

**REGULAR MEETING  
ASHEBORO CITY COUNCIL  
CITY OF ASHEBORO PUBLIC WORKS FACILITY CONFERENCE ROOM  
THURSDAY, DECEMBER 6, 2012  
7:00 p.m.**

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

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

John N. Ogburn, III, City Manager  
Dumont Bunker, P.E., City Engineer  
Holly H. Doerr, CMC, NCCMC, City Clerk/Paralegal  
John L. Evans, Assistant Community Development Director  
T. Myers Johnson, Human Resources Director  
Justin T. Luck, Zoning Administrator/Planner  
Trevor L. Nuttall, Community Development Director  
Deborah P. Reaves, Finance Director  
James O. Smith, Police Captain  
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. Consent agenda:**

Upon motion by Mr. Burks and seconded by Mr. Baker, Council Members Baker, Bell, Burks, Hunter, Moffitt and Swiers voted unanimously to approve the following consent agenda items:

- (a) **The minutes of the city council's regular meeting on November 8, 2012.**
- (b) **The technical corrections to the previously approved minutes of the city council's regular meeting on October 4, 2012.**

**MEMORANDUM**

**TO:** Mayor Smith and Members of the Asheboro City Council  
**FROM:** Holly H. Doerr, CMC, NCCMC, City Clerk/Paralegal  
**DATE:** Friday, November 30, 2012  
**RE:** Corrections to Minutes for the October 4, 2012 Regular City Council Meeting

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Attached, please find pages 20-22 of the minutes from the October 4, 2012 regular City Council meeting. Subsequent to the approval of these minutes during your November 2012 meeting, the omission of a sentence and an incorrect time for an upcoming event were discovered.

The corrections that are needed in order to maintain the accuracy of your meeting minutes have been underlined to denote added text and the strikethrough feature has been used to denote text that will be removed. Any and all changes have been highlighted in yellow.

I respectfully request the attached corrections be approved as part of your consent agenda on December 6, 2012.

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**These technical corrections were approved by the Asheboro City Council in open session during a regular meeting that was held on December 6, 2012.**

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

ATTEST:

/s/Holly H. Doerr  
Holly H. Doerr, CMC, NCCMC

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and as shown on the plat of survey entitled "Property of CITY of ASHEBORO Former 120, 122 & 124 South Randolph Avenue." This plat of survey was drawn under the supervision of Thomas Scaramastra, a Professional Land Surveyor with registration number L-4421. The said plat of survey, which is identified by Job No. 09058, is recorded in Plat Book 127, Page 57, Randolph County Public Registry.

**Section 3.** The consideration for the conveyance is the following set of conditions, covenants, and restrictions, which shall be incorporated into the non-warranty deed given by the city to the non-profit corporation along with the reservation of a permanent sanitary sewer easement in favor of the city for the purpose of maintaining an existing sanitary sewer line:

1. The S. Randolph Ave. Lot is to be used for the development of owner-occupied housing for persons of low to moderate income.
2. With regard to monetary consideration, the sum of \$17,500.00 is to be paid to the City of Asheboro in good funds according to the following payment schedule:
  - a. An initial payment of \$2,000.00 is to be paid on or before November 1, 2012; and
  - b. A second payment of \$2,000.00 is to be paid on or before December 1, 2012; and
  - c. A third payment of \$2,000.00 is to be paid on or before January 1, 2013; and
  - d. A fourth payment of \$2,000.00 is to be paid on or before February 1, 2013; and
  - e. A fifth payment of \$2,000.00 is to be paid on or before March 1, 2013; and
  - f. A sixth payment of \$2,000.00 is to be paid on or before April 1, 2013; and
  - g. A seventh payment of \$2,000.00 is to be paid on or before May 1, 2013; and
  - h. An eighth payment of \$2,000.00 is to be paid on or before June 1, 2013; and
  - i. A ninth and final payment of \$1,500.00 is to be paid on or before July 1, 2013.

**Section 4.** The deed given by the city to convey the S. Randolph Ave. Lot shall convey title in fee simple determinable. The fee simple interest of Habitat for Humanity of Randolph County, N.C., Inc. shall terminate if the non-profit corporation uses or conveys the property for any purpose other than the development of owner-occupied housing for persons of low to moderate income.

**Section 5.** The city clerk shall publish a notice summarizing the contents of this resolution, and the property may be sold at any time subsequent to the expiration of a 10-day waiting period that begins to run from the date of the publication of the said notice.

This resolution was adopted by the Asheboro City Council in open session during a regular meeting that was held on the 4<sup>th</sup> day of October, 2012.

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

ATTEST:

/s/Tamela D. Garner  
Tamela D. Garner, Deputy City Clerk

**10. Consideration of a resolution authorizing the execution of an interlocal contract for cooperative purchasing.**

Mr. Sugg reported that city staff had been studying the possibility of enhancing the city's purchasing flexibility and efficiency by utilizing, when warranted by the facts of a particular case, competitive bidding group purchasing programs. This exception to the bidding statutes is authorized by Section 143-129(e)(3) of the North Carolina General Statutes.

The Houston-Galveston Area (H-GAC) Council has created a cooperative purchasing program that qualifies as a competitive bidding group purchasing program under the North Carolina General Statutes. In order to participate in this program, at no cost to the city, an interlocal contract has to be entered with H-GAC.

In order to enable the city to proceed in an efficient and flexible manner with the procurement process for items such as a new fire truck, Mr. Sugg recommended adoption of the following resolution authorizing an interlocal contract with H-GAC.

Upon motion by Mr. Bell and seconded by Ms. Carter, Council voted unanimously to approve the following resolution:

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**46 RES 10-12**

**RESOLUTION APPROVING AN INTERLOCAL CONTRACT FOR COOPERATIVE PURCHASING**

**WHEREAS**, Section 143-129(e)(3) of the North Carolina General Statutes authorizes the city to make purchases through competitive bidding group purchasing programs that are formally organized and that offer competitively obtained purchasing services at discount prices to two (2) or more public agencies; and

**WHEREAS**, the Houston-Galveston Area Council (hereinafter referred to as "H-GAC") is a regional planning commission and political subdivision of the State of Texas; and

**WHEREAS**, H-GAC is authorized, under Texas law, to contract with eligible entities to perform governmental functions and services, including the purchase of goods and services; and

**WHEREAS**, on the basis of this authority, H-GAC has instituted a cooperative purchasing program; and

**WHEREAS**, due to the fact that H-GAC's cooperative purchasing program meets the standards found in Section 143-129(e)(3) of the North Carolina General Statutes, the City of Asheboro can make purchases through H-GAC's cooperative purchasing program; and

**WHEREAS**, research conducted by city staff members indicates that quality equipment such as fire trucks can be ordered efficiently and economically through this cooperative purchasing program; and

**WHEREAS**, in order to join this cooperative purchasing program, the City of Asheboro must execute an "INTERLOCAL CONTRACT FOR COOPERATIVE PURCHASING" that does not obligate the city to pay any fees or make any purchases through the program; and

**WHEREAS**, the city's professional staff has reviewed the prescribed contract and has found no objectionable terms and conditions within the proposed contract; and

**WHEREAS**, in light of the acceptability and non-burdensome nature of the proposed contractual terms, city staff members have recommended approval of the cooperative purchasing agreement with H-GAC in order to give the city more opportunities to efficiently and economically acquire quality equipment for the performance of essential municipal services; and

**WHEREAS**, the Asheboro City Council concurs with this recommendation;

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Asheboro that the INTERLOCAL CONTRACT FOR COOPERATIVE PURCHASING with H-GAC is approved and the Mayor of the City of Asheboro is hereby authorized to execute all documents necessary to join this competitive bidding group purchasing program.

This resolution was adopted by the Asheboro City Council in open session during a regular meeting that was held on the 4<sup>th</sup> day of October, 2012.

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

ATTEST:

/s/Tamela D. Garner  
Tamela D. Garner, Deputy City Clerk

**11. Consideration of a resolution moving the location of the Asheboro City Council's regular November meeting to the conference room of the Asheboro Public Works Facility.**

Mayor Smith asked for consideration of the resolution to move the location of the regular November monthly meeting of the City Council to the Public Works Facility conference room due to the

possibility of a large crowd being at that meeting because of extraterritorial planning jurisdiction issues being discussed.

Upon motion by Mr. Baker and seconded by Mr. Burks, Council voted unanimously to approve the following resolution to move the meeting to the Public Works Facility:

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**47 RES 10-12**

**A RESOLUTION MOVING THE LOCATION OF THE REGULAR NOVEMBER 2012 CITY COUNCIL MEETING TO THE CITY OF ASHEBORO PUBLIC WORKS FACILITY**

**WHEREAS**, the Asheboro City Council is scheduled to have its regular meeting in November 2012 at 7:00 p.m. in the Council Chamber at Asheboro City Hall, 146 North Church Street, Asheboro, North Carolina 27203; and

**WHEREAS**, during this regular meeting in November 2012, the Asheboro City Council is scheduled to hold a public hearing on the question of releasing from the city's regulation of development a total of 3,554 parcels of land that are currently located within the city's extraterritorial planning jurisdiction; and

**WHEREAS**, in an effort to provide room for the interested parties to attend this public hearing, the members of the Asheboro City Council have agreed to relocate the City Council's regular November meeting to a larger meeting room;

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Asheboro that the regular meeting of the Asheboro City Council on November 8, 2012, is hereby moved to the City of Asheboro Public Works Facility, 1312 North Fayetteville Street, Asheboro, North Carolina 27203; and

**BE IT FURTHER RESOLVED** that the meeting time for this regular meeting of the Asheboro City Council will not change. The regular November 2012 meeting of the Asheboro City Council will begin at 7:00 p.m. in the Conference Room at the City of Asheboro Public Works Facility, 1312 North Fayetteville Street, Asheboro, North Carolina 27203.

This resolution was adopted in open session during a regular meeting of the Asheboro City Council that was held on the 4<sup>th</sup> day of October, 2012.

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

ATTEST:

/s/Tamela D. Garner  
Tamela D. Garner, Deputy City Clerk

**12. Upcoming Events:**

- Fall Festival Parade will be Friday, October the 5<sup>th</sup>, at 7:00p.m.
- Fall Festival will be October the 6<sup>th</sup> & 7<sup>th</sup>.

-City of Asheboro Health Fair, Wednesday, October 10, 2012 from 8:30a.m. – 2:00p.m. at the Public Works Facility.

-Chamber of Commerce Business Showcase on Thursday, October 11, 2012, from 11:00a.m. to 6:00 p.m. at the YMCA.

-Chamber of Commerce Business After Hours Thursday October 18, 2012  
5:30PM to 7:00 PM at RCC

-City Council workshop on Thursday, October 25, 2012, at 5:30p.m. in the City Council Chambers at City Hall.

-NCLM Annual Conference is October the 21<sup>st</sup>, 22<sup>nd</sup>, and the 23<sup>rd</sup> in Charlotte, NC.

**13. Items not on the agenda.**

- Veterans Day Parade is November the 11<sup>th</sup>, 2012 at 11:00a.m.
- November the 8<sup>th</sup> is the SCORE Luncheon at 12:00 noon at AVS.

There being no further business, the meeting was adjourned at 8:16 p.m.

