

**REGULAR MEETING
ASHEBORO CITY COUNCIL
COUNCIL CHAMBER, MUNICIPAL BUILDING
THURSDAY, AUGUST 7, 2008
7:00 p.m.**

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

David H. Jarrell) – Mayor Presiding

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

John N. Ogburn, III, City Manager
Edsel L. Brown, Code Enforcement Officer
Dumont Bunker, City Engineer
Richard L. Cox, Jr., Community Planning and Development Department Intern
Holly H. Doerr, City Clerk/Senior Legal Assistant
John L. Evans, Planner
R. Wendell Holland, Jr., Zoning Administrator
R. Foster Hughes, Parks and Recreation Director
Deborah P. Juberg, Finance Director
Gary L. Mason, Chief of Police
R. Reynolds Neely, Jr., Planning Director
Ralph W. Norton, Police Captain
O. Lynn Priest, Community Development Director
James O. Smith, Police Captain
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. Invocation and Pledge of Allegiance.

Mayor Jarrell asked everyone to stand and repeat the Pledge of Allegiance, after which Dr. John Rogers, Pastor of First Baptist Church gave the invocation.

3. Appearance and recognition of guests and citizens.

Mayor Jarrell welcomed everyone in attendance.

4. Presentation of Professional Esteem Award for Police Officer I Charles Hamilton, Master Police Officer Eddie Howell, and Master Police Officer Troy Vincent.

Chief Mason reported that three (3) officers, Police Officer I Charles Hamilton, Master Police Officer Eddie Howell, and Master Police Officer Troy Vincent, were recommended by their commanding officer to receive the Professional Esteem Award for their efforts in apprehending a felon who had robbed a local convenience store on Old Liberty Road on July 3, 2008. Additionally, Chief Mason read and presented each of the officers with a handwritten memo thanking them for their outstanding professional police work. A copy of this memo will be placed in their personnel files.

Mayor Jarrell thanked the officers in the Police Department for their hard work.

Without objection from the Council, Mayor Jarrell moved Agenda Item Number 9 ahead of the remaining agenda items.

5. Consideration of a resolution for *Randolph Reads* [Agenda Item Number 9]

Mayor Jarrell presented and read a resolution for *Randolph Reads*. Upon motion by Mr. Crisco and seconded by Ms. Carter, Council voted unanimously to adopt the following resolution.

38 RES 08-08

Resolution

Whereas, *Randolph Reads* is a community reading program whose concept originated in Seattle in 1998 and has spread nationwide; and

Whereas, these programs are designed to bring people together through reading a book that explores matters relevant to the community in order to allow people from all walks of life to have a common literary experience and share their views on themes and issues raised by the book under consideration; and

Whereas, the *Randolph Reads* program was begun by the Friends of the Library in 2003 with Harper Lee's To Kill a Mockingbird, where hundreds of participants read the book and joined in discussion and activities; and

Whereas, in subsequent years *Randolph Reads* selections have included Raney by Clyde Edgerton and Wolf Whistle by Lewis Nordan; and

Whereas, *Randolph Reads: A Home on the Field—How One Championship Soccer Team Inspires Hope for the Revival of Small Town America* by Paul Cuadros will run during September and October, 2008 and is sponsored by the Latino Coalition of Randolph County in partnership with the Friends of the Library, the Randolph Arts Guild and the Randolph County Public Library, and includes representation from the Asheboro City Schools, the Asheboro Police Department, Randolph Community College and the Randolph County Schools; and

Whereas, *Randolph Reads: A Home on the Field* will kickoff at 10 a.m., Saturday, September 6, at Bicentennial Park, Asheboro; and

Whereas, activities including community discussions, art exhibits, a film series, panel discussions and an appearance by the author of the book will take place during September and October; and

Whereas, *Randolph Reads: A Home on the Field* will culminate in a Dia de la raza celebration on Sunday, October 19.

Now, therefore, be it resolved that the Mayor of Asheboro and the Asheboro City Council do hereby encourage the citizens of Asheboro and Randolph County to participate in the *Randolph Reads: A Home on the Field* program during September and October in order to improve race relations and increase the understanding of the greater community about who the Latino immigrants are, why they are here, how they came and what challenges they face in our community.

This the 7th Day of August, 2008.

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

6. Consent Agenda [Agenda Item Number 5]

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

- (a) **The minutes of the city council's regular meeting that was held on July 10, 2008.**
- (b) **The general account of the city council's closed session that was held during the July 10, 2008 regular meeting.**
- (c) **A resolution to seal the general account of the closed session held on July 10, 2008.**

**RESOLUTION TO SEAL THE GENERAL ACCOUNT OF A
CLOSED SESSION**

WHEREAS, Section 143-318.10(e) of the North Carolina General Statutes provides, in pertinent part, that the "minutes or an account of a closed session conducted in compliance with G.S. 143-318.11 may be withheld from public inspection so long as public inspection would frustrate the purpose of a closed session;" and

WHEREAS, the City Council of the City of Asheboro properly conducted a closed session during its regular meeting on July 10, 2008, pursuant to Section 143-318.11(a)(4) of the North Carolina General Statutes, in order to discuss matters relating to the location or expansion of industries or other businesses in the City of Asheboro.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Asheboro that the general account of the closed session held by the City Council on July 10, 2008 is to be sealed so long as public inspection of the records would frustrate the purpose of the closed session; and

BE IT FURTHER RESOLVED that the City Manager is authorized to act as the Council's agent with the authority to unseal these records when the purpose of the closed session would no longer be frustrated by making the records available for public inspection or when the unsealing of the said general account is otherwise required by law.

Adopted by the Asheboro City Council during a regular meeting held on August 7, 2008.

