Transfer Station will be closed on the following days: Thanksgiving Day, Christmas Day, New Year's Day, and Independence Day (July 4th). Upon thirty (30) days written notice to the Contractor, the City, in its sole discretion, may close the Transfer Station for other holidays and for other purposes as deemed necessary by the City.

4.09 If the operator of the Landfill refuses to accept City Waste Material transferred to the Contractor at the Transfer Station and such refusal is in no way or degree a consequence of the Contractor's conduct, the Contractor may return to the Transfer Station the waste material rejected by the Landfill. Once such rejected waste material is returned to the premises of the Transfer Station and accepted by the City, the ownership of the waste material shall transfer back to the City.

**Article 5. Obligations of the City.**

5.01 The City shall utilize the Contractor to meet all of its transportation requirements for the transfer of City Waste Material from the Transfer Station to the Landfill.

5.02 As prescribed by Article 3 of this Agreement, the City shall pay the Contractor for each trailer transported from the Transfer Station to the Landfill by the Contractor in compliance with the terms and conditions of this Agreement.

5.03 The City shall load and stage for transport the Contractor's trailers in accordance with the Applicable Laws while the trailers remain on-site at the Transfer Station. If substantive damage is done to the Contractor's equipment as the sole result of the negligent or deliberate act(s) or omissions of the City's employees or officials, the City shall pay for reasonable repairs to or replacement of the damaged equipment, whichever option creates the least expense for the City. The City shall not pay, under any circumstances, for any repairs necessitated by normal wear and tear. Furthermore, the Contractor is to inspect all of its equipment, specifically including the refuse trailers, before leaving the Transfer Station in route to the Landfill. If any damage is found during this inspection, the damage must be reported to the Transfer Station operator. If the Contractor reports no damage to any of its equipment prior to leaving the Transfer Station, then the Contractor forever waives any such claim.

**Article 6. Covenants and Representations of Contractor.**

6.01 All authorizations, consents, approvals, licenses, filings, and registrations required in connection with the execution, delivery, or performance by the Contractor of any of its obligations with respect to this Agreement have been duly obtained and are in full force and effect or will be obtained when and as required. To the best knowledge of the Contractor, the Contractor is in material compliance with all Applicable Laws.

6.02 None of the representations or warranties made by the Contractor in this Agreement or in any of the other related documents including the response to the request for proposals contains any untrue statement of material facts or omits any material fact necessary to make the statements made not misleading.

6.03 The Contractor covenants and agrees that, during the term of this Agreement and unless the City shall otherwise consent in writing, the Contractor shall take any and all actions to maintain its ability to transport City Waste Material as required by this Agreement, to refrain from taking any actions that would, in any manner, reduce the capability of the City to operate the Transfer Station, and to transport City Waste Material in fulfillment of the obligations described herein.

6.04 The Contractor shall at all times comply with and adhere to Applicable Laws for the transportation of solid waste and shall provide to the City, within five (5) days after the receipt thereof, true and complete copies of any written notice of noncompliance or true and accurate transcripts of any oral notice of noncompliance issued or given by any Governmental Body. Furthermore, the Contractor shall provide to the City prompt written notice describing the occurrence of any event or the existence of any circumstances that have or may result in noncompliance with Applicable Laws.

**Article 7. Insurance.**

7.01 The Contractor shall pay for and maintain, at all times during the term of this Agreement, insurance coverage as follows:

- (1) Workers' Compensation Insurance as required by the State of North Carolina;
- (2) Employers Liability Insurance in the amount of One Million and No/100 Dollars (\$1,000,000.00) per occurrence;
- (3) Comprehensive and General Liability, including contractual liability in products/completed operations, with primary limits of liability of One Million and No/100 Dollars (\$1,000,000.00) per occurrence for bodily injury and property damage;

- (4) Automobile Liability Insurance as required by the laws of the State of North Carolina, but with limits of not less than One Million and No/100 Dollars (\$1,000,000.00) per occurrence for bodily injury and property damage;
- (5) Excess Umbrella Liability Insurance in the amount of One Million and No/100 Dollars (\$1,000,000.00) layered on top of the policies set forth in subparagraphs (1), (2), (3), and (4);
- (6) Pollution Liability Insurance in the amount of Two Million and No/100 Dollars (\$2,000,000.00).

7.02 During the initial term of this contract and any extensions thereof, the City shall be named as an additional insured in the policies set out in section 7.01. In addition, Contractor shall provide the City with adequate documentation from the Contractor's insurance agent or carrier to demonstrate that said insurance coverage would cover potential losses resulting from the upset of the vehicles transporting solid waste materials, to specifically include, but without limitation, losses arising from pollution liability. Furthermore, the City shall be furnished annually with Certificates of Insurance in a form satisfactory to the City, and all policies shall provide for thirty (30) days advance written notice of material change, cancellation, or non-renewal.

**Article 8. Breaches and Defaults.**

8.01 In the event the Contractor breaches any covenant made by it hereunder or fails to provide any service required of it under the terms of this Agreement, or if at any time any representation or warranty made by the Contractor hereunder shall be proven to be false, then, upon written notice from the City to the Contractor, the Contractor shall proceed with all due diligence and dispatch to take all such actions as shall be required to cure such breach.

8.02 In the event of such breach and without limiting the City's rights at law or equity, the City shall have the following remedies available to it:

(a) City may recover its direct damages from the Contractor for material breach of the contract.

(b) City may refuse to make payments as part of a claim for direct damage for breach by the Contractor.

(c) City may terminate the contract if Contractor commits material breach of the contract. Termination shall be only after written notice by the City to the Contractor, and the Contractor's failure to cure such breach within thirty (30) days thereafter. During the thirty (30) day period subsequent to said written notice, the City shall have the right to procure the services of a third party when the Contractor's breach of this Agreement threatens the ability of the City to keep the Transfer Station in operation.

(d) If the City terminates the contract for cause, it may assess its direct damages that accrued prior to termination against the Contractor and negotiate a contract for the provision of these services by another party.

8.03 In the event the City breaches any covenant made by it hereunder or at any time any representation or warranty made by the City hereunder shall be proven to be false, then upon the Contractor's providing written notice thereof to the City, the City shall proceed with all due diligence and dispatch and take all such actions as shall reasonable be required to cure such breach.

8.04 Without limiting the Contractor's rights at law or equity, the Contractor may terminate the contract if the City fails or refuses to pay amounts that are due and payable under the terms and conditions of this Agreement. Furthermore, if the City otherwise commits a material breach of the contract causing Contractor's continued performance to be impossible, the Contractor may terminate the contract. Termination by the Contractor can occur only after written notice by the Contractor to the City, and the City's failure to cure such breach within thirty (30) days thereafter.

**Article 9. Obligations During Force Majeure.**

9.01 If any act or event of Force Majeure occurs, the party affected or relying thereon to excuse its performance hereunder shall give oral notice to the other as soon as reasonably practicable and shall deliver to the other written notice within forty-eight (48) hours after such oral notice setting forth such information as may be available to it with respect to the nature, extent, and effect of the act or event of Force Majeure.

9.02 If an act or event of Force Majeure occurs which prevents the Contractor from performing all or a portion of its obligations hereunder, the City may by some alternative means dispose of the City Waste Material that would otherwise be transported from the Transfer Station by the Contractor. In such an event, the City will do so at its own cost and without any contribution thereto by the Contractor. If an

act or event of Force Majeure occurs which has the effect of reducing, but not eliminating, the quantities of City Waste Material that the Contractor can transport from the Transfer Station to the Landfill, the Contractor shall accept an amount equal to the amount that the Contractor can actually transport. With respect to any billing period in which such an act or event of Force Majeure occurs or is continuing, the City shall not be required to pay fees in excess of those applicable to the amount of City Waste Material actually accepted by the Contractor and transported from the Transfer Station to the Landfill.

9.03 If an act or event of Force Majeure occurs which prevents the City from delivering City Waste Materials to the Contractor at the Transfer Station, the City shall not be required to pay fees in excess of the tons of City Waste Material actually accepted and transported by the Contractor. The City shall use reasonable efforts to reinstate deliveries of City Waste Material to the Contractor at the Transfer Station within five (5) days (or in any event as soon as practicable under the circumstances) after such act or event of Force Majeure has ceased.

**Article 10. Termination.** In addition to any other termination rights set forth herein, this Agreement may be terminated by either party, upon giving the other party thirty (30) days written notice, if an event of Force Majeure preventing the other party's performance under this Agreement has continued for a period of three (3) consecutive months.

**Article 11. Indemnification.**

11.01 The Contractor agrees to hereby forever hold harmless and to fully indemnify the City and its personnel, agents, officials, and City Council, in both their official and individual capacities, from any and all judgments, liens, claims, assessments, demands, attorney fees, actions, and causes of action of any sort arising out of any damage or injury sustained by any person or entity by reason of any negligent or willful act or omission of the Contractor or its officers, employees, agents or contractors in connection with the Contractor's fulfillment of the contractual obligations with the City or resulting from the breach by Contractor of any of the agreements, representations or warranties of the Contractor contained in this Agreement.

11.02 The City agrees to hereby forever hold harmless and to fully indemnify the Contractor and its personnel, agents, and officials from any and all judgments, liens, claims, assessments, demands, attorney fees, actions, and causes of action of any sort arising out of any damage or injury sustained by any person or entity by reason of any negligent or willful act or omission of the City or its officers, employees, agents, City Council, or contractors in connection with the City's fulfillment of the contractual obligations with the Contractor or resulting from the breach by City of any of the agreements, representations or warranties of the City contained in this Agreement.

**Article 12. Miscellaneous.**

12.01 All notices required to be given or authorized to be given by any party pursuant to this Agreement shall be in writing and shall be served personally or sent by registered mail or certified mail to:

The Contractor:

Eric Clapp Hauling, Inc.  
5378 Bachelor Creek Road  
Seagrove, North Carolina 27341

The City:

City of Asheboro  
146 North Church Street  
Post Office Box 1106  
Asheboro, North Carolina 27204-1106  
Attention: City Manager

12.02 This Agreement may be amended from time to time only by written agreement duly authorized and executed by the parties hereto.

12.03 If any provisions of this Agreement shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect any of the remaining provisions of this Agreement, and this Agreement shall be enforced as if such invalid and unenforceable provision had not been contained herein.

12.04 This Agreement may be executed in several counterparts, any of which shall be regarded for all purposes as an original and all of which constitute but one and the same instrument. Each party agrees that it will execute any and all documents or other instruments and take such other action as is necessary to give effect to the terms of this Agreement.

12.05 Neither party may assign, transfer, or otherwise vest in any other person any of its rights or obligations under this Agreement without the prior written consent of the other party, which consent will not be unreasonably withheld.

12.06 The representations, warranties, and indemnification provisions contained herein shall survive the termination of this Agreement.

