

**REGULAR MEETING  
ASHEBORO CITY COUNCIL  
COUNCIL CHAMBER, MUNICIPAL BUILDING  
THURSDAY, JANUARY 5, 2012  
7:00 p.m.**

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

David H. Smith            ) – Mayor Presiding  
  
Talmadge S. Baker        )  
Clark R. Bell             )  
Edward J. Burks         )  
Linda H. Carter         ) – Council Members Present  
Michael W. Hunter       )  
Walker B. Moffitt       )  
Charles A. Swiers        )

John N. Ogburn, III, City Manager  
Dumont Bunker, P.E., City Engineer  
Holly H. Doerr, CMC, City Clerk/Paralegal  
John L. Evans, Senior Planner  
Casandra M. Fletcher, Marketing Specialist  
Justin T. Luck, Zoning Administrator/Planner  
T. Myers Johnson, Human Resources Director  
Ralph W. Norton, Assistant Chief of Police  
Deborah P. Reaves, Finance Director  
James W. Smith, II, Fire Chief  
Jeffrey C. Sugg, City Attorney

**1. Call to order.**

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

**2. Silent prayer and pledge of allegiance.**

After a moment of silence was observed in order to allow silent prayer or meditation, Mayor Smith asked everyone to stand and repeat the pledge of allegiance.

**3. Recognition of guests and citizens.**

Mayor Smith welcomed everyone in attendance.

**4. Consent agenda:**

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

- (a) **The minutes of the City Council's regular meeting on December 8, 2011.**
- (b) **An ordinance amending Section 51.21 of the Code of Asheboro in order to prohibit the disturbance of garbage containers placed for collection by city forces.**

**01 ORD 1-12**

**AN ORDINANCE AMENDING CHAPTER 51 OF THE CODE OF ASHEBORO**

**WHEREAS**, Chapter 51 of the Code of Asheboro prescribes general regulations pertaining to the collection of solid waste/recyclables by the City of Asheboro Environmental Services Department; and

**WHEREAS**, Section 51.21 of the Code of Asheboro prohibits interference with garbage containers that have been placed for collection; and

**WHEREAS**, the movement of the city-issued solid waste/recyclables containers from the prescribed location for collection can impede the ability of the city's Environmental Services Department to efficiently collect solid waste/ recyclables that were initially correctly placed for collection by a customer; and

**WHEREAS**, the opening of plastic bags, which were initially correctly placed within the city-issued containers, prior to collection by city forces creates a situation that enhances the likelihood of loose debris/rubbish from the containers falling outside of the body of the automated garbage truck and then accumulating along streets, sidewalks, and private property; and

**WHEREAS**, concerns about the potential for identity theft are also raised when individuals that are not involved in the city's collection of the contents of solid waste/ recyclables containers are seen opening these containers and removing the contents that have been placed for collection by city forces; and

**WHEREAS**, the Asheboro City Council has concluded that the text of Section 51.21 of the Code of Asheboro needs to be updated and clarified in order to more effectively prohibit third parties from impeding the efficient collection of solid waste/recyclables that have been properly placed for collection;

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

**Section 1.** Section 51.21 of the Code of Asheboro is hereby rewritten to provide as follows:

~~§ 51.21 INTERFERENCE WITH GARBAGE CONTAINERS PROHIBITED.~~

~~It shall be unlawful for anyone to damage, molest or otherwise interfere with garbage containers or the contents of garbage containers belonging to or placed by persons on premises other than their own, except upon permission or at the request of the owner.~~

**§ 51.21 INTERFERENCE WITH SOLID WASTE/ RECYCLABLES CONTAINERS PROHIBITED.**

(a) It shall be unlawful for anyone other than the person who initially placed the solid waste/recyclables for collection to open, move, or otherwise disturb a solid waste/recyclables container that has been placed for collection adjacent to a street or sidewalk in compliance with the regulations prescribed by this Chapter.

(b) It shall be unlawful for anyone other than the person who initially placed the solid waste/recyclables for collection to open a plastic bag placed inside a solid waste/recyclables container or to remove or otherwise disturb in any manner the contents of the solid waste/recyclables container after the container has been placed for collection adjacent to a street or sidewalk in compliance with the regulations prescribed by this Chapter.

(c) Notwithstanding divisions (a) and (b) of this Section, the prohibition against opening, moving, removing, or otherwise disturbing a solid waste/recyclables container, or its contents, after placement for collection is inapplicable to employees or contractors of the United States of America, the State of North Carolina, or the City of Asheboro when such employees or contractors are operating within the scope of their employment or contractual responsibilities.