/s/Tamela D. Garner  
Tamela D. Garner, Deputy City Clerk

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

- (c) **A resolution expressing the appreciation of the City of Asheboro to Fire Chief James Weldon Smith, II, for his 41 years of service.**

52 RES 12-12

**RESOLUTION OF APPRECIATION FOR THE SERVICE OF RETIRED  
ASHEBORO FIRE CHIEF JAMES W. SMITH, II**

**WHEREAS**, effective December 1, 2012, James W. Smith, II retired from employment with the City of Asheboro after rendering honorable service to the City of Asheboro and its citizens over the course of a 41-year career with the Asheboro Fire Department; and

**WHEREAS**, during his tenure as Asheboro Fire Chief, which began in January 1986, Chief Smith maintained the finest traditions of service established by his predecessors and helped position the fire department for the continued delivery of high quality fire service far into the future by actively working with the elected officials and city manager to make long-term investments such as acquiring land for a third fire station; and

**WHEREAS**, while the dress uniform hat, helmet, and badges worn by Chief Smith at the time of his retirement are deemed under the city's property management regulations to now be surplus property and without market value, these items are respected and enduring symbols of the invaluable service rendered by a dedicated Asheboro Fire Chief; and

**WHEREAS**, the Asheboro City Council wishes to honor and thank Chief Smith for his faithful service to the city;

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Asheboro that the City of Asheboro extends its gratitude to James W. Smith, II for his dedicated service to the city; and

**BE IT FURTHER RESOLVED** that, as a token of appreciation for the positive difference Chief Smith has made in the community, the city manager is hereby authorized and instructed to award to James W. Smith, II the dress uniform hat, helmet, and badges that were assigned to him at the time of his retirement as Asheboro Fire Chief; 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 the said resolution to James W. Smith, II.

The Asheboro City Council adopted this resolution in open session during a regular meeting that was held on the 6<sup>th</sup> day of December, 2012.

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

ATTEST:

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

- (d) **A resolution awarding service side arms to retired officers of the Asheboro Police Department.**

53 RES 12-12

**RESOLUTION AWARDING SERVICE SIDE ARMS TO RETIRING OFFICERS  
OF THE ASHEBORO POLICE DEPARTMENT**

**WHEREAS**, effective January 1, 2013, Police Captain Sanford Allen Vuncannon, Jr. will begin his retirement from employment with the City of Asheboro after rendering honorable and invaluable service to the City of Asheboro and its citizens since the date of his initial employment with the Asheboro Police Department on September 4, 1985; and

**WHEREAS**, effective November 1, 2012, Master Police Sergeant Donald Raford Hill, Jr. began his retirement from employment with the City of Asheboro after rendering honorable and invaluable service to the City of Asheboro and its citizens since the date of his initial employment with the Asheboro Police Department on August 12, 1985; and

**WHEREAS**, pursuant to and in accordance with G.S. 20-187.2, the Asheboro City Council wishes to honor and thank Mr. Vuncannon and Mr. Hill for their service to the city by awarding to them the service side arms that they carried at the time of their retirement;

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Asheboro that, effective January 1, 2013, and in consideration of his dedicated service to the City of Asheboro, Sanford Allen Vuncannon, Jr. is to be awarded, at no charge and upon securing a permit as required by G.S. 14-402 et seq. or G.S. 14-409.1 et seq., his city-issued service side arm (a Glock 23 Generation 4 with serial no. SFS964 and three magazines); and

**BE IT FURTHER RESOLVED** that, effective immediately, and in consideration of his dedicated service to the City of Asheboro, Donald Raford Hill, Jr. is awarded, at no charge and upon securing a permit as required by G.S. 14-402 et seq. or G.S. 14-409.1 et seq., his city-issued service side arm (a Glock 23 Generation 4 with serial no. SFS982 and three magazines).

The Asheboro City Council adopted this resolution in open session during a regular meeting that was held on the 6<sup>th</sup> day of December, 2012.

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

ATTEST:

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

- (e) **Second reading and final approval of an ordinance amending Chapter 52 (Sewer Use) of the Code of Asheboro.**

31 ORD 12-12

**AN ORDINANCE AMENDING CHAPTER 52 OF THE CODE OF ASHEBORO**

**WHEREAS**, Chapter 52 of the Code of Asheboro sets forth uniform requirements for direct and indirect contributors into the City's wastewater collection and treatment system and enables the City to comply with all applicable federal and state laws; and

**WHEREAS**, certain federal and state laws and regulations applicable to the City's wastewater collection and treatment system have been amended since the adoption of Chapter 52 of the Code of Asheboro; and

**WHEREAS**, the Asheboro City Council wishes to conform Chapter 52 of the Code of Asheboro to all applicable federal and state laws and regulations.

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

**Section 1.** Chapter 52 of the Code of Asheboro is hereby rewritten to provide as follows:

**GENERAL PROVISIONS**

**§ 52.01 PURPOSE AND POLICY.**

(A) This Chapter sets forth uniform requirements for direct and indirect contributors into the wastewater collection and treatment system for the City of Asheboro, ~~hereafter referred to as the "city,"~~ and enables the City to comply with all applicable state and federal laws, including the Clean Water Act (33 U.S.C. § 1251 et seq.) and the General Pretreatment Regulations (40 CFR Part 403). The objectives of This Chapter are:

- (1) To prevent the introduction of pollutants **and wastewater discharges** into the municipal wastewater system which will interfere with the operation of the system or contaminate the resulting sludge;
- (2) To prevent the introduction of pollutants **and wastewater discharges** into the municipal wastewater system which will pass through the system, inadequately treated, into any waters of the State or otherwise be incompatible with the system;
- (3) To promote reuse and recycling of industrial wastewater and sludges from the municipal system;
- (4) To protect both municipal personnel who may be affected by sewage, sludge, and effluent in the course of their employment as well as protecting the general public;

(5) To provide for equitable distribution of the cost of operation, maintenance, and improvement of the municipal wastewater system; and

(6) To ensure the municipality complies with its NPDES or Non-discharge Permit conditions, sludge use and disposal requirements, and any other federal or state laws to which the municipal wastewater system is subject.

(B) This Chapter provides for the regulation of direct and indirect contributors to the municipal wastewater system, through the issuance of permits to certain non-domestic users and through enforcement of general requirements for the other users, authorizes monitoring and enforcement activities, requires user reporting, and provides for the setting of fees for the equitable distribution of costs resulting from the program established herein.

(C) This Chapter shall apply to all users of the municipal wastewater system, as authorized by G.S. § 160A-312. The City shall designate an administrator of the **Publicly Owned Treatment Works (POTW)** and pretreatment program that shall be hereinafter referred to as the POTW Director. Except as otherwise provided herein, the POTW Director shall administer, implement, and enforce the provisions of This Chapter. Any powers granted to or imposed upon the POTW Director may be delegated by the POTW Director to other City personnel. ~~By discharging wastewater into the municipal wastewater system, industrial users located outside the city limits agree to comply with the terms and conditions established in This Chapter, as well as any permits, enforcement actions, or orders issued hereunder.~~

~~(D) By discharging wastewater into the City wastewater system, Industrial Users located outside the city limits agree to comply with the terms and conditions established in This Chapter, as well as any permits, enforcement actions, or orders issued hereunder.~~

#### **§ 52.02 DEFINITIONS AND ABBREVIATIONS.**

Unless the context specifically indicates otherwise, the following terms, **abbreviations**, and phrases, as used in This Chapter, shall have the meanings hereinafter designated:

**ACT** or **THE ACT**. The Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 U.S.C. § 1251, et seq.

**APPROVAL AUTHORITY**. The Director of the Division of Water Quality of the North Carolina Department of Environment and Natural Resources or his or her designee.

#### **AUTHORIZED REPRESENTATIVE OF THE INDUSTRIAL USER.**

(1) If the Industrial User is a corporation, authorized representative shall mean:

(a) The president, secretary, or a vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or

(b) The manager of one or more manufacturing, production, or operation facilities, provided, the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiate and direct comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; can ensure that the necessary systems are established or actions taken to gather complete and accurate information for control mechanism requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

(2) If the Industrial User is a partnership or sole proprietorship, an authorized representative shall mean a general partner or the proprietor, respectively.

(3) If the Industrial User is a federal, state, or local government facility, an authorized representative shall mean a director or highest official appointed or designated to oversee the operation and performance of the activities of the government facility, or their designee.

(4) The individuals described above may designate another authorized representative if the authorization is in writing, the authorization specifies the individual or position responsible for the overall operation of the facility from which the discharge originates or having overall responsibility for environmental matters for the company, and the written authorization is submitted to the City.

(5) If the designation of an authorized representative is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, or overall responsibility for environmental matters for the company, a new authorization satisfying the requirements of this section must be submitted to the POTW Director prior to or together with any reports to be signed by an authorized representative.

**BIOCHEMICAL OXYGEN DEMAND (BOD).** The quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedures for five days at 20° centigrade, usually expressed as a concentration (e.g., mg/1).

**BUILDING SEWER.** A sewer conveying wastewater from the premises of a user to the POTW.

**BYPASS.** The intentional diversion of wastestreams from any portion of a user's treatment facility.

**CATEGORICAL STANDARDS.** National Categorical Pretreatment Standards or Pretreatment Standard.

**CFR.** Code of Federal Regulations.

**CITY.** The City of Asheboro, a North Carolina municipal corporation.

**COD.** Chemical Oxygen Demand.

**CONTROL AUTHORITY.** Refers to the POTW organization if the POTW organization's Pretreatment Program has not been withdrawn.

**DIRECTOR.** The person designated by the city to supervise the operation of the publicly owned treatment works and who is charged with certain duties and responsibilities by this ordinance, or his duly authorized representative.

**DIVISION.** The Division of Water Quality of the North Carolina Department of Environment and Natural Resources.

**ENVIRONMENTAL PROTECTION AGENCY, or EPA.** The U.S. Environmental Protection Agency, or where appropriate the term may also be used as a designation for the Administrator or other duly authorized official of the agency.

**FATS, OILS, and GREASES.** Organic polar compounds derived from animal and/or plant sources that contain multiple carbon chain triglyceride molecules. These substances are detectable and measurable using analytical test procedures established in 40 CFR 136, and as may be amended from time to time. All are sometimes referred to herein as "grease" or "greases."

**FOOD PREPARATION or SERVING FACILITY.** Any commercial or industrial facility that prepares or serves food or food products, including but not limited to restaurants, cafes, snack bars, grills, delis, catering services, bakeries, grocery stores, meat markets, food processors, or other similar establishments.

**gpd.** Gallons per day.

**GRAB SAMPLE.** A sample which is taken from a waste stream on a one-time basis without regard to the flow in the wastestream and over a period of time not to exceed 15 minutes.

**GREASE TRAP or INTERCEPTOR.** A device constructed in accordance with the plumbing code and operated by a user of the municipal wastewater system for separating and retaining water borne greases and grease complexes prior to the wastewater exiting the interceptor and entering the municipal wastewater system. These devices also serve to collect settleable solids generated by and from preparation activities prior to the water exiting the interceptor and entering the municipal wastewater system. The traps and interceptors are sometimes referred to herein as "grease interceptors."

**G.S.** North Carolina General Statutes.

**HOLDING TANK WASTE.** Any waste from holding tanks, included but not limited to such holding tanks as vessels, chemical toilets, campers, trailers, septic tanks, and vacuum pump tank trucks.

**INDIRECT DISCHARGE or DISCHARGE.** The discharge or the introduction from any nondomestic source regulated under § 307(b), (c), or (d) of the Act, (33 U.S.C. 1317), into the POTW (including holding tank waste discharged into the system).