12.07 This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns or subcontractors.

12.08 No waiver by either party of any term or condition of this Agreement will be deemed to constitute a waiver of any subsequent breach whether of the same or of a different section, subsection, paragraph, clause, phrase, or other provision of this Agreement. Making payments pursuant to this provision during the existence of a dispute shall not be deemed to and shall not constitute a waiver of any of the claims or defenses of the party making such payment. No waiver shall be effective unless it is in writing and is signed by the party asserted to have granted the waiver.

12.09 This Agreement shall be governed and construed under and pursuant to the laws of the State of North Carolina.

12.10 This Agreement sets forth the entire agreement and understanding of the parties with respect to the subject matter of the agreement and supersedes all prior arrangements and communications between the parties.

12.11 Each party herein expressly represents and warrants to all other parties hereto that (a) before executing this Agreement, said party has fully informed itself of the terms, contents, conditions and effects of this Agreement; (b) said party has relied solely and completely upon its own judgment in executing this Agreement; (c) said party has had the opportunity to see and has obtained the advice of counsel before executing this Agreement; (d) said party has acted voluntarily and of its own free will in executing this Agreement; (e) said party is not acting under duress, whether economic or physical, in executing this Agreement; and (f) this Agreement is the result of arm's length negotiations conducted by and among the parties and their respective counsel.

12.12 The parties agree and acknowledge that they have jointly participated in the negotiation and drafting of this Agreement. In the event of an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties and no presumptions or burdens of proof shall arise favoring any party by virtue of the authorship of any of the provisions of this Agreement. Any reference to any federal, state, local, or foreign statute or law shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise. If any party has breached any representation, warranty, or covenant contained herein in any respect, the fact that there exists another representation, warranty, or covenant relating to the same subject matter (regardless of the relative levels of specificity) which the party has not breached shall not detract from or mitigate the fact that the party is in breach of the first representation, warranty, or covenant.

12.13 By signature below, the parties represent and warrant that the undersigned are authorized to enter into this Agreement.

**IN WITNESS WHEREOF**, the parties execute this Agreement as of the date first above written.

**CITY OF ASHEBORO**, a North Carolina municipal corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

This instrument has been preaudited in the manner prescribed by the Local Government Budget and Fiscal Control Act.

\_\_\_\_\_  
Deborah P. Juberg  
Finance Officer  
City of Asheboro, North Carolina

**ERIC CLAPP HAULING, Inc.**, a North Carolina corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

11. **RZ-08-07: Request to rezone from R-10, R-15, R40, B-2 and Randolph County Zoning to I-2 (General Industrial).** [Agenda Item Number 10] The properties of Zoolander, LLC and Trollinger Investment Company encompasses approximately 100.31 acres of land and are more specifically identified by Randolph County Parcel Identification Numbers 7761684060, 7761685331, 7761685599, 7761689175, 7761665079, 7761874910, (the portion of the parcel that is inside the corporate limits) 7761762488, 7761763491, 7761764394, 7761765245, 7761763164, 7761762127, and 7761762206.

Mayor Jarrell reopened the public hearing that was closed on February 7, 2008 prior to the Council's decision to continue this matter to March 6, 2008 for further consideration.

Mr. Neely highlighted the procedural history of the above-referenced zoning request. For a description of the staff analysis, planning board recommendations, and comments provided during the initial public hearing held on February 7, 2008, please see the adopted minutes for that meeting.

During the public hearing held on March 6, 2008, Mr. Trollinger presented comments in support of the requested rezoning by stating that increased traffic volume will be noticed in this area regardless of the outcome of this specific application due to the future location of a by-pass for United States Highway 64 and the use of East Presnell Street as a major thoroughfare. Additionally, Mr. Trollinger reported that the applicants and adjoining property owners had met since the last council meeting.

Mr. Trollinger then informed the council that he would like to make the following changes to the application for rezoning of the Applicants' property:

- i) The portion of parcel no. 7761665079 currently zoned B-2 and located on the east side of Rock Crusher Road at the intersection with East Presnell Street was withdrawn from this application and shall remain in a B-2 zoning district.
- ii) The Applicants now request that the portion of parcel no. 7761665079 currently zoned R-10 and located on the north side of East Presnell Street be placed in a B-2 zoning district rather than the originally requested I-2 zoning district.

At the conclusion of Mr. Trollinger's comments, Mr. David Miller, an adjoining property owner, spoke about the concerns of the neighbors, but he expressed no current opposition to the granting of the Applicants' request.

Mr. Neely stated for the record that in a straight rezoning request, the agreements that may have been made between the Applicants and the neighboring property owners would not be enforced by the city, and no conditions would be attached.

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

Upon motion by Mr. Smith and seconded by Mr. Burks, Council voted unanimously to follow the recommendation of the Planning Board, with the exception of the changes voluntarily made by the Applicants, and placed the above-referenced property in the requested zoning districts.

## **NEW BUSINESS**

### **12. Land Use Issues: [Agenda Item Number 11]**

- (a) **RZ-08-10: Request to rezone from RA-6 (High Density Residential District) to OA-6 (Office-Apartment High Density District).** The property of Larry W. McKenzie and Christy McKenzie is located at 723 South Cox Street and consists of approximately 26,947 square feet of land. Randolph County Parcel Identification Number 7750893869 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 Mr. Larry McKenzie to rezone the above-described property from RA-6 High Density Residential to OA-6 Office-Apartment High Density. The Planning Department Staff and the Planning Board recommended approval of the request based on the following:

"The current zoning of the property (RA-6) permits high-density residential use. The requested OA-6 zoning would continue to accommodate high-density use and also office and institutional uses. The land development plan map identifies this property's location as being in an activity center which encourages a pedestrian friendly mix of land uses, including multi-family residential and office and institutional. Additionally, both multi-family residential uses and office and

institutional uses are within close proximity to this property making an OA-6 designation appropriate to the context of the area. Considering these factors, staff believes the request overall is consistent with the map, goals and policies of the land development plan. Staff therefore believes the request is generally within the public interest and supports a reasonable use of the property.”

Mr. Larry McKenzie was available to answer any questions.

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

Upon motion by Mr. Moffitt and seconded by Ms. Carter, Council voted unanimously to follow the recommendation of the Planning Board and placed the above-described property in an OA-6 Office-Apartment High Density zoning district.

- (b) RZ-08-11: Technical Amendments to the Zoning Ordinance. An application filed by the City of Asheboro to amend Article 200A (Center City Planning Area) regarding dimensional requirements in Tier 2 and building entrances in the Center City Planning Area Tiers 1 and 2. Amend Article 300A regarding parking and maneuvering in the front 25' of property, permitted materials of fences for required screening, the location of loading docks on buildings in industrial zoning districts and Design Standards in Commercial and Industrial Districts regarding permitted building materials.

Mayor Jarrell opened the public hearing on the following request.

Mr. Neely presented the Planning Department Staff's proposed amendments to Article 200A and Article 300A of the Asheboro Zoning Ordinance. The general intent of the proposed amendments is to update the ordinance language and address certain reoccurring issues concerning vinyl siding as a building material in commercial and industrial zoning districts. The technical amendments proposed by staff include the following:

- (a) Provision allowing vinyl fences as buffering and screening per the requirements of Article 300A.
- (b) Office and Institutional language clarification in Article 200A (Center City Overlay District).
- (c) Design standards regarding building entrances in Tier 1 and Tier 2 of the Center City Planning Area (Article 200A).
- (d) Modification to building setback requirements in Tier 2 of the Center City Planning Area (Article 200A).
- (e) Clarification of parking in front of structures (Article 300A, Section 308A).
- (f) Loading dock locations for buildings in industrial districts (Article 300A, Section 308A).

The Planning Department Staff and the Planning Board recommended approval of the amendments to the Asheboro Zoning Ordinance based on the following:

“Staff recommends changes in Design Standards and related provisions of the Zoning Ordinance. Those that are included in this report are recommended for adoption at this time. Staff is reviewing the current design standards in residential, commercial and industrial districts as well as other related sections of the Zoning Ordinance as mentioned in this report. Additional changes to the Design Standards section of the Zoning Ordinance (Article 300A, Sections 316A, 317A and 318A) are being investigated for technical amendments at later time.”

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

Upon motion by Mr. Moffitt and seconded by Ms. Carter, Council voted unanimously to adopt the recommendation of the Planning Board and approved, as presented, the amendments to Article 200A and Article 300A of the Asheboro Zoning Ordinance.

[A copy of the adopted amendments to the zoning ordinance is on file in the City Clerk's office.]

(c) RZ-08-12: Request to rezone from B-2 (General Business), R-10 (Medium-Density Residential), and R-15 (Low-Density Residential) to CU-RA6 (Conditional Use High Density Residential). The property of Debra B. Setzer and Randall Burrows is located at the terminus of Oak Leaf Road, approximately 600 feet south of North Carolina Highway 49 and consists of approximately 24.3 acres of land. Randolph County Parcel Identification Number 7740936604 more specifically identifies the property.

**With the consent of the Council, Mayor Jarrell moved this agenda item to immediately follow Agenda Item Number 3.**

(d) RZ-08-13: Request to rezone from B-2 (General Business) to I-2 (General Industrial). The property of William J. Trogon and others is located on the south side of East Presnell Street, approximately 800 feet northwest of U.S. Highway 64 East, and consists of approximately 15.46 acres of land. Randolph County Parcel Identification Number 7771164698 more specifically identifies the property.

Mayor Jarrell opened the public hearing on the following request.

Mr. Neely presented the staff's analysis of the request by Clyde Phillips to rezone the above-described property from B-2 General Business to I-2 General Industrial. The Planning Department Staff and the Planning Board recommended approval of the request based on the following:

"Considering the property is located in an economic development area and employment center as designed by the land development plan and within a state Economic Development area, staff believes the request is generally supported by the map and text of the land development plan and that the rezoning request is generally within the public interest in encouraging a reasonable use of the property."

Mr. Clyde Phillips was available to answer any questions.

There being no 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 follow the recommendation of the Planning Board and placed the above-described property in an I-2 General Industrial zoning district.

(e) SUB-3-08: Technical Amendments to the Subdivision Ordinance 3-08. An application filed by the City of Asheboro to amend Article X of the Subdivision Ordinance in order to incorporate regulations for Street Trees within Planned Unit Developments.

Mayor Jarrell opened the public hearing on the following request.

Mr. Neely presented the Planning Department's proposed amendment to the Asheboro Subdivision Ordinance. The general intent of the proposed amendment is to incorporate regulations for Street Trees within Planned Unit Developments. "These provisions are being proposed with a sunset clause of December 31, 2010 so the feasibility of including street trees in PUD's can be determined." These regulations would apply only to city-maintained streets within a Planned Unit Development. Additionally, Mr. Neely presented a list of recommended street trees for North Carolina.