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

ATTEST:

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

(d) **The findings of fact, conclusions of law, and order in the matter of CUP-08-28.**

**Case No. CUP-08-28
City Council
City of Asheboro**

**IN THE MATTER OF THE APPLICATION OF WEST POINTE LUXURY APARTMENTS, LLC FOR A
CONDITIONAL USE PERMIT ALLOWING MULTIPLE FAMILY
DWELLING UNITS WITH A FLOOR AREA RATIO OF UP TO 22%**

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER GRANTING THE REQUESTED
CONDITIONAL USE PERMIT**

THIS MATTER came before the Asheboro City Council (hereinafter referred to as the "Council") for hearing during a regular meeting of the Council that was held on July 10, 2008. Having considered all competent evidence and argument, the Council, on the basis of competent, material, and substantial evidence, does hereby make the following:

FINDINGS OF FACT

1. West Pointe Luxury Apartments, LLC (hereinafter referred to as the "Applicant") has properly submitted an application for a Conditional Use Permit that would allow the development of multiple family dwelling units with a floor area ratio of up to 22%.

2. The real property subject to the requested Conditional Use Permit (hereinafter referred to as the "Zoning Lot") encompasses approximately 24.3 acres of land and is more specifically identified by Randolph County Parcel Identification Number 7740936604.

3. The Zoning Lot is located in an area designated on the Growth Strategy Map as a "Primary Growth" area, and the said area is identified on the Proposed Land Development Plan Map as "Commercial/Neighborhood Residential."

4. The land uses surrounding the Zoning Lot are single-family residential to the south and east, while vacant property and retail land uses are located to the north. Vacant land and single-family residential land uses are located to the west.

5. The Zoning Lot is located within the corporate limits of the City of Asheboro, and all city services are available to the lot.

6. Oak Leaf Road is a city-maintained street at this location, and this city-maintained street is the sole outlet that will be utilized to provide ingress and egress for the proposed development. Oak Leaf Road intersects with North Carolina Highway 49. This intersection does have a traffic control signal.

7. The Applicant proposes to develop a total of 224 residential units of which 72 units will be 1-bedroom units, 120 units will be 2-bedroom units, and 32 units will be 3-bedroom units. Additionally, the proposal includes walking/nature trails, a playground area, a pool, a clubhouse, and storage areas.

8. The minimum buffer required along the southern and eastern portions of the Zoning Lot adjoining single-family and 2-family residential land uses with the accompanying zoning is an "A" buffer or screen. This requirement consists of a minimum width of 15' for a buffer or 5' for a screen with denser plantings and/or fencing. The Applicant proposes an 80-foot wide buffer with plantings and the utilization of existing vegetation consisting of plantings equal to or greater than those required by a Type C buffer, which has more stringent requirements than a Type A Buffer/Screen.

9. The Council placed the Zoning Lot in a Conditional Use RA-6 zoning district in April 2008. RA-6 zoning districts are high-density residential zoning districts. A development with multiple family dwelling units and a floor area ratio of up to 22% is permitted in a Conditional Use RA-6 zoning district with the issuance by the Council of a Conditional Use Permit.

10. Mr. Ben Ramsey, who is a state certified real estate appraiser with 22 years of experience, offered his professional opinion that the proposed land use, if developed as proposed, would not have a negative impact on the value of adjoining lots.

11. The Applicant agreed to the permit conditions offered by the city's Planning Department for the purpose of furthering the intent and purpose of the zoning ordinance. Additionally, the Applicant agreed to construct a berm along a portion of the southern property line of the Zoning Lot in order to address concerns raised by adjoining property owners during the hearing of this matter.

12. During the hearing of this matter, uncontroverted evidence was offered that, with certain clerical corrections, the site plan submitted by the Applicant is in compliance with the requirements of the Asheboro Zoning Ordinance.

Based on the foregoing findings of fact, the Council makes the following:

CONCLUSIONS OF LAW

1. The Council has concluded that the proposed use will not materially endanger the public health or safety if located where proposed and developed according to the plan as submitted and approved.

2. The evidence received during the public hearing established that the proposed use does meet all of the required conditions and specifications of the Asheboro Zoning Ordinance.

3. The evidence presented during the course of the hearing of this matter established that the proposed use would not substantially injure the value of the adjoining or abutting property.

4. The location and character of the Applicant's proposed use, if developed according to the plan as submitted and approved, is in harmony with the area in which it is to be located and in general conformity with the plan of development of Asheboro and its environs.

Based on the above-recited findings of fact and conclusions of law, the Council hereby enters the following:

ORDER

West Pointe Luxury Apartments, LLC is hereby issued a Conditional Use Permit authorizing the development of multiple family dwelling units with a floor area ratio of up to 22% on the Zoning Lot. This Conditional Use Permit shall be valid so long as, and only so long as, the Applicant, and its successors and assigns, develops and conducts the approved land use in compliance with the approved revised site plan and elevations, the provisions of the Asheboro Zoning Ordinance, and the following supplementary conditions that are attached to this permit:

1. The property owner is to maintain the proposed sewer collection system, sewer pump station, and sewer force main.

2. If an additional pump station is constructed within the sub-basin to serve the property, the construction of the pump station shown on the site plan to serve the area shall not be required.

3. An operational agreement must be obtained from the adjacent property owners (currently Bernard E. and Ellen Caruso) to connect to the sewer force main installed for the proposed Oak Leaf Christian Academy.

4. A sewer permit from the Division of Water Quality, which is part of the North Carolina Department of Environment and Natural Resources, is required.

5. The city will own and maintain the water lines between the city system and the proposed water meters; provided, however, the water lines must be constructed to city standards and specifications, the system must be approved by NCDENR-PWS, and a 20-foot wide maintenance easement must be provided.

6. The city can provide materials for the water line extension within the existing right-of-way of Oak Leaf Road per the city's extension policy approved by the City Council on October 4, 2001.

7. The property owner is to maintain the proposed street system.

8. A berm that is 6' in height shall be constructed along the southern property line in the 80-foot setback area from the creek/branch westward to the Zoning Lot's western property line. Plantings consistent with a type "C" buffer shall be placed on top of the berm. To the greatest degree practicable, natural vegetation shall be retained for an 80 ft. width along the southern and eastern portions of the property as shown on the site plan. The retained type C buffer shall provide equivalent or greater buffering and screening as required by the Zoning Ordinance (Type 'C' plantings and Section 304A). Any alternative buffer requires approval by the Planning Department.