**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 February 1, 2012.

This ordinance was adopted by the Asheboro City Council in open session during a regular meeting that was held on the 5<sup>th</sup> day of January, 2012.

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

ATTEST:

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

**(c) The 2011 annual certification of firefighters in accordance with Section 58-86-25 of the North Carolina General Statutes.**

A copy of the 2011 annual certification of firefighters is on file in the City Clerk's office. This certification is submitted to the North Carolina State Firemen's Association in Raleigh. The roster of eligible firefighters attached to the certification is used to determine eligibility for the \$50,000 line-of-duty death benefit as well as eligibility for Pension Fund credit.

**(d) Acknowledgement of the receipt of the minutes of the Asheboro ABC Board's meeting on December 5, 2011.**

A copy of the minutes received from the Asheboro ABC Board is on file in the City Clerk's office.

**OLD BUSINESS:**

**5. Continuation of a public hearing on the question of a residential planned unit development located west of the intersection of Abby Lane with Westminster Court. This combined public hearing has been called for the purpose of receiving testimony and other evidence relevant to a subdivision ordinance variance request filed under Community Development Division File No. SUB-11-02 and a Special Use Permit application filed under Community Development Division File No. SUP-11-02.**

Prior to receiving additional evidence, a motion was made by Mr. Hunter, and seconded by Ms. Carter, to excuse Mr. Swiers from any discussion and voting pertaining to this agenda item. Mr. Swiers supported this motion because of a lack of sufficient opportunity to review the entirety of the minutes of the Council meetings dating back to October 2011 when these land use cases first came before the Council for a public hearing. Council Members Baker, Bell, Burks, Carter, Hunter and Moffitt voted unanimously to adopt this motion to excuse Mr. Swiers from participating in and voting on the land use cases identified by file numbers SUB-11-02 and SUP-11-02.

This combined public hearing, which was originally opened in October 2011, pertains to an application for variances from the subdivision ordinance and an application for a Special Use Permit authorizing a residential planned unit development. The applicant, Carrington Hills II, Inc., acting by and through Gerald Hedrick, is proposing to develop a planned unit development consisting of six (6) single-family residential units on approximately 57.47 acres of land owned by Gerald D. Hedrick and Ann Hedrick and Carrington Hills, II, Inc. The site of the proposed development is located west of the intersection of Abby Lane with Westminster Court and is more specifically identified by Randolph County Parcel Identification Numbers 7741432762, 7741338154, and 7741434336.

After resuming the combined public hearing on the requested subdivision ordinance variances and Special Use Permit, Mayor Smith opened the floor for sworn testimony. Senior Planner John Evans was placed under oath and utilized a power point presentation to review the staff's analysis of this request.

A sketch design for a conventional development was approved in 1988. The applicant/developer originally proposed this phase of the development as a conventional subdivision, but this plan of development has now been abandoned by the developer. Since the developer is now proposing a planned unit development (PUD) consisting of six (6) single-family residences with a privately maintained street, all current requirements of the Zoning Ordinance and Subdivision Ordinance must be met.

Unless the City Council approves the subdivision ordinance variances requested by the developer, the combined sketch design plat/Special Use Permit site plan will not be compliant with the applicable regulations. The applicant is seeking variances from the following provisions in Article X, Section IV.C. of the Subdivision Ordinance:

Section IV.C.5. Sidewalks that meet ADA standards shall be provided along streets to connect all units, parking areas, recreation vehicle storage, recreation facilities, central trash facilities, postal centers(,) etc. and shall extend to intersections with existing streets.

Section IV.C.7. In residential PUD's parking spaces for visitor and/or overflow parking shall be installed which equals 10% of the total number of units in the project.

Section IV.C.8. In residential PUD's recreation vehicle parking/storage areas shall be installed, unless these vehicles are prohibited by covenants and restrictions. Space provided shall be 12 feet by 30 feet and shall (be) equal to 10% of the total number of units in the project.

Section IV.C.9. In residential PUD's open space and recreation space shall be provide(d) as specified in Table 200-1 under RA6 and Section 321A of the Asheboro Zoning Ordinance.

The Planning Board recommended approval of the requested subdivision ordinance variances with the following condition attached to the sidewalk requirement variance request:

- A pedestrian connection should extend between Westminster Court Extension and the recreation area shown on the site plan.

The combined public hearing on this request was initially opened during the Council's regular meeting in October 2011. During that meeting, certain adjoining property owners expressed opposition to the proposed PUD. Since then, this public hearing has been continued in order to provide the parties with time to secure legal counsel and to work on a potential plan to resolve neighborhood concerns. These efforts to informally resolve the neighbor's concerns have not been successful.