With the modification that certain trees be removed from the list of recommended trees, the Planning Board recommended approval of the amendments to the subdivision ordinance. The Planning Board recommended that the Hardy Rubber tree, the Kentucky Coffeetree, and the Black gum tree be removed from the list of recommended street trees. Additionally, Mr. Baker recommended the removal of the Sweetgum tree, while Mr. Burks recommended the removal of the Crabapple tree from the list of recommended street trees.

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

Upon motion by Ms. Carter and seconded by Mr. Burks, Council voted unanimously to accept the recommendation of the Planning Board, as well as Mr. Baker and Mr. Burks, and approved the above-referenced technical amendment to the subdivision ordinance with the modification that the following trees are deleted from the recommended tree list:

- i) the Hardy Rubber Tree
- ii) the Kentucky Coffeetree
- iii) the Black gum tree
- iv) the Sweetgum tree

v) the Crabapple tree

[A copy of the text of the subdivision ordinance amendment is on file in the City Clerk's office.]

**13. Public Comment Period. [Agenda Item Number 12]**

Mr. Neely announced that there were two (2) Boy Scouts in attendance in order to complete the citizenship requirement for a scouting project.

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

**14. Consideration of a request by Shaun L. Hayes, Attorney, for the City of Asheboro to grant a temporary easement for ingress and egress across City owned property on Hill Street and west of the Farmers' Market. [Agenda Item Number 13]**

Mr. Shaun L. Hayes, Esq. requested that the City of Asheboro grant a temporary easement for ingress and egress across city owned property located on Hill Street and west of the Farmer's Market.

Mr. Smith moved to approve the requested easement agreement and to authorize the Mayor and City Clerk to execute an Agreement and Deed of Easement. The motion was seconded by Mr. Priest. The Council voted unanimously in favor of the motion.

The approved agreement and deed of easement were drafted by the City Attorney and provide as follows:

STATE OF NORTH CAROLINA

COUNTY OF RANDOLPH

SHAUN L. HAYES AND WIFE, A. MARIA HAYES

AND

AGREEMENT

CITY OF ASHEBORO

**THIS AGREEMENT** is made and entered into this \_\_\_\_\_ day of March, 2008, by and between Shaun L. Hayes and wife, A. Maria Hayes (hereinafter collectively referred to as the "Developer"), residents of Randolph County, North Carolina, and the City of Asheboro (hereinafter referred to as the "City"), a North Carolina municipal corporation.

**WITNESSETH:**

**WHEREAS**, the Developer is seeking to acquire and develop a parcel of land (hereinafter referred to as the "Development Site") located at 342 Hill Street in Asheboro, North Carolina and more specifically described in Deed Book 2056, Page 628, Randolph County Public Registry; and

**WHEREAS**, the City owns a parcel of land (hereinafter referred to as the "City Property") described in Deed Book 1964, Page 185, Randolph County Public Registry that shares a common boundary line with the Development Site along the Development Site's eastern boundary; and

**WHEREAS**, in order to successfully utilize the Development Site in compliance with the existing rules and regulations of the Asheboro Zoning Ordinance, the Developer needs to construct a gravel driveway over and across the City Property so that vehicular traffic can access a parking area that is proposed for the northern portion of the Development Site; and

**WHEREAS**, the facilitation of development in accordance with the existing zoning map and the regulations prescribed by the Asheboro Zoning Ordinance is consistent with the goals and policies of the City.

**NOW, THEREFORE**, for valuable consideration and the mutual covenants exchanged between the parties hereto, it is agreed as follows:

1. Upon the recordation of a deed evidencing the Developer's acquisition of fee simple ownership of the Development Site, the City shall grant to the Developer, as an easement appurtenant to the Development Site, a perpetual easement for uninterrupted ingress and egress over and across the City Property by means of a gravel driveway that shall be installed and maintained by, and at the sole expense of, the Developer. The grant of this easement shall be made subject to and together with the following condition: This easement shall terminate if, and as soon as, the City, upon providing a written

thirty (30) calendar day notice of its intent, commences construction of a municipal parking lot on the City Property. Upon the commencement of work by the City in furtherance of the construction of the said parking lot, the easement granted pursuant to this Agreement shall terminate and all other rights conveyed herein shall immediately and automatically revert to the City. The instrument conveying the above-described easement to the Developer shall be recorded in the office of the Randolph County Register of Deeds and shall be identical in all material aspects to the Deed of Easement attached hereto as "Exhibit 1." This exhibit is hereby incorporated into this Agreement by reference as if copied fully herein.

2. During the construction of the above-referenced municipal parking lot, the land use operating on the Development Site shall utilize the available on-street parking as well as any parking spaces available for use by the general public in existing municipal parking lots.

3. Upon the completion and opening to the public of the new municipal parking lot, the Developer, as well as the general public, shall be able to utilize the said parking lot for access to the private parking lot to be constructed by the Developer on the northern portion of the Development Site.

4. The Developer shall attempt to develop on the Development Site a land use that is permitted in the existing OA-6 zoning district and that complies with the entirety of the applicable regulations prescribed by the Asheboro Zoning Ordinance.

5. The terms of this Agreement shall be given a reasonable construction so as to give effect to the intent of the parties to enable the Developer to utilize the Development Site in accordance with the existing zoning regulations and not burden public lands with an easement for any longer than is necessary for the city to fund and construct a municipal parking lot that will be available for use by the general public, including without limitation the Developer.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement.

Shaun L. Hayes and Wife, A. Maria Hayes

\_\_\_\_\_(SEAL)  
Shaun L. Hayes

\_\_\_\_\_(SEAL)  
A. Maria Hayes

STATE OF NORTH CAROLINA  
COUNTY OF RANDOLPH

I, the undersigned Notary Public of the County and State aforesaid, do hereby certify that Shaun L. Hayes and wife, A. Maria Hayes, whose identities were proven to me by means of the presentation of satisfactory evidence to establish the principals' identities, personally appeared before me this day and acknowledged their voluntary due execution of the foregoing Agreement for the purposes stated therein.

Witness my hand and official stamp or seal, this \_\_\_\_ day of March, 2008.

\_\_\_\_\_  
Notary Public

My commission expires:

\_\_\_\_\_  
(Name of Notary Public, typed or printed)

**CITY OF ASHEBORO:**

By: \_\_\_\_\_  
David H. Jarrell, Mayor

ATTEST:

\_\_\_\_\_  
Holly H. Doerr, City Clerk

CORPORATE SEAL

STATE OF NORTH CAROLINA  
COUNTY OF RANDOLPH

I, the undersigned Notary Public of the County and State aforesaid, do hereby certify that Holly H. Doerr personally appeared before me this day and acknowledged that she is the City Clerk for the CITY OF ASHEBORO, a North Carolina municipal corporation, and that, by authority duly given and as the act of the

municipal corporation, the foregoing Agreement was signed in its name by David H. Jarrell, its Mayor, sealed with its corporate seal, and attested by herself as its City Clerk.

Witness my hand and official stamp or seal, this \_\_\_\_ day of March, 2008.

\_\_\_\_\_  
Notary Public

My commission expires:

\_\_\_\_\_  
(Name of Notary Public, typed or printed)

### AGREEMENT AND DEED OF EASEMENT

Prepared by Jeffrey C. Sugg, City Attorney for the City of Asheboro, North Carolina 27203.

Mail after recording to Hayes Law Firm, 138-A Scarboro Street, Asheboro, North Carolina 27203.

STATE OF NORTH CAROLINA

COUNTY OF RANDOLPH

THIS DEED OF EASEMENT is made this 25<sup>th</sup> day of March, 2008, by and between the following Grantor and Grantee:

**GRANTOR:** CITY OF ASHEBORO, a North Carolina municipal corporation

**GRANTEE:** SHAUN L. HAYES AND WIFE, A. MARIA HAYES, residents of Randolph County, North Carolina

The designation Grantor and Grantee as used herein shall include said parties and their heirs, successors, and assigns, and the designation shall signify either singular, plural, masculine, feminine, or neuter as required by context.

#### WITNESSETH:

WHEREAS, the Grantor owns a parcel of land (hereinafter referred to as "Parcel 1") described in Deed Book 1964, Page 185, Randolph County Public Registry; and

WHEREAS, the Grantee owns a parcel of land (hereinafter referred to as "Parcel 2") described in Deed Book 2070, Page 389, Randolph County Public Registry; and

WHEREAS, in order to enable the Grantee to utilize Parcel 2 in accordance with the existing zoning regulations and not burden public lands with an easement for any longer than is strictly necessary for the city to fund and construct a municipal parking lot on Parcel 1, the City Council of the City of Asheboro has authorized and directed the municipal corporation's Mayor and City Clerk to execute on behalf of the City of Asheboro an easement to allow the Grantee to access the proposed private parking area prescribed by the Asheboro Zoning Ordinance for Parcel 2 until construction of the proposed municipal parking lot begins on Parcel 1.

NOW THEREFORE, in consideration of the Grantee's commitment to conform with the entirety of the existing applicable regulations prescribed by the Asheboro Zoning Ordinance and to not develop, or attempt to develop, on Parcel 2 any land use that is prohibited in the existing OA-6 zoning district as well as other good and valuable consideration, the receipt of which is hereby acknowledged, the Grantor and Grantee agree as follows:

#### SECTION 1.

##### Agreement to Grant Easement for the Purpose of Permitting Ingress and Egress

Subject to the condition stated below, the Grantor has and by these presents does grant, bargain, sell, and convey unto the Grantee a perpetual easement, which shall be an easement appurtenant to Parcel 2, for uninterrupted ingress and egress over and across Parcel 1 by means of a gravel driveway that shall be installed and maintained by, and at the sole expense of, the Grantee. The grant of this easement is made subject to and together with the following condition: This easement shall terminate as soon as the City, upon providing a written thirty (30) calendar day notice of its intent, commences construction of a municipal parking lot on Parcel 1. The Grantee hereby agrees and expressly acknowledges that, upon the commencement of work by the City in furtherance of the construction of the

said municipal parking lot, the easement granted pursuant to this instrument shall terminate and all other rights conveyed herein shall immediately and automatically revert to the City.