9. An engineering study of storm water runoff shall be made. If such study indicates the post development runoff will exceed predevelopment conditions, plans for runoff control shall be designed and certified by a professional engineer. Such controls shall be designed to reduce the runoff during the occurrence of a 10-year storm to predevelopment volumes and rates. Prior to the issuance of a Certificate of Occupancy, a professional engineer shall provide certification that the storm water controls were built according to the plans. Any open water retention or drainage areas shall be sprayed regularly for mosquito control. The continued maintenance of all runoff control measures shall be the responsibility of the property owner.

10. Due to an error, 11 additional recreational vehicles, boat, and camp/travel trailer overflow parking spaces shall be included in accordance with the requirements of Article 200, Note 15. This area shall be located outside of all building setback areas and buffer areas and shall meet all requirements of Article 400 of the zoning ordinance. No junked vehicles or junk shall be stored in any parking/storage area(s). No compliance certificate shall be issued until the required recreational vehicle/overflow parking is provided.

11. The building elevation plans shall be corrected to reflect the windows from the rear views. In addition, appropriate labeling of materials shall be included.

12. The Applicant shall prepare a revised site plan and building elevations that reflect the corrections and modifications specified in the above-listed conditions. The revised site plan and building elevations shall be submitted in a timely manner to the planning department for staff review, approval, and inclusion in the file without further review by the Council. No certificate of compliance may be issued until the revised site plan and building elevations are submitted to and approved by the planning department. This condition shall only apply to revisions strictly related to effectively implementing the above-listed conditions, and not to revisions that would otherwise be defined as a permit modification.

Adopted by the Asheboro City Council in regular session on the 7th day of August, 2008.

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

ATTEST:

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

(e) Closing of designated streets for Fall Festival XXXVI.

- A copy of the map displaying the streets to be closed, including a copy of the approved parade permit, is on file and available for inspection in the City Clerk's office.

(f) A resolution approving a revised job description and increase in pay grade for the position of Technical Services Specialist in the Water Resources Division.

36 RES 08-08

RESOLUTION APPROVING A REVISED JOB DESCRIPTION AND CHANGE IN PAY GRADE FOR THE POSITION OF TECHNICAL SERVICES SPECIALIST IN THE WATER RESOURCES DIVISION

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 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, the adopted position classification plan includes within its inventory of the city's full-time positions of employment the position of Technical Services Specialist in the Water Resources Division with a pay grade of 16; and

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

When . . . 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, the Human Resources Director has made the determination that the job description for the Technical Services Specialist should be revised to include the administrative responsibilities that have been assigned to the position since the original job description was approved; and

WHEREAS, a revised comprehensive job description (hereinafter referred to as the "Job Description"), which reflects these additional administrative responsibilities, is 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 Manager has approved the Job Description and has determined that the Technical Services Specialist's additional administrative responsibilities warrant a correspondingly higher pay grade of grade 17 for this position.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Asheboro that, effective August 7, 2008, the Job Description attached hereto as Exhibit 1 is hereby approved without modification; and

BE IT FURTHER RESOLVED that, effective August 7, 2008, the recommendation of the City Manager to increase the pay grade of the Technical Services Specialist from grade 16 to grade 17 is adopted and approved without modification.

Adopted by the Asheboro City Council in regular session on the 7th day of August, 2008.

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

ATTEST:

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

EXHIBIT 1

**TECHNICAL SERVICES SPECIALIST
Technical Services Department
Water Resources Division**

**F.L.S.A.
EXEMPT**

General Statement of Duties

Assists in the administration of the water resource programs and protection of the environment. Performs technical, observational, enforcement and educational work with food service establishments and industries for the protection of the collection and treatment system. Assists in special studies and assists in administration of public education and safety programs for the Water Resources Division.

Distinguishing Features of the Class

An employee in this class performs the responsibilities of technical and administrative work in the area of monitoring, inspecting, compliance determination, reporting and communicating with industrial, commercial, residential users and consumers. Work involves general understanding and performance of water and wastewater sampling, analyses of water/wastewater samples and assisting in report generation for the water systems and the Pretreatment program. Assists in the development of the Industrial Pretreatment and Grease programs through inspections, compliance determinations, and report generation. Assists in safety and public education programs for the Division of Water Resources. Assists in special studies / projects in the Division of Water Resources as assigned. This employee must exercise initiative and independently works under the general supervision of the Technical Services Manager. Work is reviewed through conference, records, reports, and by observation.

Illustrative Examples of Work

- Collects water and wastewater samples;
- Storage and maintenance of all wastewater sampling equipment;
- Prepares sampling events;
- Performs general laboratory field analyses and completes chain of custody for industrial discharges;
- Assists in compliance determination of the pretreatment program as regulated by local, state, and federal agencies;
- Performs inspections of food establishments and grease traps and facilities for proper operation and maintenance;
- Determines compliance of the grease traps with regulations;
- Education of food establishments and general public on proper grease practices;
- Maintains files and generates monthly reports;
- Reads industrial water deduction meters;
- Assists in preparing reports required by regulatory agencies for the division's programs;
- Assists in the administration of the division's safety program;
- Performs quarterly safety inspections and maintains MSDS books;
- Assists in the administration of the division's public education program;
- Performs work using safe practices and procedures;
- Conducts special technical and scientific studies;
- Performs related work as required.

Knowledge, Skills and Abilities

Thorough knowledge of sampling techniques, field analyses and safety requirements as related to sample collection, storage and handling;
Considerable knowledge of regulations and requirements of regulatory agencies for development of the pretreatment programs;
Considerable knowledge of regulations and requirements of regulatory agencies for development of the grease program;
Some general knowledge of city policies and public education;
Some general knowledge of applicable safety regulations and training requirements as they relate to the plant operation, maintenance and laboratory functions;
Some general knowledge of analytical principles and techniques of chemistry and bacteriology;
Ability to use computer in data analyses and report generation as needed;
Ability to interpret data, prepare and present written reports in accurate and detailed manner;
Ability to deal tactfully and courteously with the public, industrial and commercial officials, division employees, and other city personnel.