Having been placed under oath during the initial hearing of this matter in October 2011, Mr. Alan Pugh, Esq. reviewed the four standard tests and presented further testimony in support of the request on behalf of the applicant/developer.

On behalf of neighboring property owners of the Carrington Hills subdivision, Mr. R. Thompson Wright, Esq. was sworn in and offered testimony in opposition to the request. Along with Mr. Wright, neighboring property owners Ms. Helene Townsend, Mr. Thomas Schnieder, and Mr. Greg Surpass were sworn in and offered testimony in opposition to the request.

Mr. Wright presented evidence that called into question whether the proposed land use was truly a planned unit development and further called into question whether the evidence presented over the course of the public hearing was sufficient to establish the legal basis for the Council to grant a variance. More specifically, the applicant must establish that the ordinance provisions in question have created an unnecessary hardship that warrants the granting of a variance.

In the absence of the establishment of such a hardship, the Council cannot lawfully approve the requested variances. Mr. Wright contended that the evidence did not establish the existence of such an unnecessary hardship.

Ms. Helene Townsend offered, as evidence, pictures illustrating the developer's encroachment on private property without obtaining a construction easement. The pictures submitted by Ms. Townsend are on file in the City Clerk's office. Additionally, Mr. Greg Surpass offered testimony in opposition to the request and presented, as evidence, pictures of the existing streets within the subdivision.

After providing opportunities for rebuttal by each side, and after determining that no one wished to offer any additional testimony, Mayor Smith closed the public hearing. An audio recording of the testimony presented during this hearing is on file in the City Clerk's office.

Mr. Moffitt moved to grant the applicant's requested subdivision ordinance variances from Section IV.C.7. (visitor/overflow parking) and Section IV.C.8. (recreation vehicle parking/storage area) and to deny the applicant's requested variances from Section IV.C.5. (sidewalks) and Section IV.C.9. (percentage of open space and recreational space within the common area).

Mr. Baker seconded this motion, and Council Members Baker, Bell, Burks, Carter, Hunter, and Moffitt voted in favor of the motion.

Due to the impact on the validity of the Special Use Permit site plan attributable to the denial of two (2) of the applicant's requested subdivision ordinance variance requests, Mr. Pugh then asked for a continuance of the Council's consideration of the applicant's request for a special use permit for a planned unit development. Ms. Carter moved to continue this matter to the Council's regular February meeting. Mr. Burks seconded the motion. Council Members Bell, Burks, Carter, Hunter, and Moffitt voted in favor of the motion. Mr. Baker voted no.

## **NEW BUSINESS:**

### **6. Community Development Division Items:**

#### **(a) Public hearing and consideration of proposed zoning ordinance text amendments pertaining to the Center City Planning Area (Community Development Division File No. RZ-11-19).**

Mayor Smith opened the public hearing on the following request.

Senior Planner John Evans provided testimony describing the Community Development Division's on-going efforts to refine and improve the regulations, specifically including without limitation the provisions found in Article 200A of the Asheboro Zoning Ordinance, that are designed to preserve and enhance this centrally located area of the city with its distinct characteristics.

This review process includes a close examination of potential revised regulations that will better serve the goals of preservation and rehabilitation of existing neighborhoods. One example of the effort to improve the blending of preservation and rehabilitation is the focus of the revised regulations on ensuring that infield development matches the context of the area in which the new development is to occur. Due to the complexity of properly balancing competing goals, and the accompanying potential for unintended consequences, city staff believes that further study and

analysis is required before the Council considers final adoption of the revised ordinance provisions. The Planning Board concurred with the staff's assessment and recommended a continuance of this matter in order to allow for further study and analysis at the staff level.

Upon motion by Mr. Bell, and seconded by Ms. Carter, council members Baker, Bell, Burks, Carter, Hunter, Moffitt, and Swiers voted in favor of the motion and continued this matter to the Council's regular February meeting.

**(b) Consideration of a resolution authorizing the submission to the North Carolina Department of Commerce of an application for approval of an Urban Progress Zone.**

Mr. Luck presented and recommended adoption, by reference, of a resolution authorizing the submission to the North Carolina Department of Commerce of an application for approval of an Urban Progress Zone.