## SECTION 2.

### Description of Easement Area

The location of the gravel driveway permitted over and across Parcel 1 shall be determined by the Grantee, but the said driveway shall not cross or burden any city-owned lands other than Parcel 1. Parcel 1 is situated in the City of Asheboro, Asheboro Township, Randolph County, North Carolina and is more particularly described as follows:

BEGINNING at an existing iron pipe that is located South 89 degrees 27 minutes 03 seconds West 240.36 feet from an existing iron pipe that is itself located by means of the North Carolina Coordinate System at the coordinates of North 712,338.29 feet and East 1,757,323.28 feet (NAD 27); thence from said Beginning point South 01 degree 02 minutes 01 second East 11.66 feet to an existing iron pipe; thence South 89 degrees 51 minutes 52 seconds West 55.05 feet along the right-of-way for Hill Street to a new iron pipe; thence North 00 degrees 14 minutes 42 seconds East 170.30 feet to a new iron pipe; thence along the Joe S. Byerly property described in Deed Book 1701, Page 647, Randolph County Registry the following course and distance: South 88 degrees 52 minutes 36 seconds East 45.62 feet to an existing iron pipe; thence along the Trustees of Asheboro Masonic Lodge property described in Deed Book 1152, Page 330, Randolph County Registry the following course and distance: South 88 degrees 43 minutes 47 seconds East 8.26 feet to an existing iron pipe; thence along the City of Asheboro property described in Deed Book 1794, Page 1213, Randolph County Registry the following course and distance: South 00 degrees 05 minutes 13 seconds East 157.43 feet to the point and place of the BEGINNING, and containing 0.212 of an acre, more or less.

This description is in accordance with a plat of survey entitled "Recombination Survey For The City Of Asheboro," dated January 31, 2006, and drawn under the supervision of Rodney G. Maness, Professional Land Surveyor with Registration No. L-4594. The said plat of survey, which is hereby incorporated into this instrument by reference as if copied fully herein, is recorded in Plat Book 103, Page 50, Randolph County Public Registry.

## SECTION 3.

### No Use of Parcel 1 during the Construction of the New Municipal Parking Lot

During the construction of the new municipal parking lot on Parcel 1, the land use operating on Parcel 2 shall utilize the available on-street parking as well as any parking spaces available for use by the general public in existing municipal parking lots. Along with the general public, the Grantee is prohibited from accessing or otherwise utilizing Parcel 1 during the construction of the new municipal parking lot.

## SECTION 4.

### Access through Municipal Parking Lot

Upon the completion and opening to the public of the new municipal parking lot on Parcel 1, the Grantee shall be able to utilize the said parking lot for access to the private parking lot to be constructed by the Grantee on the northern portion of Parcel 2 in accordance with the regulations prescribed by the Asheboro Zoning Ordinance.

## SECTION 5.

### Indemnification

The Grantee hereby agrees to indemnify and save harmless the Grantor from any loss, claim, liability, penalty, fine, forfeiture, demand, cause of action, suit, and costs and expenses incidental thereto (including cost of defense, settlement, court costs, reasonable attorneys' fees, and expert witness and consultation fees) caused by or resulting from (i) any negligent or willful act or omission of the Grantee, and their agents or employees, in connection with Grantee's location and construction of a gravel driveway on Parcel 1; or (ii) any breach by the Grantee of any of the terms and conditions set forth in this Agreement.

The Grantor hereby agrees to indemnify and save harmless the Grantee from any loss, claim, liability, penalty, fine, forfeiture, demand, cause of action, suit, and costs and expenses incidental thereto (including cost of defense, settlement, court costs, reasonable attorneys' fees, and expert witness and consultation fees) caused by or resulting from any negligent or willful act or omission of the Grantor, and its agents or employees, in connection with this Agreement.

SECTION 6.

Amendments

This Agreement and Deed of Easement shall not be modified or amended in any manner except by a writing executed and delivered by the parties hereto or their respective successors and assigns in an instrument duly recorded in the office of the Register of Deeds for Randolph County, North Carolina.

SECTION 7.

Governing Law

The laws of the State of North Carolina shall govern this Agreement.

**IN TESTIMONY WHEREOF**, this Agreement and Deed of Easement has been executed as of the day and year first above written.

**CITY OF ASHEBORO**

**SHAUN L. HAYES AND WIFE, A. MARIA HAYES**

By: \_\_\_\_\_  
David H. Jarrell, Mayor

\_\_\_\_\_(SEAL)  
Shaun L. Hayes

ATTEST:

\_\_\_\_\_(SEAL)  
A. Maria Hayes

\_\_\_\_\_  
Holly H. Doerr, City Clerk

CORPORATE SEAL-STAMP  
STATE OF NORTH CAROLINA  
COUNTY OF RANDOLPH

I, the undersigned Notary Public of the County and State aforesaid, do hereby certify that Holly H. Doerr personally appeared before me this day and acknowledged that she is the City Clerk for the City of Asheboro, a North Carolina municipal corporation, and that, by authority duly given and as the act of the municipal corporation, the foregoing instrument was signed in its name by David H. Jarrell, its Mayor, sealed with its corporate seal, and attested by herself as its City Clerk.

Witness my hand and official stamp or seal, this \_\_\_\_ day of March, 2008.

\_\_\_\_\_  
Notary Public

My commission expires:

\_\_\_\_\_

\_\_\_\_\_  
(Name of Notary Public, typed or printed)

STATE OF NORTH CAROLINA  
COUNTY OF RANDOLPH

I, the undersigned Notary Public for the county and state aforesaid, do hereby certify that Shaun L. Hayes and wife, A. Maria Hayes, whose identities were proven to me by means of the presentation of satisfactory evidence to establish the principals' identities, personally appeared before me this day and acknowledged their voluntary due execution of the foregoing instrument for the purposes stated therein.

Witness my hand and notarial seal, this \_\_\_\_\_ day of March, 2008.

My commission expires:

\_\_\_\_\_

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
(Name of Notary Public, printed or typed)

**15. Consideration of a proposed ordinance allowing parking along the north side of Hill Street. [Agenda Item Number 14]**

Mr. Bunker presented and recommended adoption, by reference, of an ordinance amending the parking restrictions applicable to Hill Street.

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

**12 ORD 03-08**

**ORDINANCE AMENDING THE PARKING RESTRICTIONS APPLICABLE TO  
HILL STREET**

**WHEREAS**, Section 160A-296 of the North Carolina General Statutes provides that a city shall have general authority and control over all public streets, sidewalks, alleys, bridges, and other ways of public passage within its corporate limits; and

**WHEREAS**, Section 71.01(B) of the Code of Asheboro directs the City Manager to recommend to the City Council, from time to time, amendments to Schedule 1 of Section 72.02 of the Code of Asheboro as deemed necessary and for the benefit of the city; and

**WHEREAS**, Schedule 1 of Section 72.02 of the Code of Asheboro lists those areas in the city where on-street parking is prohibited; and

**WHEREAS**, pursuant to City Council action on February 8, 1979, Schedule 1 of Section 72.02 currently provides that on-street parking is not permitted on either side of Hill Street between South Church Street and South Park Street; and

**WHEREAS**, in light of on-going development along portions of the north side of Hill Street and a recent review of the width of Hill Street, the City Manager has determined that a limited number of on-street parking spaces should be made available for use by the general public; and

**WHEREAS**, the City Council concurs with the City Manager's recommendation.

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

**Section 1.** In accordance with Section 71.01(A)(1) of the Code of Asheboro, and with the exception of portions of the north side of Hill Street that are designated in Section 2 of this ordinance, on-street parking is hereby prohibited at all times on either side of Hill Street between South Church Street (North Carolina Secondary Road 1707) and South Park Street (North Carolina Secondary Road 1451).

**Section 2.** On-street parking shall be permitted during all hours of the day throughout the calendar week in the following locations along the north side of Hill Street:

- a. From a point located approximately three hundred twenty-eight feet (328') from the centerline of South Church Street to a point located approximately four hundred eight feet (408') from the centerline of South Church Street;
- b. From a point located approximately four hundred forty-six feet (446') from the centerline of South Church Street to a point located approximately four hundred eighty-six feet (486') from the centerline of South Church Street;
- c. From a point located approximately five hundred two feet (502') from the centerline of South Church Street to a point located approximately six hundred two feet (602') from the centerline of South Church Street; and
- d. From a point located approximately six hundred forty-two feet (642') from the centerline of South Church Street to a point located approximately six hundred sixty-two feet (662') from the centerline of South Church Street

**Section 3.** The City Manager is hereby authorized and directed to cause Hill Street between South Church Street and South Park Street to be posted and/or painted in accordance with the provisions of Section 71.01(A)(1) of the Code of Asheboro and in accordance with the provisions of Section 1 and Section 2 of this ordinance.

**Section 4.** The City Manager and the City Clerk are hereby directed to revise Schedule 1 of Section 72.02 of the Code of Asheboro to reflect the on-street parking regulations prescribed by this ordinance.

**Section 5.** All ordinances and clauses of ordinances in conflict with this ordinance are hereby repealed.

**Section 6.** This ordinance shall take effect and be in force from and after the date of its adoption.

Adopted by the Asheboro City Council in regular session on the 6<sup>th</sup> day of March, 2008.

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

ATTEST:

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

**16. FY 2007-2008 budget ordinance amendments: [Agenda Item Number 15]**

- (a) Consideration of an amendment of the revenues and expenditures in the General Fund to appropriate funding for the purchase of additional land for the public library.

Ms. Juberg presented and recommended adoption, by reference, of an ordinance to amend the General Fund FY 2007-2008.

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

**13 ORD 03-08**

**ORDINANCE TO AMEND THE GENERAL FUND  
FY 2007-2008**

WHEREAS, The City of Asheboro passed a resolution approving an offer to purchase additional land for the Library at the regularly scheduled council meeting on February 7, 2008 and;

WHEREAS, the offer to purchase contract between the City of Asheboro and the heirs of Nettie B. White is in the amount of \$140,000, and;

WHEREAS, the monies are due at closing in March 2008, and;

WHEREAS, revenues and expenditures in the General Fund need to be adjusted to appropriate funding for this purchase;

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:

<u>Line Item</u>	<u>Description</u>	<u>Increase Amount</u>
10-399-0000	Fund Balance Allocation	\$140,000

Section 2. That the following expense line items be increased:

<u>Line Item</u>	<u>Description</u>	<u>Increase Amount</u>
10-630-7100	Capital Outlay- land	\$140,000

Adopted this the 6<sup>th</sup> day of March 2008.

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

ATTEST:

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

- (b) Consideration of an amendment of the revenues and expenditures in the General Fund to account for the first payment of an approved contribution to Hospice of Randolph County.

Ms. Juberg presented and recommended adoption, by reference of an ordinance to amend the General Fund FY 2007-2008.

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

**ORDINANCE TO AMEND THE GENERAL FUND  
FY 2007-2008**

WHEREAS, The City of Asheboro City Council approved a contribution to Hospice of Randolph County on January 4, 2007 to help fund the construction of a 10,000 square foot addition to the Hospice Campus, and;

WHEREAS, the contribution, totaling \$125,000, will be paid in five (5) installments at a frequency not to exceed one installment per fiscal year, beginning in fiscal year July 1, 2007 to June 30, 2008, and;

WHEREAS, revenues and expenditures in the General Fund need to be adjusted to account for the first payment, 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:

<u>Line Item</u>	<u>Description</u>	<u>Increase Amount</u>
10-399-0000	Fund Balance Allocation	\$25,000

Section 2. That the following expense line items be increased:

<u>Line Item</u>	<u>Description</u>	<u>Increase Amount</u>
10-610-7200	Contribution to Economic Dev Fund	\$25,000

Adopted this the 6<sup>th</sup> day of March 2008.