**INDUSTRIAL USER or USER.** Any person which is a source of indirect discharge.

**INTERFERENCE.** The inhibition or disruption of the POTW collection system, treatment processes, operations, or its sludge process, use, or disposal, which causes or contributes to a violation of any requirement of the POTW's NPDES collection system, or Non-discharge Permit or prevents sewage sludge use or disposal in compliance with specified applicable state and federal statutes, regulations, or permits. The term includes prevention of sewage sludge use or disposal by the POTW in accordance with § 405 of the Act (33 U.S.C. 1345) or any criteria, guidelines, or regulations developed pursuant to the Solid Waste Disposal Act (SWDA) (42 U.S.C. § 6901, et seq.), the Clean Air Act, the Toxic Substances Control Act, the Marine Protection Research and Sanctuary Act (MPRSA), or more stringent state criteria

(including those contained in any state sludge management plan prepared pursuant to Title ~~IV~~ IV of SWDA) applicable to the method of disposal or use employed by the POTW.

*l.* Liter.

**MEDICAL WASTE.** Isolation wastes, infectious agents, human blood and blood products, pathological wastes, sharps, body parts, contaminated bedding, surgical wastes, potentially contaminated laboratory wastes, and dialysis wastes.

*mg.* Milligrams.

*mg/l.* Milligrams per liter.

**MINIMUM DESIGN CAPACITY.** The design features of a grease interceptor and its ability to effectively intercept and retain greases from grease-laden wastewaters discharged to the municipal wastewater system.

**N.C.G.S.** North Carolina General Statutes.

**NATIONAL CATEGORICAL PRETREATMENT STANDARD** or **CATEGORICAL STANDARD.** Any regulation containing pollutant discharge limits promulgated by EPA in accordance with § 307(b) and (c) of the Act (33 U.S.C. § 1317) which applies to a specific category of Industrial Users, and which appears in 40 CFR Chapter 1, Subchapter N, Parts 405-471.

**NATIONAL POLLUTION DISCHARGE ELIMINATION SYSTEM (NPDES) PERMIT.** A permit issued pursuant to § 402 of the Act (33 U.S.C. § 1342), or pursuant to G.S. § 143-215.1 by the state under delegation from EPA.

**NATIONAL PROHIBITIVE DISCHARGE STANDARD** or **PROHIBITIVE DISCHARGE STANDARD.** Absolute prohibitions against the discharge of certain substances; these prohibitions appear in § 52.05 and are developed under the authority of § 307(b) of the Act and 40 CFR 403.5.

**NEW SOURCE.** As defined in 40 CFR 403.3(m), including subsequent amendments and additions.

~~(1) Any building, structure, facility, or installation from which there may be a discharge of pollutants, the construction of which commenced after the publication of the proposed categorical pretreatment standards under § 307(c) of the Act which will be applicable to such source if such standards are thereafter promulgated in accordance with § 307(c), provided that:~~

~~(a) The building, structure, facility, or installation is constructed at a site at which no other source is located; or~~

~~(b) The building, structure, facility, or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or~~

~~(c) The production or wastewater generating processes of the building, structure, facility, or installation are substantially independent of an existing source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the existing source, should be considered.~~

~~(2) Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility, or installation meeting the criteria of (1)(b) or (1)(c) above but otherwise alters, replaces, or adds to existing process or production equipment.~~

~~(3) For purposes of this definition, construction of a new source has commenced if the owner or operator has:~~

~~(a) Begun, or caused to begin, as part of a continuous on-site construction program:~~

~~1. Any placement, assembly, or installation of facilities or equipment; or~~

~~2. Significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or~~

~~(b) Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this definition.~~

**NONCONTACT COOLING WATER.** Water used for cooling which does not come into direct contact with any raw material, intermediate product, waste product, or finished product.

**NON-DISCHARGE PERMIT.** A disposal system permit issued by the State pursuant to G.S. § 143-215.1 for a waste which is not discharged directly to surface waters of the State or for a wastewater treatment works which does not discharge directly to surface waters of the State.

**O & M.** Operation and Maintenance.

**PASS THROUGH.** A discharge which exits the POTW into waters of the state in quantities or concentrations which, alone or with discharges from other sources, causes a violation, including an increase in the magnitude or duration of a violation of the POTW's NPDES or Non-discharge Permit, or a downstream water quality standard NPDES, collection system, or Non-discharge permit or a downstream water quality standard even if not included in the permit.

**PERSON.** Any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity, or any other legal entity, or their legal representatives, agents, or assigns. This definition includes all federal, state, and local government entities.

**pH.** A measure of the acidity or alkalinity of a substance, expressed as standard units, and calculated as the logarithm (base 10) of the reciprocal of the concentration of hydrogen ions expressed in grams per liter of solution.

**POLLUTANT.** Any "waste" as defined in G.S. § 143-213(18) and dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, medical wastes, chemical wastes, biological materials, radioactive materials, heat, wrecked or discharged equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste, and certain characteristics of wastewater (e.g., pH, temperature, TSS, turbidity, color, metals, BOD, COD, toxicity, or and odor.)

**POTW DIRECTOR.** The City administrator designated with the responsibility for the pretreatment program and enforcement of this Sewer Use Ordinance. The City of Asheboro has designated the Director of Water Resources Water Resources Director as the administrator with this responsibility.

**POTW TREATMENT PLANT.** The portion of the POTW designed to provide treatment to wastewater.

**PRETREATMENT or TREATMENT.** The reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging or otherwise introducing such pollution pollutants into a POTW collection system and/or treatment plant. The reduction or alteration can may be obtained by physical, chemical, or biological processes, or process changes, or other means, except by diluting the concentration of the pollutants unless allowed by an applicable pretreatment standard or other means, except as prohibited by 40 CFR Part 403.6(d).

**PRETREATMENT PROGRAM.** The program for the control of pollutants introduced into the POTW from non-domestic sources which was developed by the City in compliance with 40 CFR 403.8 and approved by the approval authority as authorized by G.S. § 143-215.3(a)(14) in accordance with 40 CFR 403.11.

**PRETREATMENT REQUIREMENTS.** Any substantive or procedural requirement related to pretreatment, other than a pretreatment standard.

**PRETREATMENT STANDARDS STANDARD.** Prohibited discharge standards, categorical standards, and local limits. Any prohibited discharge standard, categorical standard, or local limit which applies to an Industrial User.

**PUBLICLY OWNED TREATMENT WORKS (POTW) or MUNICIPAL WASTEWATER SYSTEM.** A treatment works as defined by § 212 of the Act, (33 U.S.C. § 1292) which is owned in this instance by the City. This definition includes any devices or systems used in the collection, storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes, and other conveyances only if they convey wastewater to the POTW treatment plant. For purposes of This Chapter, POTW shall also include any sewers that convey wastewaters to the POTW from persons outside the City who are, by contract or agreement with the City, or in any other way, users of the City's POTW.

**RCRA.** Resource Conservation and Recovery Act.

**SEVERE PROPERTY DAMAGE.** Substantial physical damage to property, damage to the user's treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

**SIC.** Standard Industrial Classification.

**SIGNIFICANT INDUSTRIAL USER or SIU.** Any industrial user of the wastewater disposal system who: An Industrial User that discharges wastewater into a publicly owned treatment works and that:

(1) Has an average daily process wastewater flow of 25,000 gallons or more; or  
(2) Contributes more than 5% of any design or treatment capacity (i.e., allowable pollutant load) of the wastewater treatment plant receiving the indirect discharge; or  
(3) Is required to meet a National Categorical Pretreatment Standard; or  
(4) Is found by the city, the Division of Water Quality, or the United States Environmental Protection Agency (EPA) to have the potential for impact, either singly or in combination with other contributing industrial users, on the wastewater treatment system, the quality of sludge, the system's effluent quality, or compliance with any pretreatment standards or requirements.

(1) discharges an average of 25,000 gallons per day or more of process wastewater to the POTW (excluding sanitary, noncontact cooling and boiler blowdown wastewaters); or  
(2) contributes process wastewater which makes up five percent (5%) or more of the NPDES or Non-discharge permitted flow limit or organic capacity of the POTW treatment plant. In this context, organic capacity refers to BOD, TSS, and Ammonia; or

(3) is subject to Categorical Pretreatment Standards under 40 CFR Part 403.6 and 40 CFR chapter I, subchapter N, Parts 405-471; or

(4) is designated as such by the Control Authority on the basis that the Industrial User has a reasonable potential for adversely affecting the POTW's operation, or for violating any Pretreatment Standard or requirement, or for contributing to violations of the POTW's effluent limitations and conditions in its NPDES or non-discharge permit, or for contributing to violations of the POTW's receiving stream standard, or for limiting the POTW's sludge disposal options.

(5) Subject to Division approval under 15A NCAC 02H .0907(b), the Control Authority may determine that an Industrial User meeting the criteria in paragraphs (1) and (2) above has no reasonable potential for adversely affecting the POTW's operation or for violating any Pretreatment Standard or requirement, or for contributing to violations of the POTW's effluent limitations and conditions in its NPDES or non-discharge permit, or for contributing to violations of the POTW's receiving stream standard, or for limiting the POTW's sludge disposal options, and thus is not a Significant Industrial User.

(6) Subject to Division approval under 15A NCAC 02H .0907(b), the Control Authority may determine that an Industrial User meeting the criteria in paragraph (3) above meets the requirements of 40 CFR Part 403.3(v)(2) and thus is a Non-Significant Categorical Industrial User.

(7) Subject to Division approval under 15A NCAC 02H .0907(b), the Control Authority may determine that an Industrial User meeting the criteria in paragraph (3) above meets the requirements of 40 CFR Part 403.12(e)(3) and thus is a Middle Tier Significant Industrial User. Sampling and inspection requirements may be cut in half as per 40 CFR Parts 403.8(f)(2)(v)(C) and 403.12(e)(3).

**SIGNIFICANT NONCOMPLIANCE or REPORTABLE NONCOMPLIANCE SNC.** The status of noncompliance of a Significant Industrial User when one or more of the following criteria are met. Additionally, any Industrial User which meets the criteria in subparagraph 3,4, or 8 shall also be in SNC.

(1) Violations of wastewater discharge limits.

(a) Chronic violations. 66% or more of the measurements exceed (by any magnitude) the same daily maximum limit or the same average limit in a six-month period.

(b) Technical review criteria (TRC) violations. 33% or more of the measurements equal or exceed the TRC times the limit (maximum or average) in a six-month period. There are two groups of TRCs:

1. For conventional pollutants BOD, TSS, fats, oil, and grease, the TRC equals 1.4.

2. For all other pollutants, the TRC equals 1.2.

(c) Any other violations of an effluent limit (average or daily maximum) that the control authority believes has caused, alone or in combination with other discharges, interference or pass-through; or endangered the health of the sewage treatment plant personnel or the public.

(d) Any discharge of a pollutant that has caused imminent endangerment to human health, welfare, or to the environment or has resulted in the POTW's exercise of its emergency authority to halt or prevent such a discharge.