Minimum Experience and Training

Graduation from four-year college or university in the field of chemistry, biology or physical sciences and considerable experience in the Water/Wastewater field or any equivalent combination of experience and training.

Special Requirements

Must possess a valid North Carolina driver's license and have a safe driving record.

Physical Requirement

Must be able to lift 50 to 75 pounds. May involve work outdoors in varying weather conditions.

- (g) An ordinance prohibiting any person from riding on a skateboard, roller skates, or any other type of toy vehicle on posted private property at the Specialty Shops on 42.

41 ORD 08-08

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 (sic) 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, Ms. Audrey L. Cole and Mr. Tony R. Vuncannon in their respective capacities as representatives of the Specialty Shops on 42 Owners Association, Specialty Shops II on 42 Owners Association, Specialty Shops III on 42 Owners Association, and Harvon Properties, LTD properly petitioned the City Council of the City of Asheboro to have the office building and shopping center property located at 161 A-F North Carolina Highway 42 North, 177 A-G and 191 A-M North Carolina Highway 42 North, and 197 A-C North Carolina Highway 42 North 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 these premises.

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 the Specialty Shops on 42, Specialty Shops II on 42, Specialty Shops III on 42, and the Urgent Care building located respectively at 161 A-F North Carolina Highway 42 North, 177 A-G and 191 A-M North Carolina Highway 42 North, and 197 A-C North Carolina Highway 42 North in Asheboro.

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 the owners of these premises as the parties who requested 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 take effect and be in force from and after the date of its adoption.

Adopted in regular session by the Asheboro City Council on the 7th day of August, 2008.

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

ATTEST:

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

WHEREAS, the estimated cost of the new marquee is \$82,492.26 and is anticipated to be paid in two installments, and;

WHEREAS, the first installment has already been paid and the second installment is due upon installation of the marquee scheduled to be completed August 8, 2008, and;

WHEREAS, the City of Asheboro desires to make needed roof repairs to the Sunset Theater, and;

WHEREAS, bids for the theater roof replacement were taken on July 23, 2008 and the recommended low bid from McRae Roofing, Inc. is in the amount of \$168,645, and;

WHEREAS, expenditures in the Sunset Theater project fund need to be adjusted to reflect appropriation for the above referenced expenditures as well as some additional maintenance needed in preparation of the installation of the marquee, 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 item be increased:

67-360-0000	Contribution from General Fund	\$215,000
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Section 2: That the following expense line items be increased:

67-850-0000	Façade Construction	\$46,000
67-860-0000	Roof Replacement	<u>\$169,000</u>
		\$215,000

Adopted this the 7th day of August 2008.

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

ATTEST:

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

(III) Ordinance to amend the Water and Sewer Fund to appropriate contribution to East Presnell Street Project for pump station along Old Cedar Falls Road.

44 ORD 08-08

ORDINANCE TO AMEND THE WATER & SEWER FUND

WHEREAS, the City of Asheboro has received updated costs associated with the construction of the pump station along Old Cedar Falls Road and sewage forced main along East Presnell Street and;

WHEREAS, the City of Asheboro has already appropriated funds in the East Presnell Street Project fund for the design and construction of the sewage forced main in the amount of \$500,000 on November 8th 2007, and;

WHEREAS, the estimated cost of the pump station along Old Cedar Falls Road is \$342,995.00, and;

WHEREAS, expenditures in the Water & Sewer Fund need to be adjusted to reflect appropriation for a contribution to the East Presnell Street Project fund for the construction of the pump station along Old Cedar Falls Road, 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 item be increased:

30-399-0000	Fund Balance Allocation	\$343,000
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Section 2: That the following expense line items be increased:

30-850-7000	Contribution to Capital Project	\$343,000
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Adopted this the 7th day of August 2008.

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

ATTEST:

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

(IV) Ordinance to amend East Presnell Street Project to appropriate funds for pump station along Old Cedar Falls Road.

45 ORD 08-08

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

WHEREAS, the City of Asheboro has received updated costs associated with the construction of the pump station along Old Cedar Falls Road and sewage forced main along East Presnell Street and;

WHEREAS, the City of Asheboro has appropriated funds for the design and construction of the sewage forced main in the amount of \$500,000 on November 8th 2007, and;

WHEREAS, the estimated cost of the pump station along Old Cedar Falls Road is \$342,995.00, and;

WHEREAS, expenditures in the East Presnell Street Project need to be adjusted to reflect appropriation for the construction of the pump station along Old Cedar Falls Road, 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 item be increased:

70-367-3000	Contribution from Water & Sewer Fund	\$343,000
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Section 2: That the following expense line items be increased:

70-830-0000	Pump Station Construction	\$343,000
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Adopted this the 7th day of August 2008.

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

ATTEST:

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

- (j) A request by Michael Bryant of Recovery Christian Center to close a portion of Brewer Street between Watkins Street and Cross Street 7:00 a.m. to 7:00 p.m. on August 16, 2008 for a Recovery Christian Center Community Outreach.**
- (k) A resolution per G.S. 143-64.32 exempting the City of Asheboro from the advertisement/qualification based selection procedure to contract with W.K. Dickson & Company, Inc. of Charlotte, North Carolina for engineering services for design, bid documents and construction contract administration for a sewer collection system for the Asheboro Regional Airport, and for a sewer pump station and force main to handle the airport and Tot Hill Farm sewer flow, for an amount not to exceed \$211,300.00.**

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

(Asheboro Regional Airport Water Line Extension and Sewer Extension with Pump Station and Force Main)

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

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

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

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

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

WHEREAS, after conducting a qualification based selection process in 1993 in accordance with the public policy of this state for the purpose of selecting a firm to provide engineering services at the Asheboro Regional Airport (formerly known as the Asheboro Municipal Airport), W.K. Dickson & Company, Inc. of Charlotte was selected to provide long-term engineering services for the city's airport; and

WHEREAS, the services rendered by W.K. Dickson & Company, Inc. from 1993 to the present have met the needs and expectations of the city; and

WHEREAS, due to the record established by W.K. Dickson & Company, Inc. for providing satisfactory engineering services at the airport, and the firm's extensive knowledge of the Asheboro Regional Airport, the city engineer and city manager have recommended that the firm be selected to provide the requisite engineering services for a proposed water line extension and sewer collection system for the airport along with a proposed sewer pump station and force main to handle the sewer flow from the airport and the Tot Hill Farm development; and

WHEREAS, W.K. Dickson & Company, Inc. has proposed to provide the requested engineering services in consideration of an estimated professional fee of two hundred eleven thousand three hundred and no/100 dollars (\$211,300.00).