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

ATTEST:

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

- (c) Consideration of an amendment of the revenues and expenditures in the Economic Development Fund to account for the first payment of an approved contribution to Hospice of Randolph County.

Ms. Juberg presented and recommended adoption, by reference, of an ordinance to amend the Economic Development Fund FY 2007-2008

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

**ORDINANCE TO AMEND THE ECONOMIC DEVELOPMENT FUND  
FY 2007-2008**

WHEREAS, The City of Asheboro City Council approved a contribution to Hospice of Randolph County on January 4, 2007 to help fund the construction of a 10,000 square foot addition to the Hospice Campus, and;

WHEREAS, the contribution, totaling \$125,000, will be paid in five (5) installments at a frequency not to exceed one installment per fiscal year, beginning in fiscal year July 1, 2007 to June 30, 2008, and;

WHEREAS, revenues and expenditures in the Economic Development Fund need to be adjusted to account for these payments, 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:

<u>Line Item</u>	<u>Description</u>	<u>Appropriated Amount</u>
72-367-1022	Contribution from GF for Hospice #1 (07-08)	\$25,000
72-367-1023	Contribution from GF for Hospice #2 (08-09)	\$25,000
72-367-1024	Contribution from GF for Hospice #3 (09-10)	\$25,000
72-367-1025	Contribution from GF for Hospice #4 (10-11)	\$25,000
72-367-1026	Contribution from GF for Hospice #5 (11-12)	\$25,000
		<u>\$125,000</u>

Section 2. That the following expense line items be increased:

<u>Line Item</u>	<u>Description</u>	<u>Appropriated Amount</u>
72-860-0012	Contribution for Hospice #1 (07-08)	\$25,000
72-860-0013	Contribution for Hospice #2 (08-09)	\$25,000
72-860-0014	Contribution for Hospice #3 (09-10)	\$25,000
72-860-0015	Contribution for Hospice #4 (10-11)	\$25,000
72-860-0016	Contribution for Hospice #5 (11-12)	\$25,000
		<u>\$125,000</u>

Adopted this the 6<sup>th</sup> day of March 2008.

s/ David H. Jarrell  


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David H. Jarrell, Mayor

ATTEST:

s/ Holly H. Doerr  


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Holly H. Doerr, City Clerk

- (d) Consideration of an amendment of the revenues and expenditures in the General Fund to account for additional employees in the Sanitation Department and Street Department.

Ms. Juberg presented and recommended adoption, by reference, of an ordinance to amend the General Fund FY 2007-2008.

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

**16 ORD 03-08**

**ORDINANCE TO AMEND THE GENERAL FUND  
FY 2007-2008**

WHEREAS, The City of Asheboro has prepared an annexation report and services plan for the Dave's Mountain Area;

WHEREAS, the plans for extending municipal services into the area proposed for annexation outline the need for two (2) additional employees in the Sanitation Department and four (4) additional employees in the Street Department, and;

WHEREAS, funds currently budgeted for four (4) vacant positions (Accounting Specialist I, Assistant Finance Director, Code Compliance Inspector, Legal Assistant) are going to be reallocated to pay for these new positions, and;

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

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

Section 1. That the following revenue line items be decreased:

<u>Line Item</u>	<u>Description</u>	<u>Decrease Amount</u>
10-399-0000	Fund Balance Allocation	\$(16,385)

Section 2: That the following expense line items be decreased/ increased:

<u>Line Item</u>	<u>Description</u>	<u>Decrease / Increase Amount</u>
10-440- 0200	Salaries & Wages	\$(86,859)

10-440- 0702	Fringe Benefits- FICA	(5,385)
10-440- 0703	Fringe Benefits- Medicare	(1,259)
10-440- 0704	Fringe Benefits- Insurance	(6,210)
10-440- 0705	Fringe Benefits- Retirement	(5,212)
10-490- 0200	Salaries & Wages	(34,544)
10-490- 0702	Fringe Benefits- FICA	(2,142)
10-490- 0703	Fringe Benefits- Medicare	(501)
10-490- 0704	Fringe Benefits- Insurance	(4,400)
10-490- 0705	Fringe Benefits- Retirement	(2,073)
10-450- 0200	Salaries & Wages	(34,544)
10-450- 0702	Fringe Benefits- FICA	(2,142)
10-450- 0703	Fringe Benefits- Medicare	(501)
10-450- 0704	Fringe Benefits- Insurance	(4,400)
10-450- 0705	Fringe Benefits- Retirement	(2,073)
10-580- 0200	Salaries & Wages	41,104
10-580- 0702	Fringe Benefits- FICA	2,548
10-580- 0703	Fringe Benefits- Medicare	596
10-580- 0704	Fringe Benefits- Insurance	7,786
10-580- 0705	Fringe Benefits- Retirement	2,466
10-565- 0200	Salaries & Wages	93,540
10-565- 0702	Fringe Benefits- FICA	5,564
10-565- 0703	Fringe Benefits- Medicare	1,300
10-565- 0704	Fringe Benefits- Insurance	15,572
10-565- 0705	Fringe Benefits- Retirement	5,384
	net decrease	\$(16,385)

Adopted this the 6<sup>th</sup> day of March 2008.

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

ATTEST:

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

(e) Consideration of an amendment of the revenues and expenditures in the General Fund to account for the purchase of an automated garbage truck.

Ms. Juberg presented and recommended adoption, by reference, of an ordinance to amend the General Fund FY 2007-2008.

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

**17 ORD 03-08**

**ORDINANCE TO AMEND THE GENERAL FUND  
FY 2007-2008**

WHEREAS, The City of Asheboro has prepared an annexation report and services plan for the Dave's Mountain Area;

WHEREAS, the plans for extending municipal services into the area proposed for annexation outline the need for one additional automated garbage truck, and;

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

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

Section 1. That the following revenue line items be decreased:

<u>Line Item</u>	<u>Description</u>	<u>Increase Amount</u>
10-399-0000	Fund Balance Allocation	\$200,000

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

<u>Line Item</u>	<u>Description</u>	<u>Increase Amount</u>
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10-580-7400                      Capital Outlay (Equipment)    \$200,000

Adopted this the 6<sup>th</sup> day of March 2008.

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

ATTEST:

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

**17. Consideration of acceptance of the right-of-way dedication for the proposed extension of Mackie Avenue to Browers Chapel Road. [Agenda Item Number 16]**

Mr. Bunker presented proposed a right-of-way agreement between the Matthew Ryan and Lisa A. Salyer and the City of Asheboro for the proposed extension of Mackie Avenue to Browers Chapel Road.

Mr. Fred Baker of 1043 Mackie Avenue expressed his concern of an increase in the volume of traffic with the proposed extension of Mackie Avenue to Browers Chapel Road.

Upon motion by Mr. Moffitt and seconded by Mr. Burks, Council voted unanimously to accept the offered dedication and approved the right-of-way agreement drafted by the City Attorney.

**RIGHT-OF-WAY AGREEMENT**

Prepared by Jeffrey C. Sugg, City Attorney for the City of Asheboro, North Carolina 27203.

After recording, please return to the City of Asheboro, Office of the City Attorney, Post Office Box 1106, Asheboro, North Carolina 27204-1106.

STATE OF NORTH CAROLINA

COUNTY OF RANDOLPH

THIS RIGHT-OF-WAY AGREEMENT is entered into this \_\_\_\_\_6<sup>th</sup>\_\_\_\_\_ day of March, 2008, by and between the following Grantor and Grantee:

**GRANTOR:**     MATTHEW RYAN SALYER AND WIFE, LISA A. SALYER, RESIDENTS OF RANDOLPH COUNTY, NORTH CAROLINA

**GRANTEE:**     CITY OF ASHEBORO, A NORTH CAROLINA MUNICIPAL CORPORATION

The designation Grantor and Grantee as used herein shall include said parties and their heirs, successors, and assigns, and the designation shall signify either singular, plural, masculine, feminine, or neuter as required by context.

WITNESSETH:

WHEREAS, the Grantor owns a certain tract or parcel of land that is identified as Lot # 2 on a plat recorded in Plat Book 115, Page 90, Randolph County Public Registry; and

WHEREAS, the Grantee has decided to extend Mackie Avenue to Browers Chapel Road and provide a storm drainage system along Mackie Avenue and Timberlane; and

WHEREAS, the preferred route for the extension of Mackie Avenue to Browers Chapel Road crosses a portion of the Grantor's above-described parcel of land; and

WHEREAS, the proposed extension of Mackie Avenue will provide an incidental benefit to the Grantor by allowing a land use currently under development on Lot # 2 to access a public street without installing a turn lane on Browers Chapel Road as would be needed in order to obtain a driveway permit for this road; and

WHEREAS, the Grantor has agreed to grant to the Grantee 0.269 of an acre (11,708 square feet), more or less, of right-of-way across the said Lot # 2 for the construction of the proposed extension of Mackie Avenue and the associated storm drainage system.