~~(2) Violations of compliance schedule milestones, contained in a pretreatment permit or enforcement order, for starting construction, completing construction, and attaining final compliance by 90 days or more after the schedule date.~~

~~(3) Failure to provide reports for compliance schedule, self-monitoring data, baseline monitoring reports, 90-day compliance reports, and periodic compliance reports within 30 days from the due date.~~

~~(4) Failure to accurately report noncompliance.~~

~~(5) Any other violation or group of violations that the control authority considers to be significant.~~

(1) Chronic violations of wastewater discharge limits, defined here as those in which sixty-six percent (66%) or more of all the measurements taken for the same pollutant parameter (not including flow) during a six-month period exceed (by any magnitude) a numeric Pretreatment Standard or Requirement including instantaneous limits, as defined by 40 CFR Part 403.3(l).

(2) Technical Review Criteria (TRC) violations, defined here as those in which thirty-three percent (33%) or more of all the measurements taken for the same pollutant parameter during a six-month period equal or exceed the product of the numeric Pretreatment Standard or Requirement including instantaneous limits, as defined by 40 CFR Part 403.3(l), multiplied by the applicable TRC (TRC = 1.4 for BOD, TSS, fats, oil, and grease, 1.2 for all other pollutants (except flow and pH)).

(3) Any other violation of a Pretreatment Standard or Requirement as defined by 40 CFR Part 403.3(l) (daily maximum, long-term average, instantaneous limit, or narrative standard) that the Control Authority determines has caused, alone or in combination with other discharges, interference or pass through (including endangering the health of POTW personnel or the general public).

(4) Any discharge of a pollutant or wastewater that has caused imminent endangerment to human health, welfare, or to the environment or has resulted in the Control Authority's exercise of its emergency authority under 40 CFR Part 403.8(f)(1)(vi)(B) and Section 52.50(E) of This Chapter to halt or prevent such a discharge.

(5) Violations of compliance schedule milestones, contained in a pretreatment permit or enforcement order, for starting construction, completing construction, and attaining final compliance by 90 days or more after the schedule date.

(6) Failure to provide reports for compliance schedule progress, self-monitoring data, baseline monitoring reports, 90-day compliance reports, and any other compliance reports within 30 days from the due date.

(7) Failure to accurately report noncompliance.

(8) Any other violation or group of violations that the Control Authority determines will adversely affect the operation or implementation of the local pretreatment program.

**SLUG LOAD or DISCHARGE.** Any discharge at a flow rate or concentration which has a reasonable potential to cause Interference or Pass-Through, or in any other way violates the POTW's regulations, local limits, or Industrial User Permit conditions. This can include but is not limited to spills and other accidental discharges; discharges of a non-routine, episodic nature; a non-customary batch discharge; or any other discharges that can cause a violation of the prohibited discharge standards in § 52.05.

**STANDARD INDUSTRIAL CLASSIFICATION (SIC).** A classification pursuant to the Standard Industrial Classification Manual issued by the Executive Office of the President, Office of Management and Budget, 1987.

**STORM WATER.** Any flow occurring during or following any form of natural precipitation and resulting therefrom.

**SUSPENDED SOLIDS.** The total suspended matter that floats on the surface of, or is suspended in, water, wastewater, or other liquids, and which is removable by laboratory filtering.

**SWDA.** Solid Waste Disposal Act.

**THIS CHAPTER.** Chapter 52 of the Code of Asheboro.

**TKN.** Total Kjeldahl Nitrogen.

**TSS.** Total Suspended Solids.

**U.S.C.** United States Code.

**UPSET.** An exceptional incident in which there is unintentional and temporary noncompliance with categorical pretreatment standards because of factors beyond the reasonable control of the user. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

**WASTEWATER.** The liquid and water-carried industrial or domestic wastes from dwellings, commercial buildings, industrial facilities, mobile sources, treatment facilities, and institutions, together with any groundwater, surface water, and storm water that may be present, whether treated or untreated, which are contributed into or permitted to enter the POTW.

**WASTEWATER PERMIT.** As set forth in § 52.21.

**WATERS OF THE STATE.** All streams, ~~lakes, ponds, marshes, watercourses, waterways, wells, springs, reservoirs, aquifers, irrigation systems, drainage systems, rivers, brooks, swamps, sounds, tidal estuaries, bays, creeks, lakes, waterways, reservoirs,~~ and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, which are contained within, flow through, or border upon the State or any portion thereof.

### **GENERAL SEWER USE REQUIREMENTS**

#### **§ 52.05 PROHIBITED DISCHARGE STANDARDS.**

(A) *General prohibitions.* No user shall contribute or cause to be contributed into the POTW, directly or indirectly, any pollutant or wastewater which causes interference or pass through. These general prohibitions apply to all users of a POTW whether or not the user is a Significant Industrial User or subject to any national, state, or local pretreatment standards or requirements.

(B) *Specific prohibitions.* No user shall contribute or cause to be contributed into the POTW the following pollutants, substances, or wastewater:

(1) Pollutants which create a fire or explosive hazard in the POTW, including but not limited to wastestreams with a closed cup flashpoint of less than 140°F (60°C) using the test methods specified in 40 CFR 261.21;

(2) Solid or viscous substances in amounts which will cause obstruction of the flow in the POTW resulting in interference but in no case solids greater than ~~1/2"~~ **one-half inch (1/2")** in any dimension;

(3) Petroleum oil, nonbiodegradable cutting oil, or products of mineral oil origin, in amounts that will cause interference or pass through;

(4) Any wastewater having a pH less than 5.0 or more than 11.0 or wastewater having any other corrosive property capable of causing damage to the POTW or equipment;

(5) Any wastewater containing pollutants, including oxygen-demanding pollutants, (BOD, etc.) in sufficient quantity, (flow or concentration) either singly or by interaction with other pollutants, to cause interference with the POTW;

(6) Any wastewater having a temperature greater than 150°F (66°C), or which will inhibit biological activity in the POTW treatment plant resulting in interference, but in no case wastewater which causes the temperature at the introduction into the treatment plant to exceed 104°F (40°C);

(7) Any pollutants which result in the presence of toxic gases, vapors, or fumes within the POTW in a quantity that may cause acute worker health and safety problems;

(8) Any trucked or hauled pollutants, except at discharge points designated by the POTW Director in accordance with § 52.13;

(9) Any noxious or malodorous liquids, gases, or solids or other wastewater which, either singly or by interaction with other wastes, are sufficient to create a public nuisance or hazard to life or are sufficient to prevent entry into the sewers for maintenance and repair;

(10) Any substance which may cause the POTW's effluent or any other product of the POTW such as residues, sludges, or scums to be unsuitable for reclamation and reuse or to interfere with the reclamation process. In no case, shall a substance discharged to the POTW cause the POTW to be in noncompliance with sludge use or disposal regulations or permits issued under § 405 of the Act; the Solid Waste Disposal Act, the Clean Air Act, the Toxic Substances Control Act, or state criteria applicable to the sludge management method being used;

(11) Any wastewater which imparts color which cannot be removed by the treatment process, including but not limited to dye wastes and vegetable tanning solutions, which consequently imparts sufficient color to the treatment plant's effluent to render the waters injurious to public health or secondary recreation or to aquatic life and wildlife or to adversely affect the palatability of fish or aesthetic quality or impair the receiving waters for any designated uses;

(12) Any wastewater containing any radioactive wastes or isotopes except as specifically approved by the POTW Director in compliance with applicable state or federal regulations;

(13) Storm water, surface water, ground water, artesian well water, roof runoff, subsurface drainage, swimming pool drainage, condensate, deionized water, noncontact cooling water, and unpolluted industrial wastewater unless specifically authorized by the POTW Director;

(14) Fats, oils, or greases of animal or vegetable origin in concentrations greater than 100 mg/l **unless authorized by the POTW Director**;

(15) Any sludges, screenings, or other residues from the pretreatment of industrial wastes;

(16) Any medical wastes, except as specifically authorized by the POTW Director in a wastewater discharge permit;

(17) Any material containing ammonia, ammonia salts, or other chelating agents which will produce metallic complexes that interfere with the municipal wastewater system;

(18) Any material that would be identified as hazardous waste according to 40 CFR Part 261 if not disposed of in a sewer except as may be specifically authorized by the POTW Director;

(19) Any wastewater causing the treatment plant effluent to violate State Water Quality Standards for toxic substances as described in 15A NCAC 2B .0200;

(20) Wastewater causing, alone or in conjunction with other sources, the treatment plant's effluent to fail a toxicity test;

(21) Recognizable portions of the human or animal anatomy;

(22) Any wastes containing detergents, surface-active agents, or other substances which may cause excessive foaming in the municipal wastewater system;

(23) At no time shall two successive readings on an explosion hazard meter at the point of discharge into the system (or at any point in the system) be more than 5% nor any single reading over 10% of the lower explosive limit (LEL) of the meter.

(C) Pollutants, substances, wastewater, or other wastes prohibited by this section shall not be processed or stored in such a manner that they could be discharged into the municipal wastewater system. All floor drains located in process or materials storage areas must discharge to the Industrial User's pretreatment facility before connecting with the system.

(D) When the POTW Director determines that a user is contributing to the POTW any of the above-enumerated substances in such amounts which may cause or contribute to interference of POTW operation or pass through, the POTW Director shall:

(1) Advise the user of the potential impact of the contribution on the POTW in accordance with § 52.50, and

(2) Take appropriate actions in accordance with §§ 52.20 and 52.21 for such user to protect the POTW from interference or pass through.

#### **§ 52.06 NATIONAL CATEGORICAL PRETREATMENT STANDARDS.**

(A) Users subject to categorical pretreatment standards are required to comply with applicable standards as set out in 40 CFR Chapter 1, Subchapter N, Parts 405-471 and incorporated herein.

(B) Where a categorical pretreatment standard is expressed only in terms of either the mass or the concentration of a pollutant in wastewater, the POTW Director may impose equivalent concentration or mass limits in accordance with 40 CFR 403.6(c).

(C) When wastewater subject to a categorical pretreatment standard is mixed with wastewater not regulated by the same standard, the POTW Director shall impose an alternate limit using the combined wastestream formula in 40 CFR 403.6(e).

(D) A user may obtain a variance from a categorical pretreatment standard if the user(s) can prove, pursuant to the procedural and substantive provisions in 40 CFR 403.13, that factors relating to its

discharge are fundamentally different from the factors considered by EPA when developing the categorical pretreatment standard.

(E) A user may obtain a net gross adjustment to a categorical standard in accordance with 40 CFR 403.15.

**(F) A user may request a removal credit adjustment to a categorical standard in accordance with 40 CFR 403.7.**

**§ 52.07 LOCAL LIMITS.**

(A) An industrial waste survey is required prior to a user discharging wastewater containing in excess of the following daily average discharge limits:

|                                     |                                    |
|-------------------------------------|------------------------------------|
| 250 mg/l                            | BOD                                |
| 250 mg/l                            | TSS                                |
| 25 mg/l                             | <b>Ammonia</b> NH <sup>3</sup>     |
| 0.005 mg/l                          | Arsenic                            |
| 0.005 mg/l                          | Cadmium                            |
| 0.05 mg/l ( <b>total chromium</b> ) | Chromium ( <b>Total Chromium</b> ) |
| 0.06 mg/l                           | Copper                             |
| 0.01 mg/l                           | Cyanide                            |
| 0.05 mg/l                           | Lead                               |
| 0.0002 mg/l                         | Mercury                            |
| 0.02 mg/l                           | Nickel                             |
| 0.005 mg/l                          | Silver                             |
| 0.17 mg/l                           | Zinc                               |
| 100 mg/l                            | Oil & Grease                       |

(B) Industrial waste survey information will be used to develop user-specific local limits when necessary to ensure that the POTW's maximum allowable headworks loading is not exceeded for particular pollutants of concern. User-specific local limits for appropriate pollutants of concern shall be included in wastewater permits. The POTW Director may impose mass-based limits in addition to, or in place of, the concentration-based limits.