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

**01 RES 1-12**

**RESOLUTION AUTHORIZING THE SUBMISSION OF AN APPLICATION  
ON BEHALF OF THE CITY OF ASHEBORO TO THE NORTH CAROLINA DEPARTMENT OF  
COMMERCE FOR APPROVAL OF AN URBAN PROGRESS ZONE**

**WHEREAS**, the City Council of the City of Asheboro has determined that a certain area within the City of Asheboro may require economic incentives to assist in economic development efforts; and

**WHEREAS**, the City Council of the City of Asheboro has determined that incentives provided by the State of North Carolina are desirable; and

**WHEREAS**, the City Council of the City of Asheboro wishes to pursue re-designation of the qualifying area as a North Carolina Urban Progress Zone.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Asheboro that the City's elected and appointed officials and employees are hereby authorized to submit a formal application to the North Carolina Department of Commerce for re-designation of the identified area as a North Carolina Urban Progress Zone.

Adopted by the Asheboro City Council in regular session on the 5<sup>th</sup> day of January, 2012 in Asheboro, North Carolina.

s/ David H. Smith  
David H. Smith, Mayor

ATTEST:

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

**7. Public comment period.**

Mayor Smith opened the public comment period.

Ms. Katie Snuggs invited the council members to the Martin Luther King, Jr., Breakfast on January 16, 2012.

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

**8. Consideration of a resolution concurring with amendments made by the city manager to the City of Asheboro Personnel Policies and Procedures Manual.**

Mr. T. Myers Johnson, Human Resources Director, presented and recommended adoption, by reference, of a resolution concurring with amendments made by the city manager to the City of Asheboro Personnel Policies and Procedures Manual.

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

**RESOLUTION CONCURRING WITH AMENDMENTS MADE BY THE CITY MANAGER TO THE CITY OF ASHEBORO PERSONNEL POLICIES AND PROCEDURES MANUAL**

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

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

**WHEREAS**, since the date of the last amendment of the manual on February 10, 2011, the human resources director and/or the personnel committee have recommended to the city manager that certain improvements be made to Articles III (Pay Plan), VI (Benefits), and VII (Leaves of Absence); and

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

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

**WHEREAS**, the City Council has concluded that the city manager's decision to amend the City of Asheboro Personnel Policies and Procedures Manual is consistent with the City Council's adopted mission statement "to provide the citizens of Asheboro with excellence in leadership, fiscal management, and municipal services and to create meaningful and appropriate opportunities for citizen participation to improve the quality of life for all;"

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Asheboro that it concurs with the city manager's amendment of the City of Asheboro Personnel Policies and Procedures Manual, effective February 1, 2012, to reflect the policy changes specified in the attached exhibits.

This resolution was adopted by the Asheboro City Council in open session during a regular meeting held on the 5<sup>th</sup> day of January, 2012.

s/ David H. Smith  
David H. Smith, Mayor

ATTEST:

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

**EXHIBIT 1**

**Article III.**

**Section 7. Overtime**

The mission and purposes of city government inherently require that city employees may periodically be required to work overtime. In accordance with the Fair Labor Standards Act, the city divides employees into two groups for overtime pay purposes. Overtime work shall be work performed by an employee which exceeds the number of hours constituting the established work period for the employee's position. Overtime will be distributed as equally as practical among qualified employees in the same job classification, department and shift, without regard to age, sex, race, color, creed, religion, national origin or physical handicap.

Employees may receive compensation for overtime worked in the following manners:

a) Non-Exempt Employees

At an hourly rate of 1.5 times his/her regular rate for hours worked which exceeds their established work period or compensatory time-off at the rate of 1.5 hours off for each hour worked in excess of their established work period. The use and/or payment of accrued compensatory time-off shall be administered in strict compliance with the Fair Labor Standards Act.

b) Exempt Employees

~~In the event overtime work is authorized and performed by exempt employees, compensatory time for such overtime may be granted on an hour-for-hour basis to be~~

~~taken by the employee at a time which will, in the opinion of the employee's supervisor, interfere least with the operation of the department. Exempt employees required to work overtime because of emergency conditions or who are regularly required to work a greater number of hours than established for the class to which their position is allocated may be paid for their overtime work with approval of the City Manager. In order to receive payment for overtime work, the department head for whom the affected employee works shall, prior to submission of the department's time sheets to the accounting specialist, indicate on said employee's time sheet that the employee is classified as an exempt employee and obtain the City Manager's written approval on said time sheet of payment for overtime work. Exempt employees will not be paid for unused compensatory time upon termination of employment.~~