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Asheboro that the Asheboro Regional Airport Water Line Extension and Sewer Extension with Pump Station and Force Main Project is hereby exempted from the provisions of Article 3D of Chapter 143 of the North Carolina General Statutes on the basis of the unique knowledge/familiarity of W.K. Dickson & Company, Inc. with the Asheboro Regional Airport and the firm's demonstrated competence; and

BE IT FURTHER RESOLVED that the City Manager is hereby authorized to execute, in accordance with the applicable laws and the city's standard contracting policies, an amendment of a contract for professional services with W.K. Dickson & Company, Inc. for the provision of the engineering services described in the above-stated recitals.

Adopted by the Asheboro City Council in regular session on the 7th day of August, 2008.

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

ATTEST:

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

7. **OLD BUSINESS: [Agenda Item Number 6]**

- (a) **SUP-08-03: Request for Special Use Permit for Combustible and Flammable Liquid Storage in Quantities Greater than 2,000 but less than 100,000 Gallons Aggregate (Propane Storage).** The property of Harold W. Campbell and Kennan Hill is located on the south side of Oakhurst Road approximately 700 feet east of U.S. Highway 220 Business South (at the point where the northern portion of Oakhurst Road intersections with U.S. Highway 220 Business South). This property totals approximately 13,470 square feet. Randolph County Parcel Identification Number 7659666105 more specifically identifies the property.

Mayor Jarrell opened the public hearing on the following request.

Mr. Neely was sworn in and presented the staff's analysis of the Applicant's request, including the submitted site plan. The Applicant, Mr. Kennan Hill, requested a Special Use Permit for the Storage of Combustible/Flammable Liquids. The applicant originally proposed the storage of 100,000 gallons of propane at the above-described location. Since the June 2008 staff report, the applicant has submitted in a timely manner a revised site plan proposing the storage of 90,000 gallons of propane at the above-referenced location.

Mr. Kenneth Beason was sworn in and provided testimony in support of the request as one of the parties involved in developing the proposed land use.

There being no further comments and no opposition from the public, Mayor Jarrell closed the public hearing. An audiotape of the testimony presented during this hearing is on file in the City Clerk's office.

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

The formal findings of fact, conclusions of law, and order granting the Special Use Permit will be entered by the Council during regular session on September 4, 2008. This order will reflect certain conditions imposed upon this permit as a consequence of the testimony presented during the hearing of this matter.

- (b) **Consideration of an ordinance requested by Moffitts, Inc. to annex 124.377 acres along the north side of Old Humble Mill Road into the City of Asheboro as a satellite annexation.**

[The above-referenced item was previously withdrawn by the applicant.]

- (c) **Consideration of a proposed contract with the East Side Volunteer Fire Protection Association, Inc. for the provision of fire protection services.**

[The above-referenced item was withdrawn by staff as a consequence of the applicant's withdrawal of the annexation request that originally necessitated the need to contract for fire protection services.]

NEW BUSINESS:

8. **Land Use Issues: [Agenda Item Number 7]**

- (a) **RZ-08-29: Request to rezone from Randolph County Zoning to City of Asheboro Zoning.** A portion of the Tot Hill Farm community on the north and south sides of Tot Hill Farm Road including the residential lots, homes, town homes, farmhouse, pavilion (event barn), pool and pool cabana of the Tot Hill Farm community. More specifically, the proposed rezoning consists of 198.439 acres, including Tot Hill Farm, Phase I Section A; Tot Hill Farm Section 2; Tot Hill Farm Section 3; Johns Ridge, Phase 2, Section 5; Patio Homes, Section 1; Home Place Townhomes; Randolph County Parcel Identification Number 7638063534 and a portion of Randolph County Parcel Identification Number 7628877241.

Due to a financial conflict of interest, Mr. Crisco asked to be excused from any discussion and action regarding the above-referenced item. A motion was made by Mr. Smith and seconded by Mr. Burks to excuse Mr. Crisco from any discussion and voting. Council Members Baker, Burks, Carter, Moffit, Priest, and Smith adopted this motion. Then, Mayor Jarrell and Mr. Priest asked to be excused from any discussion and action regarding the above-referenced item due to a financial conflict of interest. A motion was made by Mr. Smith and seconded by Mr. Burks to

excuse Mayor Jarrell and Mr. Priest from any discussion and voting. Council Members Baker, Burks, Carter, Moffitt, and Smith unanimously adopted this motion.

A public hearing was then conducted with Mayor Pro Tempore Smith serving as the presiding officer. Mr. Neely presented the Planning Department's request to rezone the above-described property from Randolph County Zoning to City Zoning. In essence, an R15 zoning designation was proposed for all of the affected property, except for the non-residential uses, the Homeplace Townhomes Subdivision and land in the vicinity of Tot Hill Trail. For these areas, an RA-6 zoning designation was proposed. The Planning Department Staff recommended approval of the request based on the following:

"Due to the recent annexation of the Tot Hill Farm community, the appropriate city zoning designations need to be selected for the areas that have been annexed. The purpose of these zoning designations is to place each parcel of land associated with the annexation area into the appropriate zoning district that is most compatible with existing and future development and in a manner that promotes the public interest and a reasonable uses (sic) of the properties. After receiving input from the Planning Board and citizens affected by the rezoning amendment, staff believes that the proposed zoning designations are the most compatible designations given the context of the affected properties."