**§ 52.08 STATE REQUIREMENTS.**

State requirements and limitations on discharges shall apply in any case where they are more stringent than federal requirements and limitations or those in This Chapter.

**§ 52.09 RIGHT OF REVISION.**

The City reserves the right to establish limitations and requirements which are more stringent than those required by either state or federal regulation if deemed necessary to comply with the objectives presented in § 52.01 or the general and specific prohibitions in § 52.05, as is allowed by 40 CFR 403.4.

**§ 52.10 DILUTION.**

No user shall ever increase the use of process water or, in any way; attempt to dilute a discharge as a partial or complete substitute for adequate treatment to achieve compliance with the limitations contained in the National Categorical Pretreatment Standards, unless expressly authorized by an applicable pretreatment standard, or in any other pollutant-specific limitation developed by the City or state.

**§ 52.11 PRETREATMENT OF WASTEWATER.**

(A) Pretreatment facilities. Users shall provide wastewater treatment as necessary to comply with This Chapter and wastewater permits issued under § 52.21 and shall achieve compliance with all National Categorical Pretreatment Standards, local limits, and the prohibitions set out in § 52.05 within the time limitations as specified by EPA, the state, or the POTW Director, whichever is more stringent. Any facilities necessary for compliance shall be provided, operated, and maintained at the user's expense. Detailed plans showing the pretreatment facilities and operating procedures shall be submitted to the City for review, and shall be approved by the POTW Director before construction of the facility. The review of such plans and operating procedures shall in no way relieve the user from the responsibility of modifying the facility as necessary to produce an effluent acceptable to the City under the provisions of This Chapter. Any subsequent changes in the pretreatment facilities or method of operation shall be reported to and be approved by the POTW Director prior to the user's initiation of the changes.

(B) Additional pretreatment measures.

(1) Whenever deemed necessary, the POTW Director may require users to restrict their discharge during peak flow periods, designate that certain wastewater be discharged only into specific sewers, relocate and/or consolidate points of discharge, separate sewage wastestreams from industrial wastestreams, and such other conditions as may be necessary to protect the POTW and determine the user's compliance with the requirements of This Chapter.

(2) The POTW Director may require any person discharging into the POTW to install and maintain, on their property and at their expense, a suitable storage and flow control facility to ensure equalization of flow. A wastewater discharge permit may be issued solely for flow equalization.

(3) In general, grease, oil, and sand interceptors shall be provided when, in the opinion of the POTW Director, they are necessary for the proper handling of wastewater containing excessive amounts of grease and oil, or sand; except that such interceptors shall not be required for residential users. All interception units shall be of type and capacity approved by the POTW Director in conjunction with the Chief Building Inspector and shall be so located to be easily accessible for cleaning and inspection. Such interceptors shall be inspected, cleaned, and repaired regularly, as needed, by the user and at the user's expense. To assist in the prevention of sanitary sewer blockages and obstructions resulting from the contribution and accumulation of fats, oils, and greases into the municipal wastewater system from industrial or commercial establishments, particularly food preparation and/or serving facilities, all food preparation and/or serving facilities with existing grease interceptors shall be subject to the following additional regulations. Furthermore, as of January 1, 2004, all food preparation and/or serving facilities that are proposed, constructed, expanded, renovated, reconstructed, or change ownership shall be required to provide/install and maintain a grease interceptor in compliance with the following supplemental regulations for grease interceptors prior to such users opening, expanding, or reopening the food preparation and/or serving facility.

(a) All grease interceptors shall be of a type and capacity approved by the POTW Director in conjunction with the Chief Building Inspector and shall be located as to be readily and easily accessible for cleaning and inspection. The POTW Director shall have the right to make determinations concerning the adequacy of a particular grease interceptor on the basis of a review of all relevant information regarding the grease interceptor in question, including but not limited to, the past performance of the interceptor, the facility site, and a review of the building plan. If such a review of the relevant information results in the POTW Director making the determination that a particular grease interceptor is inadequate, the POTW Director shall have the right and authority under This Chapter to require the responsible party to repair, modify, or replace the interceptor in question.

(b) The POTW Director may also require the utilization of grease interceptors by industrial and non-domestic users, when in the opinion of the POTW Director, such interceptors are necessary for the proper handling of wastewater containing fats, oil, and grease in concentrations as determined by Standard Method 5520B in excess of 100 mg/l.

(c) All grease interceptors shall be provided and maintained in continuously efficient operation at all times by and at the expense of the users.

(d) Each user's grease interceptor shall be cleared of grease, sludge, and debris as required to maintain minimum design capability. In ground interceptors shall be cleaned, at a minimum frequency, of every 90 days. The under the sink interceptors shall be cleaned daily. The POTW Director may require of a user variable cleaning frequency if conditions warrant. All maintenance and cleaning shall be performed by the user at his or her expense. The user shall be responsible for the proper removal and disposal by appropriate means of the captured material. Any removal and hauling of collected material shall be performed according to all applicable federal, state, and local government laws, ordinances, and regulations. No waste removed from the interceptor shall be reintroduced into the sanitary sewer or back into the interceptor.

(e) The use of enzymes or emulsifiers is prohibited.

(f) The use of hot water flushing to clear the interceptor is prohibited.

(g) All users shall maintain written records of maintenance performed on the interceptor for a minimum of three years and shall immediately produce such records upon receipt of a request for the records from the POTW Director or his or her designee. The records shall include a receipt for the maintenance performed. In order for such a receipt to be valid for purposes of This Chapter, the receipt must be signed by the relevant contractor and dated.

(4) Users with the potential to discharge flammable substances may be required to install and maintain an approved combustible gas detection meter.

#### **§ 52.12 ACCIDENTAL DISCHARGE/SLUG CONTROL PLANS.**

(A) The POTW Director or his designee shall evaluate whether each Significant Industrial User needs a plan or other action to control and prevent slug discharges and accidental discharges as defined in Section 52.02. All Significant Industrial Users must be evaluated within one (1) year of being designated a Significant Industrial User. The POTW Director may require any user to develop, submit for approval, and implement such a plan or other specific action. Alternatively, the POTW Director may develop such a plan for any user.

(B) All SIUs are required to notify the POTW immediately of any changes at its facility affecting the potential for spills and other accidental discharge, discharge of a non-routine episodic nature, a non-customary batch discharge, or a slug load. Also, see § 52.29 and § 52.30.

(C) An accidental discharge/slug control plan shall address, at a minimum, the following:

- (1) Description of discharge practices, including non-routine batch discharges; and
- (2) Description of stored chemicals; and
- (3) Procedures for immediately notifying the POTW Director of any accidental or slug discharge, as required by § 52.30; and
- (4) Procedures to prevent adverse impact from any accidental or slug discharge. Such procedures include, but are not limited to, inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site runoff, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants, including solvents, and/or measures and equipment for emergency response.

#### **§ 52.13 HAULED WASTEWATER.**

(A) Septic tank waste may be introduced into the POTW only at locations designated by the POTW Director and at such times as are established by the POTW Director. Such waste shall not violate §§ 52.05 through 52.13 or any other requirements established by the POTW Director on behalf of the City. The POTW Director may require septic tank waste haulers to obtain wastewater discharge permits.

(B) The POTW Director shall require haulers of industrial waste to obtain wastewater discharge permits. The POTW Director may require generators of hauled industrial waste to obtain wastewater discharge permits. The POTW Director also may prohibit the disposal of hauled industrial waste. The discharge of hauled industrial waste is subject to all other requirements of This Chapter.

(C) Industrial waste haulers may discharge loads only at locations designated by the POTW Director. No load may be discharged without the prior consent of the POTW Director. The POTW Director may collect samples of each hauled load to ensure compliance with applicable standards. The POTW Director may require the industrial waste hauler to provide a waste analysis of any load prior to discharge.

(D) Industrial waste haulers must provide a waste-tracking form for every load. This form shall include, at a minimum, the name and address of the industrial waste hauler, permit number, truck identification, names and addresses of sources of waste, and volume and characteristics of waste. This form shall identify the type of industry, known or suspected waste constituents, and whether any wastes are RCRA hazardous wastes.

### **FEES**

#### **§ 52.15 PURPOSE OF FEES.**

It is the purpose of this Section to provide for the recovery of costs from the users of the city's wastewater disposal system for the implementation of the program established under This Chapter. The applicable charges or fees shall be set forth in the city's Schedule of Charges and Fees for the Division of Water Resources by the POTW Director. A copy of the schedule of charges and fees will be made available from the POTW Director.

It is the purpose of This Chapter to provide for the recovery of costs from users of the City's wastewater disposal system for the implementation of the program established herein. The applicable charges or fees shall be set forth by the POTW Director in a schedule of sewer use charges and fees approved by the City Council. A copy of these charges and fees will be made available from the POTW Director.

**§ 52.16 USER CHARGES.**

(A) A user charge shall be levied on all users including, but not limited to, persons, firms, corporations, or governmental entities that discharge, cause, or permit the discharge of sewage into the POTW.

~~(B) When establishing the user charges, the POTW Director, City Manager, and the City Council shall give express consideration to cost factors associated with the POTW such as the cost of debt service, operation, and maintenance (including replacement) of the POTW.~~

(B) The user charge shall reflect, at least, the cost of debt service, operation, and maintenance (including replacement) of the POTW.

(C) Each user shall pay its proportional cost based on volume of flow.

(D) Prior to the beginning of each fiscal year, the POTW Director shall submit to the City Manager a proposed schedule of charges and fees. The City Manager shall review the proposed schedule of charges and fees in light of the sewage contributions of users, the total costs of debt service, and the operation and maintenance costs of the POTW. On the basis of this review his or her review of all of the relevant factors, the City Manager will make recommendations to the City Council for adjustments as necessary in the schedule of charges and fees that will be in effect for a given fiscal year.

(E) Charges for flow to the POTW not directly attributable to the users shall be distributed among all users of the POTW based upon the volume of flow of the users.

**§ 52.17 SURCHARGES.**

(A) All Industrial Users of the POTW are subject to industrial waste surcharges on discharges which exceed concentrations of BOD, COD, TSS, and TKN set forth in the schedule of charges and fees. The amount of the surcharges will be based on the volume of flow and the character and concentrations of the constituents of the wastewater.

(B) The volume of flow used in determining the total discharge of wastewater for payment of user charges and surcharges shall be based on the following:

(1) Metered water consumption as shown in the records of meter readings maintained by the City;  
or

(2) If required by the City or at the individual dischargers option, other flow monitoring devices which measure the actual volume of wastewater discharged to the sewer. Such devices shall be accessible and safely located, and the measuring system shall be installed in accordance with plans approved by the City. The City may require a refrigerated composite sampler, which will collect proportional samples based upon flow readings from this system. The metering system shall be installed and maintained at the users expense according to arrangements that may be made with the City. Equipment malfunctions or failures to properly measure flow shall necessitate flow data based on the water consumption meter;

(3) Where any user procures all or part of his or her water supply from sources other than the City, the user shall install and maintain at his or her own expense a flow-measuring device of a type approved by the City.