Exempt employees may be granted compensatory time-off, on an hour-for-hour basis, for work that would be deemed to be overtime work if performed by a non-exempt employee. For the limited purpose of interpreting paragraph b) of Article III, Section 7, this type of work will be referred to throughout the remainder of paragraph b) as "overtime work" even though such work is not treated as overtime work under the Fair Labor Standards Act. Accumulated compensatory time-off for overtime work may be taken by an exempt employee at a time which will, in the opinion of the employee's supervisor, interfere least with the city's operations. Subject to advance approval by the City Manager, exempt employees performing overtime work because of emergency conditions or who are regularly required to work a greater number of hours than established for the class to which their position is allocated may be paid at his or her regular rate of pay for overtime work rather than accruing compensatory time-off. If an exempt employee is to be paid for the overtime work rather than receiving compensatory time-off, the division or department head who supervises the affected employee shall, prior to submitting the division's or department's time sheets for payroll processing, obtain the City Manager's written approval on said time sheet for paying the employee for a designated amount of overtime work.

Notwithstanding any other provision in this manual, exempt employees who have been allowed to accumulate compensatory time-off, rather than receiving contemporaneous payment for overtime work, will not be paid for any portion of the accumulated compensatory time-off until the exempt employee terminates his or her employment with the city. In the event an exempt employee separating from employment with the city is to receive a payment for some or all of the accumulated compensatory time-off, such terminal pay is to be calculated at the employee's final regular rate of pay on the basis of the maximum amount of compensatory time-off that the employee would have been allowed to accumulate if he or she had been a non-exempt employee. The terminal pay cannot include, and exempt employees are expressly prohibited from receiving, any payment that is based on compensatory time-off hours accumulated in excess of the number of hours that could have been accumulated by a non-exempt employee. When an exempt employee terminates his or her employment with the city, the balance of any accumulated compensatory time-off that has not been used by the employee or included in the employee's terminal pay shall be deemed to be abandoned and forfeited by the employee.

## **EXHIBIT 2**

### **Article VI.**

#### **Section 5. North Carolina Local Governmental Employees' Retirement System**

Each full-time employee shall be required to join the Local Governmental Employees' Retirement System as a condition of employment, effective on the date of employment upon completion of 6 months employment. While no waiting period is established for joining the Local Governmental Employees' Retirement System, this section does not and shall not be construed in any manner to impair or impact to any degree the conditions of probationary employment found in Article V, Section 4 of this manual.

## **EXHIBIT 3**

### **ARTICLE VII. LEAVES OF ABSENCE**

#### **Section 1. Holidays**

The City Manager is authorized to grant the following holidays with pay to all full-time employees, based on one (1) regular work day per holiday:

New Year's Day  
Martin Luther King, Jr. Day  
Good Friday  
Memorial Day

Independence Day  
Labor Day  
Thanksgiving - 2 days  
Christmas - 3 days

Regular holidays or unscheduled workdays which occur during a vacation, sick or other leave period of any officer or employee of the city shall not be considered as vacation, sick or other leave.

Employees required to work on regular scheduled holidays may be granted compensatory time off.

When any of the aforementioned holidays fall on a Saturday or a Sunday, the day(s) observed will be at the discretion of the City Manager.

Notwithstanding any other provision in this section, the City Manager may suspend any previously approved holiday leave when, in the discretion of the City Manager, the city is confronting events or circumstances that require the utilization of extraordinary measures and operations by city forces in order to provide the level of service expected of the city. This authority to suspend holiday leave shall not be construed as placing any employee "on-call." Unless an employee is subject to an on-call policy implemented in the regular course of business by a division or department of the city, the City Manager's authority to suspend holiday leave does not require employees to remain on the city's premises or in close proximity to city facilities. Under this provision, an employee's obligation is to have accurate contact information on file with the Human Resources Department so that he or she can be reached when not working and advised to return to work as soon as is practicable. This authority to suspend holiday leave is inapplicable to employees who are using holiday leave as part of an approved FMLA leave or during the 7-day waiting period prescribed by the North Carolina Workers' Compensation Act.

#### **Section 4. Vacation Leave – Manner of Taking**

Employees shall be granted the use of earned vacation leave upon request and at those times designated by their supervisor which will least obstruct normal operations of the division or department.