The Planning Board concurred with the staff's reasoning. Dr. Stuart B. Fountain, President of Tot Hill Farm Homeowners Association, presented comments in support of the requested rezoning.

There being no further comments and no opposition from the public, Mayor Pro Tempore Smith closed the public hearing.

Upon motion by Mr. Baker and seconded by Ms. Carter, Council voted unanimously to accept the recommendation of the Planning Board and placed the above-described property in the city zoning districts recommended by the planning department staff. Council Members Baker, Burks Carter, Moffitt, and Smith adopted this motion.

Upon motion by Mr. Baker and seconded by Mr. Burks, Council voted unanimously to limit the foregoing excusal of Mayor Jarrell, Council Member Crisco, and Council Member Priest to agenda item 8(a). Council Members Baker, Burks, Carter, Moffitt, and Smith adopted this motion. Mayor Jarrell, Council Member Crisco, and Council Member Priest then returned to their seats at the table and participated in the remainder of this meeting.

Mayor Jarrell opened the public hearing on the following request.

(b) RZ-08-30 Request for General Technical Amendments to the Asheboro Zoning Ordinance.

Mr. Neely explained that the proposed amendments to the zoning ordinance were designed to eliminate obsolete language and clarify the text of the ordinance. The issues impacted by the proposed amendments include multi-use commercial and industrial developments, adult uses, drinking establishments, and agricultural tourism facilities.

A more specific listing of the proposed changes is as follows:

"Amend Table 200-2 (Table of Uses), Notes to Table 200-2, Article 400 (Off-Street Parking Requirements), Table 400-1 (Parking Requirements); Article 500 (Signs) including Table 500-1 and Notes to Article 500, Article 600 (Special Uses) and Article 1100 (Definitions). These proposed Technical Amendments address the following uses: Multi-Use Commercial Developments, Multi-Use Industrial Developments, Political Signs (size, height, duration of placement), Adult Businesses, Drinking Establishments (Bar, Cocktail Lounge, Tavern Coffeehouse, Cabaret, etc.) Breweries/Microbreweries/Brewpubs, and Liquor/Package Stores. The proposed Technical Amendments also add a Definition (Article 1100) Use Category (Table 200-2) and Special Use Permit standards (Article 600) for Agricultural Tourism Facilities."

The Planning Department Staff believes the proposed amendments clarify vague language, eliminate erroneous references, and address various zoning issues in a manner that is in the public's interest. Therefore, Mr. Neely recommended approval of the proposed amendments with corrections for certain typographical errors noted in the amendment Article of 500 during the public hearing.

The Planning Board also recommended approval of the proposed amendments on the basis of the board's concurrence with the staff's reasoning. However, the Planning Board did state the need for vigilance about ensuring buffering requirements between adjoining uses (e.g. width of buffer and plantings) are adequate for compatibility between districts. This need for vigilance is especially important when commercial and industrial uses adjoin residential uses.

During the public hearing, Mr. Kim Markham and Mr. Jim Wright inquired about and raised concerns with the city's regulation of political signs. Dr. John Rogers inquired and raised concerns about the sale of alcoholic beverages near schools and churches.

There being no further comments nor opposition from the public, Mayor Jarrell closed the public hearing. A copy of the PowerPoint presentation utilized by Mr. Neely during this hearing is on file in the City Clerk's office.

Upon motion by Mr. Smith and seconded by Mr. Baker, Council voted unanimously to accept the recommendation of the Planning Board and approved, as revised during the public hearing to correct typographical errors, the proposed amendments to the Asheboro Zoning Ordinance. The Council members directed planning department staff members to follow up on the Planning Board's concerns and review the city's screening/buffering requirements. Additionally, staff is to review and work on improving enforcement procedures/mechanisms for the zoning ordinance. A copy of the approved text of the amendments is on file in the City Clerk's office.

9. Public Comment Period. [Agenda Item Number 8]

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

10. Consideration of approval of a resolution for *Randolph Reads*. [Agenda Item Number 9]

[With the consent of the Council, Mayor Jarrell moved this agenda item to immediately follow Agenda Item Number 4. Please see item number 5 in these minutes.]

11. Alcoholic Beverage Control Issues:

(a) Consideration of a resolution designating an official to make recommendations to the North Carolina Alcoholic Beverage Control Commission on ABC permit applications.

Mr. Sugg presented and recommended adoption, by reference, of a resolution designating the city manager to make recommendations to the North Carolina Alcoholic Beverage Control Commission on ABC permit applications.

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

39 RES 08-08

**NORTH CAROLINA
ALCOHOLIC BEVERAGE CONTROL COMMISSION
(919) 779-0700**

**Location: 3322 Garner Road
Raleigh, NC 27610**

**Mail: 4307 Mail Service Center
Raleigh, NC 27699-4307**

**RESOLUTION OF THE CITY OF ASHEBORO, COUNTY OF RANDOLPH, REGARDING THE
DESIGNATION OF AN OFFICIAL TO MAKE RECOMMENDATIONS TO THE NORTH CAROLINA
ALCOHOLIC BEVERAGE CONTROL COMMISSION ON ABC PERMIT APPLICATIONS.**

WHEREAS, G.S.18B-904(f) authorizes a governing body to designate an official, by name or by position, to make recommendations concerning the suitability of persons or locations for ABC permits; and

WHEREAS, the City of Asheboro, County of Randolph, wishes to notify the NC ABC Commission of its designation as required by G.S.18B-904(f);

BE IT THEREFORE RESOLVED that the City Manager is hereby designated to notify the North Carolina Alcoholic Beverage Control Commission of the recommendations of the City of Asheboro, County of Randolph, regarding the suitability of persons and locations for ABC permits within its jurisdiction.