(C) The character and concentration of the constituents of the wastewater used in determining surcharges shall be determined by samples collected and analyzed by the City. Samples shall be collected in such a manner as to be representative of the actual discharge and shall be analyzed using procedures set forth in 40 CFR Part 136.

(D) The determination of the character and concentration of the constituents of the wastewater discharge by the POTW Director or his or her duly appointed representatives shall be binding as a basis for charges.

**§ 52.18 PRETREATMENT PROGRAM ADMINISTRATIVE CHARGES.**

The schedule of charges and fees adopted by the City may include charges and fees for the following:

(A) Reimbursement of costs of setting up and operating the pretreatment program; and

(B) Monitoring, inspections, and surveillance procedures; and

(C) Reviewing slug control plans, including accidental and/or slug load discharge procedures and construction plans and specifications; and

(D) Permitting; and

(E) Other fees as the City may deem necessary to carry out the requirements of the pretreatment program.

### **WASTEWATER DISCHARGE PERMIT APPLICATION AND ISSUANCE**

#### **§ 52.20 WASTEWATER DISCHARGERS.**

It shall be unlawful for any person to connect or discharge to the POTW without first obtaining the permission of the City. When requested by the POTW Director, a user must submit information on the nature and characteristics of its wastewater within 30 days of the request. The POTW Director is authorized to prepare a form for this purpose and may periodically require users to update this information.

#### **§ 52.21 WASTEWATER PERMITS.**

(A) All Significant Industrial Users shall obtain a Significant Industrial User permit prior to the commencement of discharge to the POTW. Existing Industrial Users who are determined by the POTW Director to be Significant Industrial Users shall obtain a Significant Industrial User permit within 180 days of receiving notification of the POTW Director's determination. Industrial Users who do not fit the Significant Industrial User criteria may at the discretion of the POTW Director be required to obtain a wastewater discharge permit for non-Significant Industrial Users.

(B) *Significant Industrial User determination.* All persons proposing to discharge non-domestic wastewater, or proposing to change the volume or characteristics of an existing discharge of non-domestic wastewater shall request from the POTW Director a Significant Industrial User determination. If the POTW Director determines or suspects that the proposed discharge fits the Significant Industrial User criteria he or she will require that a Significant Industrial User permit application be filed.

(C) *Significant Industrial User permit application.* Users required to obtain a Significant Industrial User permit shall complete and file with the City an application in the form prescribed by the POTW Director and accompanied by an application fee in the amount prescribed in the schedule of charges and fees. Significant Industrial Users shall apply for a Significant Industrial User permit within 90 days after notification of the POTW Director's determination in division (B) above. The application shall include at a minimum the information required by 15A NCAC 02H 0.0916(c)(1)(A-M). In support of the application, the user shall submit any other information deemed necessary by the POTW Director to evaluate the permit application. This information may include reporting requirements under 40 CFR Part 403.12(b) and Section 52.25 of This Chapter. In support of the application, the user shall submit, in units and terms appropriate for evaluation, the following information:

- (1) Name, address, and location (if different from the address); and
- (2) Standard Industrial Classification (SIC) codes for pretreatment, the industry as a whole, and any processes for which categorical pretreatment standards have been promulgated; and
- (3) Analytical data on wastewater constituents and characteristics including but not limited to those mentioned in §§ 52.05 through 52.13, any of the priority pollutants (§ 307(a) of the Act) which the applicant knows or suspects are present in the discharge as determined by a reliable analytical laboratory, and any other pollutant of concern to the POTW; sampling and analysis shall be performed in accordance with procedures established by the EPA pursuant to § 304(g) of the Act and contained in 40 CFR Part 136, as amended, and required in § 52.34 and § 52.35; and
- (4) Time and duration of the indirect discharge; and
- (5) Average daily and 30 minute peak wastewater flow rates, including daily, monthly, and seasonal variations if any; and
- (6) Site plans, floor plans, mechanical and plumbing plans, and details to show all sewers, floor drains, sewer connections, directions of flow, and appurtenances by the size, location, and elevation; and
- (7) Description of activities, facilities, and plant processes on the premises including all materials which are or could be accidentally or intentionally discharged; and
- (8) Where known, the nature and concentration of any pollutants in the discharge which are limited by any city, state, or federal pretreatment standards, and a statement regarding whether or not the pretreatment standards are being met on a consistent basis and if not, whether additional operation and maintenance (O&M) and/or additional pretreatment is required for the user to meet applicable pretreatment standards; and
- (9) If additional pretreatment and/or O&M will be required to meet the pretreatment standards; the shortest schedule by which the user will provide such additional pretreatment. The completion date in this schedule shall not be longer than the compliance date established for the applicable pretreatment standard. The following conditions apply to this schedule:
  - (a) The schedule shall contain progress increments in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the user to meet the applicable pretreatment standards. No increment in the schedule shall exceed nine months;

~~(b) No later than 14 days following each date in the schedule and the final date for compliance, the user shall submit a progress report to the POTW Director including, at a minimum, whether or not it complied with the increment of progress, the reason for any delay, and if appropriate, the steps being taken by the user to return to the established schedule. In no event shall more than nine months elapse between such progress reports to the POTW Director;~~

- ~~(10) Each product produced by type, amount, process or processes and rate of production; and  
(11) Type and amount of raw materials processed (average and maximum per day); and  
(12) Number and type of employees, and hours of operation of plant and proposed or actual hours of operation of pretreatment system; and  
(13) If subject to a categorical standard, a baseline monitoring report in accordance with 40 CFR 403.12(b) and 15A NCAC 2H .0908(a), as outlined in § 52.25.  
(14) Any other information as may be deemed by the POTW Director to be necessary to evaluate the permit application.~~

(D) *Application signatories and certification.* All wastewater discharge permit applications and user reports must be signed by the current Authorized Representative of the Industrial User on file with the Approval Authority and/or City as defined in § 52.02 and contain the following certification statement:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

(E) *Application review and evaluation.* The POTW Director will evaluate the data furnished by the user and may require additional information.

- (1) The POTW Director is authorized to accept applications for the City and shall refer all applications to the POTW staff for review and evaluation.
- (2) Within 30 days of receipt, the POTW Director shall acknowledge and accept the complete application; or if not complete, shall return the application to the applicant with a statement of what additional information is required.

(F) *Tentative determination and draft permit.*

- (1) The POTW staff shall conduct a review of the application and an on-site inspection of the Significant Industrial User, including any pretreatment facilities, and shall prepare a written evaluation and tentative determination to issue or deny the Significant Industrial User permit.
- (2) If the staff's tentative determination in division (F)(1) above is to issue the permit, the following additional determinations shall be made in writing:
  - (a) Proposed discharge limitations for those pollutants proposed to be limited; and
  - (b) A proposed schedule of compliance, including interim dates and requirements, for meeting the proposed limitations; and
  - (c) A brief description of any other proposed special conditions which will have significant impact upon the discharge described in the application.
- (3) The staff shall organize the determinations made pursuant to divisions (F)(1) and (F)(2) above and the City's general permit conditions into a ~~single industrial user permit~~ Significant Industrial User permit.

~~(G) *Permit synopsis.* A fact sheet providing a brief synopsis of the application shall be prepared by the POTW staff for submission to the applicant and the approval authority and shall be made available to the public upon request. The contents of such fact sheets shall include at least the following information:~~

- ~~(1) A sketch and detailed description of the industrial facilities and pretreatment facilities including the location of all points of discharge to the POTW and all established compliance monitoring points;~~
- ~~(2) A quantitative description of the discharge described in the application which includes at least the following:~~

- (a) The rate or frequency of the proposed discharge; if the discharge is continuous, the average daily flow; and
- (b) The actual average daily discharge in pounds per day of any limited pollutant and any pollutant identified in the application as known or suspected present; and
- (c) The basis for the pretreatment limitations including the documentation of any calculations in applying categorical pretreatment standards.

(G) Permit supporting documentation. The Control Authority staff shall prepare the following documents for all Significant Industrial User permits.

(1) An allocation table (AT) listing permit information for all Significant Industrial Users, including but not limited to permit limits, permit effective and expiration dates, and a comparison of total permitted flows and loads with Division approved maximum allowable loadings of the POTW, including flow, on forms or in a format approved by the Division. The AT shall be updated as permits are issued or renewed, and as permits are modified where the permitted limits or other AT information is revised.

(2) The basis, or rationale, for the pretreatment limitations, including the following:

- (a) documentation of categorical determination, including documentation of any calculations used in applying categorical pretreatment standards; and
- (b) documentation of the rationale of any parameters for which monitoring has been waived under 40 CFR Part 403.12(e)(2).

(H) Final action on ~~significant industrial user~~ Significant Industrial User permit applications.

(1) The POTW Director shall take final action on all applications not later than 90 days following receipt of a complete application.

(2) The POTW Director is authorized to:

- (a) Issue a Significant Industrial User permit containing such conditions as are necessary to effectuate the purposes of This Chapter and G.S. § 143-215.1; and
- (b) Issue a Significant Industrial User permit containing time schedules for achieving compliance with applicable pretreatment standards and requirements; and
- (c) Modify any permits upon not less than 60 days notice and pursuant to division (J) below; and
- (d) Revoke any permit pursuant to § 52.50; and
- (e) Suspend a permit pursuant to § 52.50; and
- (f) Deny a permit application when in the opinion of the POTW Director such discharge may cause or contribute to pass-through or interference of the wastewater treatment plant or where necessary to effectuate the purposes of G.S. § 143-215.1.

(I) Hearings.

(1) Initial adjudicatory hearing. An applicant whose permit is denied, or is granted subject to conditions he or she deems unacceptable, a permitted user assessed a civil penalty under § 52.99, or one issued an administrative order under § 52.50 shall have the right to an adjudicatory hearing before a city hearing officer upon making written demand, identifying the specific issues to be contested, to the POTW Director within 30 days following receipt or denial of the significant industrial user permit, civil penalty assessment, or administrative order. For purposes of This Chapter, the city hearing officer shall be deemed to be the city Zoning Administrator. Unless such written demand is made within the time specified herein, the action shall be final and binding. The hearing officer shall make a final decision on the contested permit, penalty, or order within 45 days of the receipt of the written demand for a hearing. The POTW Director shall transmit a copy of the hearing officer's decision by registered or certified mail.

(a) New permits. Upon appeal, including judicial review in the General Courts of Justice, of the terms and conditions of a newly issued permit, the terms and conditions of the entire permit are stayed and the permit is not in effect until either the conclusion of judicial review or until the parties reach a mutual resolution.

(b) Renewed permits. Upon appeal, including judicial review in the General Courts of Justice, of the terms and conditions of a renewed permit, the terms and conditions of the existing permit remain in effect until either the conclusion of judicial review or until the parties reach a mutual resolution.

(2) Final appeal hearing. Any decision of a hearing officer made as a result of an adjudicatory hearing held under division (I)(1) above may be appealed to the City Council upon filing a written demand within ten days of receipt of notice of the decision. Hearings held under this subdivision

shall be conducted in accordance with the quasi-judicial principles and procedures utilized by the City Council when conducting a public hearing on an application for a Special Use Permit under Article 600 of the Asheboro Zoning Ordinance. Failure to make written demand within the time specified herein shall bar further appeal. The City Council shall make a final decision on the appeal within 90 days of the date the appeal was filed and shall transmit a written copy of its decision by registered or certified mail.