NOW, THEREFORE, in consideration of the benefits that will be conferred upon the Grantor as an adjoining property owner by virtue of the construction of the proposed extension of Mackie Avenue, the Grantor has and by these presents does hereby grant, bargain, sell, and convey unto the Grantee a public right-of-way in perpetuity along, through, and over that certain 0.269 of an acre (11,708 square feet) of land, more or less, needed for the construction, maintenance, and public use of the proposed extension of Mackie Avenue, which will include without limitation a storm drainage system. The right-of-way granted herein is more particularly defined and described as follows:

Asheboro Township, Randolph County, North Carolina:

BEGINNING at an existing iron pipe set in the western margin of the 60-foot right-of-way for Browers Chapel Road (North Carolina Secondary Road 2826) and located by means of the North Carolina Coordinate System at the coordinates of North 707,850.195 feet and East 1,763,857.309 feet (NAD 83), this existing iron pipe is located 562 feet, more or less, from the intersection of the centerline of Browers Chapel Road with the centerline of United States Highway 64 (East Dixie Drive); thence from the said Beginning point along the western margin of the right-of-way for Browers Chapel Road the following courses and distances: South 20 degrees 43 minutes 10 seconds East 142.80 feet to a computed point; thence following the right-of-way for Browers Chapel Road in a southeasterly direction along an arc having a radius of 696.82 feet and an arc distance of 10.52 feet ( a chord bearing and distance of South 19 degrees 36 minutes 23 seconds East 10.52 feet) to an existing iron pipe; thence continuing along the right-of-way for Browers Chapel Road in a southeasterly direction along an arc having a radius of 696.82 feet and an arc distance of 36.69 feet (a chord bearing and distance of South 17 degrees 39 minutes 55 seconds East 36.69 feet) to a new iron pipe; thence across the interior portion of Lot # 2 as shown on the plat of survey recorded in Plat Book 115, Page 90, Randolph County Public Registry the following courses and distances: North 27 degrees 06 minutes 48 seconds West 70.40 feet to a new iron pipe; thence South 69 degrees 16 minutes 50 seconds West 96.78 feet to a new iron pipe; thence in a southwesterly direction along the arc of a curve having a radius of 375.00 feet and an arc distance of 98.15 feet (a chord bearing and distance of South 76 degrees 46 minutes 45 seconds West 97.87 feet) to a new iron pipe; thence South 84 degrees 16 minutes 38 seconds West 24.37 feet to an existing iron pipe set at the common corner of the said Lot # 2 and the Leo M. Jones and Florine D. Jones property described in Deed Book 813, Page 387, Randolph County Public Registry; thence North 01 degree 53 minutes 38 seconds East 50.44 feet across the existing 50-foot right-of-way for Mackie Avenue to an existing iron pipe; thence along the common boundary line between Lot # 1 and Lot # 2 as shown on the plat of survey recorded in Plat Book 115, Page 90, Randolph County Public Registry the following courses and distances: North 84 degrees 16 minutes 38 seconds East 17.68 feet to an existing iron pipe; thence in a northeasterly direction along the arc of a curve having a radius of 325.00 feet and an arc distance of 85.07 feet (a chord bearing and distance of North 76 degrees 46 minutes 45 seconds East 84.82 feet) to an existing iron pipe; thence North 69 degrees 16 minutes 50 seconds East 96.78 feet to an existing iron pipe; thence North 12 degrees 35 minutes 22 seconds West 70.71 feet to the point and place of the BEGINNING, and containing 0.269 of an acre (11,708 square feet) of land, more or less.

This description is in accordance with a plat of survey entitled "RIGHT OF WAY DEDICATION PLAT ACROSS PROPERTY OWNED BY MATTHEW RYAN SALYER & LISA A. SALYER" that was drawn under the supervision of Glenn Lee Brown, a professional land surveyor with registration number L-3663. The said plat of survey is dated February 26, 2008, and is recorded in the Office of the Register of Deeds for Randolph County, North Carolina in Plat Book 115 at Page 99. The said plat of survey is hereby incorporated into this instrument by reference as if copied fully herein.

THE FURTHER TERMS AND CONDITIONS of the right-of-way herein conveyed are as follows:

1. The Grantor agrees not to erect any structures, including without limitation fencing and signs, or other obstructions within the right-of-way and further agrees not to engage in cultivation within the right-of-way.
2. The Grantor hereby releases the Grantee from all claims for damages arising from this RIGHT-OF-WAY AGREEMENT and from all claims for damages arising from the future use by the Grantee of the above-described public right-of-way for all purposes for which the Grantee is authorized by law to subject said right-of-way.
3. The Grantee does not waive or forfeit the right to take action to insure compliance with the terms, conditions, and purposes of this RIGHT-OF-WAY AGREEMENT as a consequence of prior failures to act to insure compliance with this agreement.

4. It is understood and agreed that should circumstances, conditions, or actions by the Grantee delay the construction of the proposed extension of Mackie Avenue, the right-of-way granted herein shall remain until such time as it is expressly released by the Grantee.

5. There are no conditions to this RIGHT-OF-WAY AGREEMENT not expressed herein.

TO HAVE AND TO HOLD the aforesaid right-of-way interest and all privileges and rights thereunto belonging to the Grantee forever. The covenants agreed to and the terms, conditions, and restrictions imposed herein shall be binding upon the said Grantor and shall continue as a servitude running in perpetuity with the above-described land.

Matthew Ryan Salyer and wife, Lisa A. Salyer covenant and warrant that they are the sole owners of said property; that they solely have the right to convey this right-of-way; and that they will forever warrant and defend title to the same against the lawful claims of all persons whomsoever.

IN WITNESS WHEREOF, Matthew Ryan Salyer and wife, Lisa A. Salyer, as the Grantor, have hereunto set their hands and seals the day and year first above written.

\_\_\_\_\_ s/ Matthew Ryan Salyer (SEAL)  
Matthew Ryan Salyer

\_\_\_\_\_ s/ Lisa A. Salyer (SEAL)  
Lisa A. Salyer

STATE OF NORTH CAROLINA  
COUNTY OF RANDOLPH

I, the undersigned Notary Public for the county and state aforesaid, do hereby certify that Matthew Ryan Salyer and wife, Lisa A. Salyer, whose identities were proven to me by means of the presentation of satisfactory evidence to establish the principals' identities, personally appeared before me this day and acknowledged their voluntary due execution of the foregoing instrument for the purposes stated therein.

Witness my hand and notarial seal, this 6<sup>th</sup> day of March, 2008.

My commission expires:  
March 15, 2009

\_\_\_\_\_ s/ Gail Brady  
Notary Public

\_\_\_\_\_ Gail Brady  
(Name of Notary Public, printed or typed)

[Notary Seal on original document.]

**18. Consideration of parks and recreation issues:**

**(a) Consideration of revising user fees charged by the Parks and Recreation Department.**

Mr. Hughes presented and recommended adoption by reference of certain changes in the Parks and Recreation User Fees.

Upon motion by Mr. Smith and seconded by Ms. Carter, Council voted unanimously to adopt, effective immediately, the following user fees by reference.

**ASHEBORO PARKS & RECREATION**

**Schedule of Deposits, Fees, and Charges**

Blue Color denotes proposed Changes

*Adopted: March 6, 2008*

**Effective: March 6, 2008**

	<b>Rec Card Fees</b>	<b>Non-Resident Fees</b>
<b>BASEBALL/SOFTBALL FIELD RENTAL</b>		
Rental per hour (no lights)	\$ 15.00	\$ 20.00

<b>Light Fee (per hour)</b>	\$ 10.00	\$ 15.00
<b>Tournament rental</b>		
(1 field) per weekend	\$ 175.00	\$ 225.00
(two fields) per weekend	\$ 300.00	\$ 400.00
<b>Concession Stand &amp; Restrooms</b>	\$ 50.00	\$ 65.00
<b>Additional Field Preparation</b>	\$ 45.00	\$ 60.00
<b>DOWNTOWN FARMERS MARKET</b>	<i>Member</i>	<i>Non-Member</i>
<b>Membership</b>	\$ 25.00	
<b>Daily Fee</b>	\$ 5.00	\$ 8.00
<b>Authorized Agent (per product)</b>	\$ 15.00	\$ 15.00
<b>GOLF COURSE</b>	<i>Rec Card Fees</i>	<i>Non-Resident Fees</i>
<b>Walking Only</b>		
Weekday	\$8.00	\$10.00
<b>Riding (9 holes) includes Greens Fees</b>		
Weekday	\$14.00	\$17.00
<b>Riding (18 holes) includes Greens Fees</b>		
Weekday	\$20.00	\$24.00
<b>Twilight (18 holes) After 3pm Daily</b> <i>includes Cart &amp; Greens Fees</i>		
Weekday	\$15.00	\$19.00
<b>Senior Member Cart Fee</b>		
Nine Holes	\$ 5.00	\$ 6.00
Eighteen Holes	\$ 10.00	\$ 12.00
<b>Membership Rates</b>		
Individual	\$ 365.00	\$ 430.00
Family (Up to 4 at the same residence)	\$ 480.00	\$ 600.00
Student	\$ 260.00	\$ 305.00
Senior	\$ 260.00	\$ 305.00
<b>LAKE LUCAS</b>	<i>Rec Card Fees</i>	<i>Non-Resident Fees</i>
Daily fishing permit	\$ 3.00	\$ 4.00
Annual fishing permit	\$ 35.00	\$ 50.00
Daily Jon boat rental	\$ 8.00	\$ 12.00
Daily Canoe rental	\$ 6.00	\$ 10.00
Canoe/Kayak Launch	\$ 2.50	\$ 3.50
Annual Canoe/Kayak Launch	\$ 35.00	\$ 50.00
Daily launch fee	\$ 7.00	\$ 9.50
Annual launch fee	\$ 100.00	\$ 135.00
Boat rental spaces	\$ 75.00	\$ 125.00
<b>LAKE REESE</b>	<i>Rec Card Fees</i>	<i>Non-Resident Fees</i>
Daily launch fee	\$ 7.00	\$ 9.50
Canoe/Kayak Launch	\$ 2.50	\$ 3.50
Annual Canoe/Kayak Launch	\$ 35.00	\$ 50.00
Annual launch fee	\$ 100.00	\$ 135.00
Daily duck hunting (per boat)	\$ 12.50	\$ 16.00
<b>ROOM RENTAL</b>	<i>Rec Card Fees</i>	<i>Non-Resident Fees</i>
1 Hour	\$ 20.00	\$ 25.00
1/2 Day	\$ 60.00	\$ 75.00
Full Day	\$ 100.00	\$ 125.00
<b>ROTARY PAVILION AT BICENTENNIAL PARK</b>		
Security Deposit	\$ 75.00	\$ 75.00
Daily Rate	\$ 100.00	\$ 175.00
<b>SKATE PARK</b>	<i>Rec Card Fees</i>	<i>Non-Resident Fees</i>

Daily Admission	\$ 1.00	\$ 2.00
1/2 Day Admission (School Hours Only)	\$ 1.00	\$ 3.00
Full Day Admission (Non-School Hours)	\$ 2.00	\$ 4.00
15 Admission Pass	\$ 25.00	\$ 50.00
15 Admission Pass	\$ 10.00	\$ 25.00
1 Year Unlimited Pass	\$ 150.00	\$ 300.00

<b>SUNSET THEATER</b>		<i>Applies to All</i>
Security Deposit		\$ 100.00
Party Rental (3 hour max)		\$ 100.00
Dark/Rehearsal (Multi day use, 4 hour max)		\$ 50.00
Non-Profit (Multi day use, 8 hour max)		\$ 200.00
Non-Profit (Single day use, 8 hour max)		\$ 250.00
General Meeting (2 hour max)		\$ 75.00
Private Event (8 hour max)		\$ 300.00
Commercial/For Profit (8 hour max)		\$ 350.00

*Some rates subject to a \$25.00 discount Monday - Thursday*

<b>TENNIS CENTER</b>	<i>Rec Card Fees</i>	<i>Non-Resident Fees</i>
Lights per hour per court	\$ 3.00	\$ 4.00

<b>YOUTH SPORTS FEES</b>		
City resident	No Fee	
Non-Resident		\$ 40.00
Late Fee (Applies to all after reg. deadline)	\$ 10.00	\$ 10.00
<b>SHELTER RENTAL</b>		
<i>Rec Card Fees Non-Resident Fees</i>		
Frazier, Eastside, Lake Lucas, North Asheboro Park, & 1/2 of Memorial		
1/2 Day: 10am - 3pm or 3:30pm - Dark	No Fee	\$ 20.00
Full Day	No Fee	\$ 40.00

<b>Memorial Park Full Shelter</b>		
1/2 Day: 10am - 3pm or 3:30pm - Dark	No Fee	\$ 35.00
full Day	No Fee	\$ 70.00

<b>SWIMMING POOLS</b>		
<i>Rec Card Fees Non-Resident Fees</i>		
<b>Public Swim (day)</b>		
2 years old & under (with paying adult)	No Fee	No Fee
3 years old and above	\$ 2.50	3.25
<b>Public Swim (night)</b>		
2 years old & under (with paying adult)	No Fee	No Fee
3 years old and above	\$ 2.00	\$ 2.75
<b>Swimming lessons</b>	\$ 25.00	\$ 30.00
<b>Swim Pass (15 admissions)</b>	\$ 30.00	\$ 40.00
<b>*Groups (15+)</b>	\$ 2.00	\$ 2.75
<b>*Pool Rental (2 hr. Min.) 0 - 49</b>	\$ 150.00	\$ 225.00

*Includes 1 Manager & 2 Lifeguards*

<b>Pool Rental (2 hr. Min.) 50+</b>	\$ 200.00	\$ 300.00
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*Includes 1 Manager & 3 Lifeguards, add \$20 for each additional Lifeguard required.*

Participants who reside within the City Limits of Asheboro must obtain a Rec Card in order to receive the Rec Card Rate.