BE IT FURTHER RESOLVED THAT notices to the City of Asheboro, County of Randolph, should be mailed or delivered to the official designated above at the following address:

Mailing address: Post Office Box 1106
Office location: 146 North Church Street
City: Asheboro, NC
Zip Code: 27204-1106 Phone #: (336) 626-1201, Ext. 213

This the 7th day of August, 2008.

s/ David H. Jarrell
(Mayor/Chairman)

Sworn to and subscribed before me this the 7th day of August, 2008.

s/ Holly H. Doerr
(Clerk)

(b) Consideration of ordinances regulating the possession and consumption of certain alcoholic beverages in specified locations.

Mr. Sugg presented an ordinance amending Section 130.03 of the Code of Asheboro. Upon motion by Mr. Smith and seconded by Mr. Crisco, Council voted unanimously to adopt the following ordinance by reference.

46 ORD 08-08

AN ORDINANCE AMENDING SECTION 130.03 OF THE CODE OF ASHEBORO

WHEREAS, Section 18B-300(c) of the North Carolina General Statutes provides that a city may by ordinance regulate or prohibit the consumption or possession of malt beverages and unfortified wine in certain locations; and

WHEREAS, in light of the results of the city alcoholic beverage election conducted on July 29, 2008, the City Council of the City of Asheboro has decided to amend Chapter 130 of the Code of Asheboro in order to effectively implement the above-described regulatory powers.

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

Section 1. Section 130.03 of the Code of Asheboro is hereby rewritten to provide as follows:

§ 130.03 — POSSESSION AND CONSUMPTION OF ALCOHOLIC BEVERAGES ON CITY PROPERTY

~~It shall be unlawful for any person to purchase, possess or consume any alcoholic beverage at any city park, recreational area or any other property owned or occupied by the city. Any person found guilty of violating this section shall be guilty of a misdemeanor.~~

§ 130.03. CONSUMPTION AND POSSESSION OF ALCOHOLIC BEVERAGES IN CERTAIN LOCATIONS

(A) Consumption of malt beverages and unfortified wine. It shall be unlawful for any person who is not an occupant of a motor vehicle to consume a malt beverage or unfortified wine on any public street, sidewalk, or alley in the city; or on any other property owned, occupied, or controlled by the city.

(B) Possession of open containers of malt beverages and unfortified wine. It shall be unlawful for any person who is not an occupant of a motor vehicle to possess open container(s) of malt beverages and unfortified wines on any public street, sidewalk or alley in the city; or on any other property owned, occupied, or controlled by the city. For the purposes of this subsection, an open container means a container whose seal has been broken or a container other than the manufacturer's unopened original container.

(C) Possession of malt beverages and unfortified wines on public streets, alleys, or parking lots which are temporarily closed to regular traffic for special events. It shall be unlawful for any person to possess any malt beverage or unfortified wine on any public street, alley, or parking lot which has been temporarily closed to regular traffic for a special event.

(D) Possession and consumption of fortified wine, spirituous liquor, and mixed beverages. The possession or consumption of fortified wine, spirituous liquor, or mixed beverages is hereby prohibited on property owned or leased by the city.

(E) Exception for sworn law enforcement officers. The regulations contained in this section shall not be construed to prohibit a sworn law enforcement officer acting in the performance of his official duties or a person acting under the immediate and direct supervision of a sworn law enforcement officer in furtherance of the officer's official duties from possessing or consuming alcoholic beverages.

(F) Penalties. Any person who violates the prohibitions prescribed by subsections (A), (B), and (C) shall be guilty of a misdemeanor in accordance with Section 14-4 of the North Carolina General Statutes.

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 full force from and after the date of its adoption.

Adopted by the Asheboro City Council in regular session on the 7th day of August, 2008.

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

ATTEST:

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

- (i) Mr. Sugg also presented an ordinance amending Chapter 130 of the Code of Asheboro to exercise the local option to regulate the retail sale of certain alcoholic beverages on Sundays. As drafted, the ordinance would have exercised the local option to the full extent of the law. The ordinance drafted by staff provided as follows:

AN ORDINANCE AMENDING CHAPTER 130 OF THE CODE OF ASHEBORO

WHEREAS, Section 18B-1004(d) of the North Carolina General Statutes provides for a local option to prohibit the retail sale of malt beverages, unfortified wine, and fortified wine during any or all of the hours from 12:00 Noon on Sunday until 7:00 A.M. on the following Monday; and

WHEREAS, in light of the results of the city alcoholic beverage election conducted on July 29, 2008, the City Council of the City of Asheboro has decided to amend Chapter 130 of the Code of Asheboro in order to exercise this local option.

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

Section 1. Section 130.08 of the Code of Asheboro is hereby enacted to provide as follows:

§ 130.08 RETAIL SALE OF CERTAIN ALCOHOLIC BEVERAGES ON SUNDAYS

(A) *Prohibition of retail sales.* It shall be unlawful for any person to engage in the retail sale of malt beverages, unfortified wine, and fortified wine during any or all of the hours from 12:00 Noon on Sunday until 7:00 A.M. on the following Monday.

(B) *Exceptions.* Nothing in this section shall be construed to prohibit the following:

- (1) Sales in establishments having brown-bagging or mixed beverages permits.
- (2) The wholesale delivery and sale of unfortified wine, fortified wine, and malt beverages to retailers issued permits pursuant to N.C.G.S. § 18B-1001 or N.C.G.S. § 18B-1002(a)(2) or (5).

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 this the 7th day of August, 2008.

David H. Jarrell, Mayor

ATTEST:

Holly H. Doerr, City Clerk

Ms. Carter moved to adopt the above ordinance, and Mr. Burks seconded the motion. Mr. Burks, Ms. Carter, and Mr. Priest voted in favor of the motion. Mr. Baker, Mr. Crisco, Mr. Moffitt and Mr. Smith voted against the motion. The motion failed by a vote of 4 to 3.

(c) **Consideration of an ordinance establishing city-issued privilege licenses for establishments holding ABC permits.**

Mr. Sugg presented and recommended adoption, by reference, of an ordinance amending Chapter 110 of the Code of Asheboro.