~~(3) Official record. When a final decision is issued under division (1)(2) above, the City Council shall prepare an official record of the case that includes:~~

- ~~(a) All notices, motions, and other like pleadings; and~~
- ~~(b) A copy of all documentary evidence introduced; and~~
- ~~(c) A certified transcript of all testimony taken, if testimony is transcribed. If testimony is taken and not transcribed, then a narrative summary of any testimony taken; and~~
- ~~(d) A copy of the final decision of the City Council.~~

~~(4) Judicial review. Any person against whom a final order or decision of the City Council is entered, pursuant to the hearing conducted under division (1)(2) above, may seek judicial review of the order or decision by filing a written petition within 30 days after receipt of notice by registered or certified mail of the order or decision, but not thereafter, with the Superior Court of Randolph County along with a copy to the city. Within 30 days after receipt of the copy of the petition of judicial review, the City Council shall transmit to the reviewing court the original or a certified copy of the official record.~~

~~(J) Permit modification.~~

~~(I) Permit modification.~~

(1) Modifications of permits shall be subject to the same procedural requirements as the issuance of permits except as listed below. Any changes or new conditions in the permit shall include a reasonable time schedule for compliance.

- (a) Changes in the ownership of the discharge when no other change in the permit is indicated; ~~and~~
- (b) A single modification of any compliance schedule not in excess of four months; ~~and~~
- (c) ~~A modification~~ Modification of compliance schedules (construction schedules) in permits for new sources where the new source will not begin to discharge until control facilities are operational.

(2) Within nine months of the promulgation of a National Categorical Pretreatment Standard, the wastewater discharge permit of users subject to such standards shall be revised to require compliance with such standard within the time frame prescribed by such standard. Where a user, subject to a National Categorical Pretreatment Standard, has not previously submitted an application for a wastewater discharge permit as required by division ~~(B)~~ (C) of this Section, the user shall apply for a wastewater discharge permit within 180 days after the promulgation of the applicable National Categorical Pretreatment Standard.

(3) A request for a modification by the permittee shall constitute a waiver of the 60-day notice required by G.S. § 143-215.1(b) for modifications.

~~(K)~~ (J) *Permit conditions.*

(1) The POTW Director shall have the authority to grant a permit with such conditions attached as he or she believes necessary to achieve the purpose of This Chapter and G.S. § 143-215.1. Wastewater permits shall contain, but are not limited to, the following:

- (a) A statement of duration (in no case more than five years); and
- (b) A statement of non-transferability; and
- (c) Applicable effluent limits based on categorical standards or local limits or both; and
- (d) Applicable monitoring, sampling, reporting, notification, and record keeping requirements. These requirements shall include an identification of pollutants to be monitored, sampling location, sampling frequency, and sample type based on federal, state, and local law; and
- (e) Requirements for notifying the POTW in the event of an accidental discharge or slug load as defined in § 52.02; and
- (f) Requirements to implement a plan or other controls for prevention of accidental discharges and/or slug loads as defined in § 52.02, if determined by the POTW Director to be necessary for the User; and

(g) Requirements for immediately notifying the POTW of any changes at its facility affecting the potential for spills and other accidental discharges, or slug load as defined in § 52.02, also see § 52.29 and § 52.30; and

(h) A statement of applicable civil and/or criminal penalties for violation of pretreatment standards and requirements and any applicable compliance schedule.

(2) In addition, permits may contain, but are not limited to, the following:

(a) Limits on the average and/or maximum rate of discharge, and/or requirements for flow regulation and equalization; and

(b) Limits on the instantaneous, daily, and/or monthly average and/or maximum concentration, mass, or other measure of identified wastewater pollutants or properties; and

(c) Requirements for the installation of pretreatment technology or construction of appropriate containment devices, and the like, designed to reduce, eliminate, or prevent the introduction of pollutants into the treatment works; and

(d) Development and implementation of waste minimization plans to reduce the amount of pollutants discharged to the municipal wastewater system; and

(e) The unit charge or schedule of user charges and fees for the management of the wastewater discharged to the system; and

(f) Requirements for installation and maintenance of inspection and sampling facilities and equipment; and

(g) Specifications for monitoring programs which may include sampling locations, frequency of sampling, number, types, and standards for tests, and reporting schedules; and

(h) Requirements for immediate reporting of any instance of noncompliance and for automatic resampling and reporting within 30 days where self-monitoring indicates a violation; and

(i) Compliance schedules for meeting pretreatment standards and requirements; and

(j) Requirements for submission of periodic self-monitoring or special notification reports; and

(k) Requirements for maintaining and retaining plans and records relating to wastewater discharges as specified in § 52.37 and affording the POTW Director, or his or her representatives, access thereto; and

(l) Requirements for prior notification and approval by the POTW Director of any new introduction of wastewater pollutants or of any significant change in the volume or character of the wastewater prior to introduction in the system; and

(m) Requirements for the prior notification and approval by the POTW Director of any change in the manufacturing and/or pretreatment process used by the permittee; and

(n) Requirements for immediate notification of excessive, accidental, or slug discharges, or any discharge which could cause any problems to the system; and

(o) A statement that compliance with the permit does not relieve the permittee of responsibility for compliance with all applicable federal and state pretreatment standards, including those which become effective during the terms of the permit; and

(p) Other conditions as deemed appropriate by the POTW Director to ensure compliance with This Chapter, and state and federal laws, rules, and regulations.

~~(L)~~ **(K)** *Permit duration.* Permits shall be issued for a specified time period, not to exceed five (5) years. A permit may be issued for a period less than a year or may be stated to expire on a specific date.

~~(M)~~ **(L)** *Permit transfer.* Wastewater Permits are issued to a specific user for a specific operation. A wastewater discharge permit shall not be reassigned or transferred or sold to a new owner, new user, different premises, or a new or changed operation.

~~(N)~~ (M) *Permit reissuance.* A Significant Industrial User shall apply for permit reissuance by submitting a complete permit application in accordance with this ~~section~~ **Section** a minimum of 180 days prior to the expiration of the existing permit.

### **REPORTING REQUIREMENTS**

#### **§ 52.25 BASELINE MONITORING REPORTS.**

(A) Within either 180 days after the effective date of a categorical pretreatment standard, or the final administrative decision on a category determination under 40 CFR 403.6(a)(4), whichever is later, existing categorical users currently discharging to or scheduled to discharge to the POTW shall submit to the POTW Director a report which contains the information listed in division (B) below. At least 90 days prior to commencement of their discharge, new sources, and sources that become categorical users subsequent to the promulgation of an applicable categorical standard, shall submit to the POTW Director a report which contains the information listed in division (B) below. A new source shall report the method of pretreatment it intends to use to meet applicable categorical standards. A new source also shall give estimates of its anticipated flow and quantity of pollutants to be discharged.

(B) Users described above shall submit the information set forth below.

(1) *Identifying information.* The name and address of the facility, including the name of the operator and owner.

(2) *Environmental permits.* A list of any environmental control permits held by or for the facility.

(3) *Description of operations.* A brief description of the nature, average rate of production, and standard industrial classifications of the operations carried out by such user. This description should include a schematic process diagram which indicates points of discharge to the POTW from the regulated processes.

(4) *Flow measurement.* Information showing the measured average daily and maximum daily flow, in gallons per day, to the POTW from regulated process streams and other streams, as necessary, to allow use of the combined wastestream formula set out in 40 CFR 403.6(e).

(5) Measurement of pollutants.

(a) The categorical pretreatment standards applicable to each regulated process.

(b) The results of sampling and analysis identifying the nature and concentration, and/or mass, where required by the standard or by the POTW Director, of regulated pollutants in the discharge from each regulated process. Instantaneous, daily maximum, and long-term average concentrations, or mass, where required, shall be reported. The sample shall be representative of daily operations and shall be analyzed in accordance with the procedures set out in ~~§ 52.34~~ **Section 52.34 of This Chapter.**

(c) Sampling must be performed in accordance with the procedures set out in ~~§ 52.35~~ **Section 52.35 of This Chapter** and 40 CFR 403.12(b) and (g), including 40 CFR 403.12(g)(4).

(6) *Certification.* A statement, reviewed by the user's current authorized representative as defined in ~~§ 52.02~~ **Section 52.02 of This Chapter** and certified by a qualified professional, indicating whether pretreatment standards are being met on a consistent basis, and, if not, whether additional operation and maintenance (O&M) and/or additional pretreatment is required to meet the pretreatment standards and requirements.

(7) *Compliance schedule.* If additional pretreatment and/or O&M will be required to meet the pretreatment standards, the shortest schedule by which the user will provide such additional pretreatment and/or O&M. The completion date in this schedule shall not be later than the compliance date established for the applicable pretreatment standard. A compliance schedule pursuant to this Section must meet the requirements set out in ~~§ 52.26~~ **Section 52.26 of This Chapter.**

(8) *Signature and certification.* All baseline-monitoring reports must be signed and certified in accordance with ~~§ 52.21(D)~~ **Section 52.21(D) of This Chapter.**

#### **§ 52.26 COMPLIANCE SCHEDULE PROGRESS REPORTS.**

The following conditions shall apply to the compliance schedule required by ~~§ 52.25(B)(7)~~ **Section 52.25(B)(7) of This Chapter:**

(A) The schedule shall contain progress increments in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the user to meet the applicable pretreatment standards (such events include, but are not limited to, hiring an engineer, completing preliminary and final plans, executing contracts for major components, commencing and completing construction, and beginning and conducting routine operation); and

(B) No increment referred to above shall exceed nine (9) months; and

(C) The user shall submit a progress report to the POTW Director no later than fourteen (14) 44 days following each date in the schedule and the final date of compliance including, as a minimum, whether or not it complied with the increment of progress, the reason for any delay, and, if appropriate, the steps being taken by the user to return to the established schedule; and

(D) In no event shall more than nine (9) months elapse between such progress reports to the POTW Director.

#### **§ 52.27 REPORTS ON COMPLIANCE WITH CATEGORICAL PRETREATMENT STANDARD DEADLINE.**

Within ninety (90) 90 days following the date for final compliance with applicable categorical pretreatment standards, or in the case of a new source following commencement of the introduction of wastewater into the POTW, any user subject to such pretreatment standards and requirements shall submit to the POTW Director a report containing the information described in § Section 52.25(B)(4) - (B)(6) of This Chapter. For users subject to equivalent mass or concentration limits established in accordance with the procedures in 40 CFR 403.6(c), this report shall contain a reasonable measure of the user's long-term production rate. For all other users subject to categorical pretreatment standards expressed in terms of allowable pollutant discharge per unit of production (or other measure of operation), this report shall include the user's actual production during the appropriate sampling period. All compliance reports must be signed and certified in accordance with § Section 52.21(D) of This Chapter.

#### **§ 52.28 PERIODIC COMPLIANCE REPORTS.**

(A) The City may sample and analyze user discharges in lieu of requiring the users to conduct sampling and analysis.

(A) (B) All Significant Industrial Users required to self-monitor shall, at a frequency determined by the POTW Director but in no case less than once every six (6) 6 months, submit a report indicating the nature and concentration of pollutants in the discharge which are limited by pretreatment standards and the applicable flows for the reporting period. Sampling and analysis must be performed in accordance with procedures set out in § Section 52.34 and § Section 52.35 of This Chapter. All periodic compliance reports must be signed and certified in accordance with § Section 52.21(D) of This Chapter.

(B) (C) If a user subject to the reporting requirement in this section monitors any pollutant more frequently than required by the POTW Director, using the procedures prescribed in § Section 52.34 of This Chapter, the results of this monitoring shall be included in the report.