Notwithstanding any other provision in this section, the City Manager may suspend any previously approved vacation leave when, in the discretion of the City Manager, the city is confronting events or circumstances that require the utilization of extraordinary measures and operations by city forces in order to provide the level of service expected of the city. This authority to suspend vacation leave shall not be construed as placing any employee "on-call." Unless an employee is subject to an on-call policy implemented in the regular course of business by a division or department of the city, the City Manager's authority to suspend vacation leave does not require employees to remain on the city's premises or in close proximity to city facilities. Under this provision, an employee's obligation is to have accurate contact information on file with the Human Resources Department so that he or she can be reached when not working and advised to return to work as soon as is practicable. This authority to suspend vacation leave is inapplicable to employees who are using vacation leave as part of an approved FMLA leave or during the 7-day waiting period prescribed by the North Carolina Workers' Compensation Act.

#### **9. Consideration of a resolution authorizing the execution of an installment financing contract and related instruments with Branch Banking and Trust Company for a loan in an amount not to exceed \$327,000.00.**

Ms. Reaves presented and recommended adoption, by reference, of a resolution authorizing the execution of an installment financing contract and related instruments with Branch Banking and Trust Company for a loan in an amount not to exceed \$327,000.00.

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

**03 RES 1-12**

#### **RESOLUTION AUTHORIZING THE EXECUTION OF AN INSTALLMENT FINANCING AGREEMENT WITH BRANCH BANKING AND TRUST COMPANY FOR A LOAN IN AN AMOUNT NOT TO EXCEED \$327,000**

**WHEREAS**, in order to maintain a satisfactory level of municipal services for the citizens of the City of Asheboro, the Asheboro City Council adopted, on June 28, 2011, a budget ordinance for fiscal year 2011-2012 that allocated funding from the General Fund for a leaf truck in the Street Department and allocated funding from the Water and Sewer Fund for the acquisition of a skid loader and truck for the Wastewater Treatment Plant as well as the acquisition of a truck for each of the following departments: (a) the Water Maintenance Department, (b) the Wastewater Maintenance Department, (c) the Technical Services Department, and (d) the Systems Maintenance Department; and

**WHEREAS**, the budgeted amount of the expenditure from the General Fund for the leaf truck was one hundred forty thousand dollars (\$140,000), and the budgeted amount of the expenditure from



the Water and Sewer Fund for vehicles and equipment was one hundred eighty-seven thousand dollars (\$187,000) with the total expenditure from both funds not to exceed three hundred twenty-seven thousand dollars (\$327,000); and

**WHEREAS**, Section 160A-20 of the North Carolina General Statutes authorizes the city to finance the purchase of personal property by means of an installment contract that creates a security interest in the purchased property to secure payment of the purchase price to the entity supplying financing for the purchase transaction; and

**WHEREAS**, the adopted budget ordinance called for the above-stated expenditures to be financed by means of entering into an installment financing contract that would create a security interest in the municipal vehicles and equipment to be acquired with the proceeds from this financing arrangement; and

**WHEREAS**, the said municipal vehicles and equipment were to be purchased and placed into service as soon as possible by utilizing the available funds in the General Fund and the Water and Sewer Fund; and

**WHEREAS**, loan proceeds obtained from installment financing are to be used to reimburse the General Fund and the Water and Sewer Fund for the above-described initial expenditures for municipal vehicles and equipment; and

**WHEREAS**, more favorable financing terms can be obtained by taking the steps necessary to allow the lending institution from whom financing is ultimately obtained to exclude from its gross income the interest paid or payable under the financing agreement with the city; and

**WHEREAS**, in compliance with the applicable Treasury Regulations, the Asheboro City Council adopted Resolution Number 25 RES 7-11 on July 14, 2011, and officially stated as follows:

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Asheboro that, prior to the execution of an installment financing contract and consistent with the adopted budget ordinance, a maximum of one hundred forty thousand and no/100 dollars (\$140,000.00) may be expended from the General Fund by the Street Department for a leaf truck and a maximum of one hundred eighty-seven thousand and no/100 dollars (\$187,000.00) may be expended from the Water and Sewer Fund for the purchase of a skid loader and truck for the Wastewater Treatment Plant as well as the purchase of a truck for each of the following departments: (a) the Water Maintenance Department, (b) the Wastewater Maintenance Department, (c) the Technical Services Department, and (d) the Systems Maintenance Department; and

BE IT FURTHER RESOLVED that it is the official intent of the Asheboro City Council to fully reimburse, with loan proceeds from an installment financing contract to be executed prior to the end of the 2011-2012 fiscal year, the General Fund and the Water and Sewer Fund for the purchase earlier in the same fiscal year of vehicles and equipment needed by the municipal departments listed in the immediately preceding paragraph to continue to provide essential municipal services; and