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

47 ORD 08-08

AN ORDINANCE AMENDING CHAPTER 110 OF THE CODE OF ASHEBORO

WHEREAS, Article 2C of Chapter 105 of the North Carolina General Statutes provides for a local license tax that must be paid by each person who obtains certain permits from the North Carolina Alcoholic Beverage Control Commission to sell alcoholic beverages; and

WHEREAS, in light of the results of the city alcoholic beverage election conducted on July 29, 2008, the City Council of the City of Asheboro has decided to amend Chapter 110 of the Code of Asheboro in order to effectively implement the provisions of Article 2C of Chapter 105 of the North Carolina General Statutes.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Asheboro as follows:
Section 1. Section 110.36 of the Code of Asheboro is hereby enacted to provide as follows:

§ 110.36 Special provisions relating to licenses for establishments holding ABC permits.

(A) *Consideration of applications.* An application for a city-issued alcoholic beverage privilege license shall be submitted to the city clerk for evaluation by the city manager and the manager's designee(s). Specifically, but without limitation, the city clerk shall refer any such application to the police, fire, and building inspections departments.

(1) If none of the three (3) departments recommends denial of the requested license, and no other information is received by the city manager indicating grounds for the manager to consider denial, the city clerk shall issue the license upon payment of the annual license fee.

(2) If any one (1) of the three (3) departments recommends denial of an application, the city manager shall make the final staff level determination after reviewing the recommendations of the three (3) departments and any other relevant information received by the manager.

(a) If the manager determines that there is not sufficient reason to consider denial or non-renewal of an application, he shall issue his determination and direct that the license be issued.

(b) If the manager determines that there is sufficient lawful reason to consider denial or non-renewal of an application, the manager shall refer the application to the city council for its consideration at the next regular meeting of the council.

(c) Upon receiving a recommendation from the city manager that an application for an alcoholic beverage privilege license or renewal be denied, before considering whether to deny the license, the council shall give the applicant an opportunity to appear at a hearing before the council and to offer evidence. Any hearing held under the provisions of this section shall be upon at least ten (10) days' notice to the applicant. All persons who present evidence at such a hearing shall be sworn and parties shall have the right to cross-examine witnesses.

(d) The council shall make written findings of fact based on the evidence presented at the hearing. If the council finds that the application should be issued, it shall direct the manager to issue the requested license. If the council finds that the license should be denied, it shall enter its decision.

(e) The applicant may appeal the denial of a license to the Randolph County Superior Court, by an action in the nature of certiorari, if notice of appeal is given within ten (10) days of the receipt of written findings stating the basis of the council's denial of the requested permit.

(f) The city manager shall establish any administrative policies and application forms necessary to implement this section.

(B) *License and tax.* In addition to the taxes that must be paid for city beer and wine retail licenses in accordance with N.C.G.S. § 105-113.77, a city malt beverage wholesaler or city wine wholesaler license must be obtained on an annual basis for

businesses located within the corporate limits of the city. This requirement does not apply to businesses located outside the corporate limits of the city, regardless of whether the business sells or delivers malt beverages or wine inside the city. The annual tax for a city malt beverage wholesaler license or a city wine wholesaler license is thirty-seven dollars and fifty cents (\$37.50).

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 this the 7th day of August, 2008.

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

ATTEST:

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

(d) Discussion of the appointment and organization of a local ABC board in accordance with Article 7 of Chapter 18B of the North Carolina General Statutes.

Mr. Sugg explained the process of appointing members to the local ABC board and read the powers of said board as set forth in the North Carolina General Statutes. After discussion, Mayor Jarrell suggested that, since there were a number of qualified applicants interested in serving on the local ABC board, the Council give him the authority to appoint a three (3) member committee to review a list of potential appointees and recommend three (3) qualified individuals to the Council for its consideration and appointment to the city's local ABC board.

Upon motion by Ms. Carter and seconded by Mr. Priest, Council voted unanimously to authorize Mayor Jarrell to appoint a three (3) member committee, consisting of Mr. Smith, Chairperson, Mr. Burks, and Mr. Crisco, to review the following list of potential appointees and recommend three (3) qualified individuals to the Council for its consideration and appointment to the city's local ABC board:

Cynthia Bailey
Brooke Schmidly
Rusty Walker
Steve Knight
Yvonne Deaton
Brad Crumpler
Johnny Bunch
Andy Huffine
Ronald Powell

The City Council then paused its consideration of items on the Council's agenda while Mr. Smith conferred in open session with the committee members. Mr. Smith then announced that the committee would meet on Monday, August 11, 2008 at 4:00 p.m. in the Council Chamber to review the above list of potential appointees and recommend three (3) qualified individuals to the Council for its consideration and appointment to the city's local ABC board. The City Council will consider this recommendation during a special meeting that is to be held at 5:00 p.m. on August 12, 2008 in the Council Chamber.

(e) General discussion including the publicizing of training sessions to be held at 10:00 a.m. and 1:30 p.m. in the conference room of the City of Asheboro Public Works Facility on August 14, 2008. These training sessions will address the topic of the North Carolina Alcoholic Beverage Control Commission's application process for ABC permits for local retailers.

Mr. Ogburn announced that North Carolina Alcoholic Beverage Control Commission would be having a training session at the City of Asheboro Public Works Facility on Thursday, August 14, 2008 at 10:00 a.m. and 1:30 p.m.. This training session would address various topics regarding the application process for ABC permits for local retailers.

11. Announcement of special joint meeting with Randolph County Commissioners, Tuesday, August 12, 2008 at 6:30 p.m. in the County Commissioners meeting room.

Mayor Jarrell announced that there would be a special joint Council meeting with the Randolph County Board of Commissioners on Tuesday, August 12, 2008 at 6:30 p.m. in the County Commissioners meeting room located at 725 McDowell Road, Asheboro, North Carolina.

12. Discussion of items not on the agenda.

- On behalf of the Redevelopment Commission, Ms. Carter requested that city staff research the possibility of an additional Code Enforcement Officer. Mr. Ogburn stated that staff would research the matter and report its findings to the Council at its regular September meeting.

There being no further business, the meeting was adjourned at 10:05 p.m.

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

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