**(b) Consideration of an ordinance to prohibit the use of skateboards and inline skates on all city owned property other than the skate park.**

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

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

**18 ORD 03-08**

**AN ORDINANCE ENACTING SECTION 130.08 OF THE CODE OF ASHEBORO**

**WHEREAS**, the city's director of parks and recreation has noted a problem with individuals damaging city property and creating a hazard for themselves and others by riding skateboards and inline skates in city park facilities other than the Asheboro Skate Park; and

**WHEREAS**, similar problems have been noted with skateboards and inline skates at city facilities that are not managed by the parks and recreation department; and

**WHEREAS**, by constructing and operating the Asheboro Skate Park, the city has provided an alternative public venue for the enjoyment of skateboards and inline skates.

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

**Section 1.** Chapter 130 of the Code of Asheboro is hereby amended by adding a new section to read:

§ 130.08 REGULATION OF SKATEBOARDS AND INLINE SKATES

(A) Subject to Subsection (B), it shall be unlawful for any person riding on a skateboard or inline skates to ride any such device on the premises of facilities or lands owned in fee simple or leased by the City of Asheboro.

(B) Skateboards and inline skates may be utilized within designated areas of the Asheboro Skate Park in accordance with Chapter 98 of the Code of Asheboro.

(C) This Section shall not be construed to authorize any activity involving skateboards, roller skates, coasters, toy vehicles, or similar devices that is prohibited by Section 70.53 of the Code of Asheboro.

**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 the date of its adoption.

Adopted by the Asheboro City Council in regular session on the 6<sup>th</sup> day of March, 2008.

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

ATTEST:

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

**(c) Consideration of an ordinance amending the rules for the Farmers' Market.**

Mr. Hughes presented and recommended adoption, by reference, of an ordinance amending the Parks and Recreation Department Policy Manual.

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

**19 ORD 03-08**

**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 Farmers' Market 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 6<sup>th</sup> day of March, 2008.

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

ATTEST:

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

## EXHIBIT 1

### ARTICLE XI. FARMER'S MARKET

#### SECTION 11.1 OPERATION AND CONTROL

The Farmers Market Facility shall be administered by the City of Asheboro, Department of Parks & Recreation in a manner that will provide the citizens of Asheboro and Randolph County with an opportunity for a quality experience.

**Under guidance from the Parks & Recreation Director, a designated staff member will operate the facility in the best interest of the City of Asheboro.**

~~Subject to the ordinances and regulations governing the Parks & Recreation Department and the general authority of the Parks & Recreation Director, the Market Manager or another designee, shall operate the Facility as a Farmer's Market on days and times specified in the Rules and Regulations section of this document. At other times, the facility shall be programmed by the Parks & Recreation Department.~~

~~The Market Manager may be a City or County employee or a designated not-for-profit agency. If the Market Manager is a designated not-for-profit agency, they shall serve on a 12 month contract approved by Asheboro City Council.~~

#### SECTION 11.2 HOURS OF OPERATION

- A. The Hours of Operation of the Farmer's Market shall vary with the season and activities permitted. ~~The Market Manager shall produce a Farmer's Market Schedule no later than March 15 for the upcoming year.~~
- B. The Operating days shall be Tuesday, Thursday and Saturday. Operating Days may be added or deleted, depending on supply of produce. ~~The Market Manager~~ **Parks & Recreation Director** reserves the right to adjust hours of operation, as needed.

#### SECTION 11.3 FEES AND CHARGES

An annual Membership is available **for a nominal yearly fee.** ~~\$25.00.~~ Membership affords the vendor one daily vendor fee per season and an assigned space for the season. **On market days, The all assigned member spaces will be held reserved for one hour after the market opens. After this time limit has expired, spaces are available to eligible vendors on a first come, first served basis.** ~~until 8:00am on market days. Other than the one daily fee included in membership, Members and non-members will be required to pay a daily \$5.00 fee. Non-members will be required to pay a \$8.00 daily vendor fee. Prices are subject to change at the discretion of the Market Manager.~~ **Fees and charges shall be set by City Council and shall be**

incorporated into the Schedule of Deposits, Fees, and Charges Administered by the Parks & Recreation Department.

#### SECTION 11.4 RULES AND REGULATIONS

- A. ~~The Market Manager or its designee~~ Staff shall enforce all rules and regulations during the operation of the Farmer's Market.
- B. All products sold at the market must be grown or made by the person, family or company selling the product. ~~or his/her authorized representative . An authorized representative must be listed on the application and approved.~~ Only home grown or home made products from the following counties may be sold: Randolph, Alamance, Chatham, Davidson, Forsyth, Guilford, Moore, Montgomery, Richmond and Stanley. ~~The market manager~~ Staff shall assign spaces to all vendors.
- C. **Growers Agent: A Market Member may be a Grower's Agent for other farmers who are unable to sell at the market. The Agent shall be responsible for obtaining a Grower's Certification for each grower represented. The Agent will be required to post signage detailing the name and location of where the products are from. The Agent will also be required to pay a Growers Agent fee for each person, family or company they represent.**
- D. Each Seller shall be responsible for keeping their assigned space clean during use and when leaving the facility. Excess produce must be removed from the market and not dumped in market trash containers.
- E. In order to sell at the Farmer's Market, an Application ~~in a form prescribed by the Market Manager~~ must be filled out and returned to ~~the Market Manager~~ **Asheboro Parks & Recreation** with the appropriate fees.
- F. ~~The Market Manager~~ Staff shall review and approve each application. Applications should be received at least two weeks before the vendor plans to begin selling at the Market.
- G. All vendors must have received a "Growers Certification" from their local Cooperative Extension service and have the certificate or a copy on hand in order to sell at the market.
- H. All Vendors shall display a sign bearing their name and address. This sign shall be prominently displayed by the vendor while selling at the market. ~~The sign shall provided by~~ **Asheboro Parks & Recreation.** ~~the Market manager.~~
- I. Prices must be posted for all items to be sold.
- J. Products that can be sold include:
  - a. Vegetables grown from seeds, sets or seedlings.
  - b. Fruits, nuts or berries ~~grown on land owned or leased by the seller.~~
  - c. Plants ~~grown by the seller~~ from seed, seedling transplant or cutting.
  - d. Bulbs ~~propagated by the seller.~~
  - e. Eggs ~~produced by the seller's hens.~~
  - f. Meats ~~produced from animals raised by the seller.~~
  - g. Dairy products ~~from animals raised by and made by the seller.~~
  - h. Honey ~~produced from the seller's bees.~~
  - i. Cut or dried flowers ~~grown by the seller.~~
  - j. Straw ~~baled by the seller.~~
  - k. Preserves, pickles, relishes, jams and jellies ~~made by the seller.~~
  - l. Baked goods baked by the seller.
  - m. Baskets
  - n. Pottery
  - o. Woodwork
  - p. Candles
  - q. **General Arts & Crafts**
  - r. Coffee and Tea served in single serve containers that are not reused on the premises.
- K. No low-acid canned foods such as green beans, corn, peas, carrots, etc... may be sold. In addition, no canned tomato products may be sold.
- L. All products must be of top quality.
- M. All food must meet NCDA and local health regulations. Members selling prepared foods must provide verification of current NCDA inspection when submitting their application.
- N. Food items must be labeled prior to sale with at least the following information:
  - a. common or usual name of product.
  - b. Net contents, ie: net weight in ounces or pounds and ounces if the product is solid or semisolid; net contents in fluid ounces if the product is liquid.
  - c. List of ingredients in the product by decreasing order of predominance by weight of each ingredient.
  - d. Name, address including zip code and phone number of the person responsible for the product.
  - e. Date processed.
- O. Only standard canning jars with new rings and lids may be used.
- P. Home baked cakes, pies, cookies and breads may be sold except cream pies.

- Q. All products produced under certification such as organic, licensed meat, poultry, or dairy products or products requiring inspection, such as baked goods or preserves must display certification or license and have a copy on file with ~~the Market Manager~~ **Staff**.
- R. No live animals may be sold or given away at the market.
- S. No pets are allowed at the Farmer's Market.
- T. Any vendor selling meat, dairy, poultry, or other animal products that are regulated by the NCDA and/or USDA are responsible for satisfying any regulatory requirements prior to selling of product. Vendors must file a copy of Department of Agriculture Form MP-2 (Registration of Poultry and Meat Handlers) with the market manager and keep a copy of this license with them at all times while selling at the market. Vendors also must inform the ~~market manager~~ **Staff** of any change in licensing status immediately upon receiving notice of a change. All products must be stored in a new or like new condition refrigerator or freezer.
- U. Scales should be the type that can be or is approved and certified by the NCDA.
- V. Any complaints, disputes or violations of the rules shall be directed to the ~~market manager~~ **Staff** for resolution.
- W. Neither the City of Asheboro nor its elected officials, officers, employees, agents **or** representatives, ~~or contractors~~ shall be responsible, in either an official or individual capacity, for loss through theft or otherwise of private property at the market. The Farmer's market shall not be responsible for personal injuries or damages to individuals or personal property arising out of the actions or conduct of guests, invitees, or any type of third party not directly affiliated with the City of Asheboro.
- X. Each vendor shall be responsible for their own records, taxes and compliance with all applicable regulations.