**WHEREAS**, subsequent to the adoption of Resolution Number 25 RES 7-11, the city manager, finance director, and public works director re-evaluated the expenditures proposed for fiscal year 2011-2012 and concluded that the one hundred forty thousand dollars (\$140,000) originally budgeted for a leaf truck would address more pressing needs in the City of Asheboro Public Works Division if these funds were to be reallocated within the street department to purchase municipal equipment assigned a higher priority than a leaf truck by the public works director and the street department superintendent; and

**WHEREAS**, the list of municipal vehicles and equipment prioritized ahead of a leaf truck is as follows:

1. Track Loader
2. 2011 4WD Half Ton Pick-Up Truck
3. Zero Turn Mower
4. Two (2) 8-Inch Finish Mowers
5. Pole Camera; and

**WHEREAS**, in compliance with the applicable Treasury Regulations, the Asheboro City Council took into account the revised opinion of the City of Asheboro Public Works Division's management team and adopted Resolution Number 34 RES 9-11 on September 8, 2011, in order to officially state as follows:

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Asheboro that, prior to the execution of an installment financing contract and

consistent with the adopted budget ordinance, as amended during the course of the fiscal year, one hundred forty thousand and no/100 dollars (\$140,000.00) may be expended from the General Fund by the Street Department for the municipal equipment listed in the immediately preceding paragraph (a track loader, a 2011 4WD half ton pick-up truck, a zero turn mower, two (2) 8-inch finish mowers, and a pole camera) and one hundred eighty-seven thousand and no/100 dollars (\$187,000.00) may be expended from the Water and Sewer Fund for the purchase of a skid loader and truck for the Wastewater Treatment Plant as well as the purchase of a truck for each of the following departments: (a) the Water Maintenance Department, (b) the Wastewater Maintenance Department, (c) the Technical Services Department, and (d) the Systems Maintenance Department; and

**BE IT FURTHER RESOLVED** that it is the official intent of the Asheboro City Council to fully reimburse the General Fund and the Water and Sewer Fund, with loan proceeds from an installment financing contract to be executed prior to the end of the 2011-2012 fiscal year, for funds advanced from the General Fund and the Water and Sewer Fund for the purchase earlier in the same fiscal year of the above-listed vehicles and equipment needed by the municipal departments to continue to provide essential municipal services; and

**BE IT FURTHER RESOLVED** that this resolution supersedes Resolution Number 25 RES 7-11 that was adopted on July 14, 2011; and

**WHEREAS**, after searching for favorable financing rates and terms, the city manager and the finance director have recommended approval of an installment financing proposal from Branch Banking and Trust Company (hereinafter referred to as "BB&T") that proposes financing an amount not to exceed three hundred twenty-seven thousand dollars (\$327,000) at an annual interest rate that is not to exceed one and sixty-nine hundredths percent (1.69%) for a term not to exceed forty-eight (48) months; and

**WHEREAS**, the financing agreement prepared by BB&T is attached hereto as EXHIBIT 1 and is hereby incorporated into this resolution by reference as if copied fully herein; and

**WHEREAS**, the Asheboro City Council has concluded that entry into the financing agreement proposed by BB&T is consistent with the best interests of the city;

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Asheboro that the installment financing agreement attached hereto as EXHIBIT 1 is hereby approved; and

**BE IT FURTHER RESOLVED** that the mayor, city manager, city clerk, finance director, and all other necessary city officials are hereby authorized to execute and deliver to BB&T on behalf of the City of Asheboro the attached financing agreement and any related instruments necessary for fully implementing the said financing arrangement; and

**BE IT FURTHER RESOLVED** that, notwithstanding any provision of the attached financing instruments, no deficiency judgment may be rendered against the City of Asheboro in any action for breach of a contractual obligation under the financing agreement and related instruments executed with BB&T; and

**BE IT FURTHER RESOLVED** that, notwithstanding any provision of the attached installment financing agreement and related instruments, the taxing power of the City of Asheboro is not and may not be pledged directly or indirectly to secure any moneys due under the financing agreement; and

**BE IT FURTHER RESOLVED** that the security provided under the terms of the instruments found in EXHIBIT 1 is the sole security for BB&T under this financing arrangement; and

**BE IT FURTHER RESOLVED** that city officials shall not take or omit to take any action the taking or omission of which would cause the interest payments paid by the city under the said installment financing agreement to be includable in the gross income for federal income tax purposes of the registered owners of the interest payment obligations; and

**BE IT FURTHER RESOLVED** that the Asheboro City Council hereby designates the city's obligations to make principal and interest payments as prescribed in the attached financing documents as "qualified tax-exempt obligations" for the purpose of Internal Revenue Code Section 265(b)(3); and

**BE IT FURTHER RESOLVED** that the adoption of this resolution is part of the continuing declaration by the Asheboro City Council of its intent to reimburse from the financing agreement proceeds the expenditures from the city's General Fund as well as its Water and Sewer Fund for the municipal vehicles and equipment described herein; and

**BE IT FURTHER RESOLVED** that all prior actions of the city's officers in furtherance of the purposes of this resolution are hereby ratified, approved, and confirmed, and any and all resolutions (or parts thereof) in conflict with this resolution are hereby repealed to the extent of any such conflict; and

**BE IT FURTHER RESOLVED** that the provisions of this resolution shall become effective upon adoption.

Upon motion of Mr. Baker, and seconded by Mr. Burks, this resolution was adopted by the Asheboro City Council in open session during a regular meeting held on the 5<sup>th</sup> day of January, 2012. 7 council members voted in favor of adopting this resolution, and 0 council members voted in opposition to adopting this resolution.

s/ David H. Smith  
David H. Smith, Mayor  
City of Asheboro, North Carolina

ATTEST:

s/ Holly H. Doerr  
Holly H. Doerr, CMC, City Clerk  
City of Asheboro, North Carolina

**[Exhibit 1 that is referred to in this resolution is attached to the original resolution on file in the City Clerk's office.]**

**10. Update on the acquisition of land for a third fire station to serve eastern Asheboro.**

Mr. Ogburn reported that approximately 2.670 acres of land located at 1431 East Salisbury Street has been purchased for use as a third fire station to serve eastern Asheboro. Additionally, Mr. Ogburn presented and recommended adoption, by reference, of a resolution of appreciation honoring the descendants of William Kendrick Lewallen and Inez Curtis Lewallen Spence for their interest in facilitating the acquisition of land for a third fire station. Mr. Lewallen was an active volunteer of the Asheboro Fire Department for approximately thirty (30) years between 1933 and 1963.

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

**04 RES 1-12**

**RESOLUTION OF APPRECIATION**

**WHEREAS**, the City of Asheboro has engaged for a significant period of time in a search for a suitable location for a third fire station to serve eastern Asheboro; and

**WHEREAS**, on December 30, 2011, the City of Asheboro purchased approximately 2.670 acres of land located at 1431 East Salisbury Street for use as the site of a future fire station; and

**WHEREAS**, the acquisition of this real property from the Estate of Inez Curtis Lewallen Spence would not have been possible without the genuine interest displayed by the heirs of Ms. Spence in facilitating the acquisition of land for a third fire station; and

**WHEREAS**, this willingness and commitment to acting in the best interests of the community is entirely consistent with the example set by Inez Curtis Lewallen Spence, who passed away on August 15, 2007, after devoting five (5) years to the Randolph County Schools and thirty-five (35) years of her life to the Asheboro City Schools, and her husband, William Kendrick Lewallen, who passed away on January 23, 1975, after actively volunteering his services to the Asheboro Fire Department for a time period of approximately thirty (30) years between 1933 and 1963;

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Asheboro, on this the 5<sup>th</sup> day of January, 2012, that the City of Asheboro extends its gratitude to the descendants of William Kendrick Lewallen and Inez Curtis Lewallen Spence for their continuation of a tradition of contributing to the betterment of the community by making it possible for the city to secure a preferred location for a future third fire station; and

**BE IT FURTHER RESOLVED** that the City Clerk is hereby authorized and instructed to enter into the city records a copy of this Resolution of Appreciation and to transmit a copy of this resolution to Mr. Reece K. Hughes, Co-Executor of the Estate of Inez C. Spence.

s/ David H. Smith  
David H. Smith, Mayor

ATTEST:

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

**11. City Council meeting dates:**

**(a) Review of dates for regular meetings during the remainder of 2012.**

After a brief discussion, the council members came to the informal consensus that only one regular meeting date should be changed for the 2012 calendar year. The one change pertains to the regular meeting scheduled for July 5, 2012.

The council members agreed during their discussion that the regular July meeting should be rescheduled for July 12, 2012 due to the July 4<sup>th</sup> holiday. An ordinance rescheduling the meeting will be acted upon by the Council during its regular February meeting.

**(b) Announcement of a special meeting to be held on Thursday, January 19, 2012 at 5:30 p.m.**

Mayor Smith announced that a special city council meeting will be held on Thursday, January 19, 2012, at 5:30 p.m. in the council chamber.

There being no further business, the meeting was adjourned at 9:20 p.m.

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

s/ David H. Smith  
David H. Smith, Mayor