#### **SECTION 11.5 EXECUTIVE COMMITTEE VENDOR FEEDBACK**

~~An Executive Committee shall be established and include the following as members, Parks & Recreation Director, Market Manager and Cooperative Extension agent.~~  
~~Farmer's Market Regular meetings of the committee shall be held before and after the Farmer's Market season. The purpose of the meetings shall be to give Market participants the opportunity to voice their opinions and make suggestions of the operation of the market.~~ Other meetings may be held on an as needed basis. The Parks & Recreation Director shall preside at all meetings.  
~~Proposed changes to the Farmer's Market rules and regulations shall be approved by the Executive Committee, Rule changes shall be presented to at the February City Council meeting each year, provided, however, The City Council may on its own motion address issues at the Farmer's Market on a more frequent basis as deemed appropriate by the City Council.~~

#### **SECTION 11.6 FARMERS MARKET FACILITY**

1. No Alcoholic beverages or drugs are permitted.
2. No pets, other than service animals are allowed.
3. No flea market items may be sold or displayed at any time.
4. Yard Sales may not be held at the Facility.
5. Rental of the facility must be approved by the parks & recreation department.
6. Security deposit and Rental Fees shall be set by City Council.
7. Vendors requiring electricity shall provide their own extension cords properly rated to meet their electrical requirements.
8. No items may be attached to any area of the Farmer's Market structure, trees, etc...
9. Holding an event at the Farmer's Market without authorization shall subject the event to immediate termination and other enforcement actions as deemed appropriate by the Parks & Recreation Director.

#### **(d) Distribution of a proposed sponsorship policy.**

Mr. Hughes presented a draft sponsorship policy for the City of Asheboro Parks and Recreation Department for council's review and comment. A final proposed policy will be presented to the Council for formal consideration at a later date. The draft policy provides as follows:

#### **City of Asheboro Parks and Recreation Department**

#### **Draft Sponsorship Policy**

#### Statement of Policy

The City of Asheboro (hereinafter referred to as the "City") will accept sponsors who help promote its mission by providing monetary or in-kind support for the City's facilities and programs. The City recognizes that the public trust and perception of its impartiality may be damaged through sponsorships

that are aesthetically displeasing, politically oriented, or offensive to segments of the City's citizenry. When the public trust and perception of impartiality are lost, the City's ability to effectively fulfill its mission is impaired. Therefore, the City permits private sponsorship of city-owned facilities, property, services, and programs only in limited circumstances consistent with the maintenance of public trust and the perception of the City's impartiality as a means to generate resources for improving or expanding the municipality's programs and services. The City maintains its sponsorship program as a nonpublic forum and exercises sole discretion over who may be eligible to become a sponsor according to the terms of this policy.

Sponsorships should be linked, whenever possible, to specific activities, events, programs, or publications. The City will neither seek nor accept sponsors who manufacture products or take positions inconsistent with federal, state, or local law, or with the City's policies, positions, or resolutions. The establishment of a sponsorship agreement does not constitute an endorsement by the City of the sponsor's organization, products, or services.

#### Definition of Terms

Sponsorship is the right to associate the name, products, or services of an external entity (for-profit or not-for-profit) with facilities, property, programs, or services of the City. Sponsorship is a business relationship in which the City and the external entity exchange goods, services, and donations for the public display of a message on city-owned property acknowledging private support.

#### Approval Authority Structure

The City possesses sole and final decision-making authority when determining the appropriateness of a sponsorship relationship and reserves the right to refuse any offer of sponsorship. Sponsorship agreement proposals will be reviewed according to the following guidelines:

- a. Sponsorship agreements projected to generate less than \$5,000.00 may be approved by the department head impacted by the sponsorship.
- b. Sponsorship agreements projected to generate at least \$5,000.00, but less than \$30,000.00 shall require the written approval of the City Manager, who shall also inform and consult with the City Council.
- c. Sponsorship agreements projected to generate \$30,000.00 or more shall be referred to the City Council for formal consideration.

#### Proposal Review Criteria

Proposals for sponsorship of the City's facilities, property, programs, or services shall be reviewed on the basis of a written Memorandum of Understanding that clearly outlines the form of support offered by the sponsor and the recognition to be given by the City. A Memorandum of Understanding shall be created for each sponsorship relationship and should detail, at a minimum, the following:

- a. Activities, products, and services of the private entity and its subsidiaries;
- b. Benefits to be given to the proposed sponsor by the City;
- c. Benefits to be given to the City by the proposed sponsor and the estimated monetary value of said benefits;
- d. Prominence of the proposed public recognition of support;
- e. Content of the proposed public recognition of support;
- f. Duration of the proposed public recognition of support; and
- g. Conditions under which the sponsorship agreement will be terminated.

#### Criteria for Proposal Review

The City recognizes that although entering into a sponsorship agreement with an external entity does not constitute an endorsement, it does imply an affiliation. Such affiliation can affect the reputation of the City and its ability to fulfill its mission effectively. Therefore, any proposal for sponsorship in which the involvement of an outside entity compromises the public's perception of the City's neutrality or its ability to act in the public interest will be rejected.

The following criteria shall be considered before entering into a sponsorship agreement:

- a. Extent and prominence of the public display of sponsorship;
- b. Aesthetic characteristics of the public display of sponsorship;
- c. Importance of the sponsorship to the mission of the City;
- d. Level of support provided by the sponsor;
- e. Cooperation necessary from other City units to implement the sponsorship;
- f. Inconsistencies between the City's policies and the known policies or practices of the potential sponsor; and
- g. Any other factors which might undermine public confidence in the City's impartiality or interfere with the efficient delivery of municipal services or operations, including, but not limited to, current or potential conflicts of interest between the sponsor and the City and other units of government.

### Permissible Sponsors and Message Content

Sponsorships on the City's property are maintained as a nonpublic forum. The City intends to preserve its rights and discretion to exercise full editorial control over the placement, content, appearance, and wording of sponsorship affiliations and messages.

The City may evaluate the desirability of any potential sponsorship relationship based on the appropriateness of the product or subject matter of a potential sponsorship. The City will not deny sponsorship opportunities based on the potential sponsor's viewpoint.

Any sponsorship from an organization engaged in any of the following activities, or having a mission that supports any of the following subject matters, or which, in the sole discretion and judgment of the City, is deemed to be unsuitable for and contrary to community standards of appropriateness for government publications/notices shall be prohibited on any City property:

- a. Promotion of the sale or consumption of alcoholic beverages, or promotion of establishments that are licensed for and primarily sell alcoholic beverages, including bars; provided, however, food service establishments or places of lodging may be authorized only when the sale of alcohol is incidental to providing food service or lodging;
- b. Promotion of the sale or consumption of tobacco products;
- c. Promotion of the sale of birth control products or services;
- d. Commentary, advocacy, or promotion of issues, candidates, and campaigns pertaining to political elections;
- e. Depiction in any form of profanity or obscenity, or the promotion of sexually-oriented products, activities, or materials;
- f. Promotion of the sale or use of firearms, explosives, or other weapons, or glorification of violent acts; and
- g. Promotion or depiction of illegal products or the glorification of illegal products, activities, or materials.

### Permissible Recognition Statements

Sponsorship recognition statements are permitted to identify the sponsor, but should not promote or endorse the organization or its products or services. Statements that advocate, contain price information or an indication of associated savings or value, request a response, or contain comparative or qualitative descriptions of products, services, or organizations will not be accepted. Only the following content will be deemed appropriate:

- a. The legally recognized name of the advertising organization;
- b. The advertiser's organizational slogan if it identifies rather than promotes the organization or its products or services;
- c. The advertiser's product or service line described in very brief, generic, objective terms. Generally only one product or service line may be identified;
- d. Brief contact information for the advertiser's organization, such as phone number, address, or Internet URL. Contact information must be stated in such a manner as to avoid an inference of urging the reader to action.

The City will not make any statements that directly or indirectly advocate or endorse a sponsor's organization, products, or services.

No materials or communications, including, but not limited to, print, video, Internet, broadcast, or display items, developed to promote or communicate the sponsorship using the City's name, marks, and/or logo may be issued without written approval from the City Manager.

- (e) Consideration of renaming the City Fields Complex, including the individual fields within the complex.

At its meeting on Thursday, February 28, 2008, the Parks and Recreation Sports Advisory Committee discussed the renaming of the individual fields within the City Fields Complex. The committee members are Wayne Thomas, Chairperson, Joe Trogdon, Gary Mason, John Matkins, Greg York, and Ed Bunch. On behalf of the committee, Mr. Hughes presented a recommendation for Council's consideration as follows:

- To include the City Fields Complex located at 735 Farr Street with the entire Kiwanis Park and name the overall facility "Kiwanis Park."
- To rename Kiwanis Field Number 1 as "Darrell Rich Field."
- To rename Kiwanis Field Number 2 as "Wayne D. Thomas Field."
- To rename City Field Number 1 as "Luther Field" in memory of Leo Luther and in honor of Jimmy Luther.
- To rename City Field Number 2 as "Leon Yow Field."
- To rename North Asheboro Field as "Clarence Smith Field."

Upon motion by Mr. Smith and seconded by Mr. Burks, Council voted unanimously to approve the renaming of the City Fields Complex and the individual fields within the complex as presented.

**(f) Consideration of closing portions of Sunset Avenue and Church Street for the Sunset Street Festival.**

Mr. Hughes presented a request to close Sunset Avenue from Fayetteville Street to Davis Street and Church Street from Hill Street to Hoover Street beginning at 11:00 p.m. on Friday, May 9, 2008 and ending at 10:00 p.m. on Saturday, May 10, 2008 for the Sunset Street Festival. The street festival will be held on Saturday, May 10, 2008 from 9:00 a.m. until 6:00 p.m.

Upon motion by Mr. Smith and seconded by Ms. Carter, Council voted unanimously to close Sunset Avenue from Fayetteville Street to Davis Street and Church Street from Hill Street to Hoover Street during the period of time listed above.

**19. Consideration of approval for Marlowe and Company to provide consulting and lobbying services for the City of Asheboro. [Agenda Item Number 18]**

Mr. Ogburn requested the approval for Marlowe and Company to provide consulting and lobbying services for the City of Asheboro.

Upon motion by Mr. Smith and seconded by Mr. Priest, Council voted unanimously to authorize the execution of an agreement between the City of Asheboro and Marlowe and Company whereby Marlow and Company will provide consulting and lobbying services for the city.

**20. Discussion of items not on the agenda. [Agenda Item Number 19]**

- Drug Task Force Meeting on Monday, March 10, 2008 at 6:30 p.m. – East Side Park.
- Special City Council Meeting on Thursday, March 27, 2008 at 7:00 p.m. – City of Asheboro Public Works Facility Conference Room.

There being no further business, the meeting was adjourned at 9:40 p.m.

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

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