#### **§ 52.29 REPORTS OF CHANGED CONDITIONS.**

(A) Each user must notify the POTW Director of any planned significant changes to the user's operations or system which might alter the nature, quality, or volume of its wastewater at least thirty (30) 30 days before the change. The permittee shall not begin the changes until receiving written approval from the Control Authority and/or City. See § Section 52.30(D) of This Chapter for other reporting requirements.

(B) The POTW Director may require the user to submit such information as may be deemed necessary to evaluate the changed condition, including the submission of a wastewater discharge permit application under § Section 52.21 of This Chapter.

(C) The POTW Director may issue a wastewater discharge permit under § Section 52.21 of This Chapter or modify an existing wastewater discharge permit under § Section 52.21 of This Chapter in response to changed conditions or anticipated changed conditions.

(D) For purposes of this requirement, significant changes include, but are not limited to, flow or pollutant increases of twenty percent (20%) 20% or greater, and the discharge of any previously unreported pollutants, increases or decreases to production, increases in discharge of previously reported pollutants, discharge of pollutants not previously reported to the Control Authority and/or City, new or changed product lines, new or changed manufacturing processes and/or chemicals, or new or changed customers.

### § 52.30 REPORTS OF POTENTIAL PROBLEMS.

(A) In the case of any discharge, including, but not limited to, accidental discharges, discharges of a nonroutine, episodic nature, a noncustomary batch discharge, or a slug load as defined in § Section 52.02 of This Chapter, that may cause potential problems for the POTW, the user shall immediately telephone and notify the POTW Director of the incident. This notification shall include the location of the discharge, type of waste, concentration and volume, if known, and corrective actions taken by the user.

(B) Within five (5) days following such discharge, the user shall, unless waived by the POTW Director, submit a detailed written report describing the cause of the discharge and the measures to be taken by the user to prevent similar future occurrences. Such notification shall not relieve the user of any expense, loss, damage, or other liability which may be incurred as a result of damage to the POTW, natural resources, or any other damage to person or property; nor shall such notification relieve the user of any fines, penalties, or other liability which may be imposed pursuant to this chapter This Chapter.

(C) A notice shall be permanently posted on the user's bulletin board or other prominent place advising employees whom to call in the event of a discharge described in division (A) of this Section. Employers shall ensure that all employees, who may cause such a discharge to occur, are advised of the emergency notification procedure.

(D) All SIUs are required to notify the POTW immediately of any changes at its facility affecting the potential for spills and other accidental discharge, discharge of non-routine, episodic nature, a non-customary batch discharge, or a slug load as defined in § Section 52.02 of This Chapter.

### § 52.31 REPORTS FROM UNPERMITTED USERS.

(A) All users not required to obtain a wastewater discharge permit shall provide appropriate reports to the POTW Director as the POTW Director may require.

(B) All users classified as Non-Significant Categorical Industrial Users under subparagraph (6) of the definition for Significant Industrial User or SIU found in Section 52.02 of This Chapter shall provide appropriate reports to the POTW Director as the POTW Director may require. At a minimum, this reporting shall include the Annual Certification that the user is continuing to meet the Non-Significant Categorical Industrial User criteria as required under 40 CFR 403.12(q).

### § 52.32 NOTICE OF VIOLATION/REPEAT SAMPLING AND REPORTING.

(A) If sampling performed by a user indicates a violation, the user must notify the POTW Director within twenty-four (24) 24 hours of becoming aware of the violation. The user shall also repeat the sampling and analysis and submit the results of the repeat analysis to the POTW Director within thirty (30) 30 days after becoming aware of the violation. If allowed by the POTW Director, the user is not required to resample:

- (1) If the POTW Director monitors at the user's facility at least once a month; or
- (2) If the POTW Director samples between the user's initial sampling and when the user receives the results of this sampling.

(B) If the POTW Director has performed the sampling and analysis in lieu of the Industrial User does not require the user to perform any self-monitoring and the POTW sampling of the user indicates a violation, the POTW Director shall repeat the sampling and obtain the results of the repeat analysis within thirty (30) 30 days after becoming aware of the violations, unless one of the following occurs:

- (1) The POTW Director monitors at the user's facility at least once a month; or
- (2) The POTW Director samples the user between their initial sampling and when the POTW receives the results of this initial sampling; or
- (3) The POTW Director requires the user to perform sampling and submit the results to the POTW Director within the 30-day deadline of the POTW becoming aware of the violation.

### § 52.33 NOTIFICATION OF THE DISCHARGE OF HAZARDOUS WASTE.

(A) The City prohibits the discharge of any hazardous wastes without notification to and approval by of the POTW Director.

(A) (B) Any user who commences the discharge of hazardous waste shall notify the POTW, the EPA Regional Waste Management Division Director, and state hazardous waste authorities, in writing, of any discharge into the POTW of a substance which, if otherwise disposed of, would be a hazardous waste under 40 CFR Part 261. Such notification must include the name of the hazardous waste as set forth in 40 CFR Part 261, the EPA hazardous waste number, and the type of discharge

(continuous, batch, or other). If the user discharges more than ~~one hundred (100)~~ 400 kilograms of such waste per calendar month to the POTW, the notification also shall contain the following information to the extent ~~such~~ information is known and readily available to the user: an identification of the hazardous constituents contained in the wastes; an estimation of the mass and concentration of such constituents in the wastestream discharge during the calendar month; and an estimation of the mass ~~and concentration~~ of ~~such~~ constituents in the wastestream expected to be discharged during the following 12 months. ~~With the exception of the notification required by the first sentence of this subdivision, all notifications must take place no later than 180 days after discharge commences. With the exception of the notification required by the first sentence of this subdivision, All notifications must take place no later than one hundred eighty (180) days before the discharge commences. The user shall not begin the discharge until written approval is received from the City. Any~~ notification under this paragraph need be submitted only once for each hazardous waste discharge. However, notifications of changed conditions must be submitted under ~~§ 52.29~~ Section 52.29 of This Chapter. The notification requirement in this section does not apply to pollutants already reported by users subject to categorical pretreatment standards under the self-monitoring requirements of ~~§§ 52.25, 52.27, and 52.28~~ Sections 52.25, 52.27, and 52.28 of This Chapter.

~~(B)~~ (C) Dischargers are exempt from the requirements of division ~~(A)~~ (B) above during a calendar month in which they discharge no more than ~~fifteen (15)~~ 45 kilograms of hazardous wastes, unless the wastes are acute hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e). Discharge of more than ~~fifteen (15)~~ 45 kilograms of nonacute hazardous wastes in a calendar month, or of any quantity of acute hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e), requires a one-time notification. Subsequent months during which the user discharges more than such quantities of any hazardous waste do not require additional notification.

~~(C)~~ (D) In the case of any new regulation under Section 3001 of RCRA identifying additional characteristics of hazardous waste or listing any additional substance as a hazardous waste, the user must notify the POTW Director, the EPA Regional Waste Management Waste Division Director, and state hazardous waste authorities of the discharge of such substance within ~~ninety (90)~~ 90 days of the effective date of such regulations.

~~(D)~~ (E) In the case of any notification made under this section, the user shall certify that it has a program in place to reduce the volume and toxicity of hazardous wastes generated to the degree it has determined to be economically practical.

~~(E)~~ (F) This provision does not create a right to discharge any substance not otherwise permitted to be discharged by This Chapter, a permit issued thereunder, or any applicable federal or state law.

#### § 52.34 ANALYTICAL REQUIREMENTS.

All pollutant analyses, including sampling techniques, to be submitted as part of a wastewater discharge permit application or report shall be performed ~~by a laboratory certified by the state to perform the wastewater analyses~~ in accordance with the techniques prescribed in 40 CFR Part 136, unless otherwise specified in an applicable categorical pretreatment standard ~~or unless otherwise performed in accordance with procedures approved by the EPA or the City.~~ If 40 CFR Part 136 does not contain sampling or analytical techniques for the pollutant in question, sampling and analyses must be performed in accordance with procedures approved by the EPA ~~and the City.~~

#### § 52.35 GRAB AND COMPOSITE SAMPLE COLLECTION.

(A) All wastewater samples must be representative of the user's discharge. Wastewater monitoring and flow measurement facilities shall be properly operated, kept clean, and maintained in good working order at all times. The failure of a user to keep its monitoring facility in good working order shall not be grounds for the user to claim that sample results are unrepresentative of its discharge.

(B) Grab samples must be used for pH, ~~cyanide~~, total phenols, oil and grease, sulfide, volatile organic compounds, and any other pollutants as required by 40 CFR 136. The POTW shall determine the number of grabs necessary to be representative of the User's discharge. See 40 CFR 403.12(g)(5) for additional grab sample number requirements for BMR and 90 Day Compliance Reports. Additionally, the POTW Director may allow collection of multiple grabs during a 24 hour period which are composited prior to analysis as allowed under 40 CFR 136.

(C) Composite Samples: All wastewater composite samples shall be collected with a minimum of hourly aliquots or grabs for each hour that there is a discharge. All wastewater composite samples shall be collected using flow proportional composite collection techniques, unless time-proportional composite sampling or grab sampling is authorized by the POTW Director. When authorizing time-proportional composites or grabs, the samples must be representative and the decision to allow the alternative sampling must be documented.

**§ 52.36 TIMING.**

Written reports will be deemed to have been submitted on the date postmarked. For reports that are not mailed, postage prepaid, into a mail facility serviced by the United States Postal Service, the date of receipt of the report shall govern.

**§ 52.37 RECORD KEEPING.**

Users subject to the reporting requirements of This Chapter shall retain, and make available for inspection and copying, all records of information obtained pursuant to any monitoring activities required by This Chapter and any additional records of information obtained pursuant to monitoring activities undertaken by the user independent of such requirements. Records shall include the date, exact place, method, and time of sampling, and the name of the person taking the samples; the data analyses that were performed; who performed the analyses; the analytical techniques or methods used; and the results of such analyses. These records shall remain available for a period of at least three (3) years. This period shall be automatically extended for the duration of any litigation concerning the user or the City, or where the user has been specifically notified of a longer retention period by the POTW Director.

**§ 52.38 ELECTRONIC REPORTING.**

The POTW Director may develop procedures for receipt of electronic reports for any reporting requirements of This Chapter. Such procedures shall comply with 40 CFR Part 3. These procedures shall be enforceable under Sections 52.50, 52.51, 52.52, and 52.99 of This Chapter.

**COMPLIANCE MONITORING**

**§ 52.40 MONITORING FACILITIES.**

(A) The City requires the user to provide and operate, at the user's own expense, monitoring facilities to allow inspection, sampling, and flow measurement of the building sewer and/or internal drainage systems. The monitoring facility should normally be situated on the user's premises, but the City may, when such a location would be impractical or cause undue hardship on the user, allow the facility to be constructed in the public street or sidewalk area located so that it will not be obstructed by landscaping or parked vehicles.

(B) There shall be ample room in or near such sampling manhole or facility to allow accurate sampling and preparation of samples for analysis. The facility, sampling, and measuring equipment shall be maintained at all times in a safe and proper operating condition at the expense of the user.

(C) Whether constructed on public or private property, the sampling and monitoring facilities shall be provided in accordance with the City's requirements and all applicable local construction standards and specifications. Construction shall be completed within ninety (90) 90 days following written notification by the City.

**§ 52.41 INSPECTION AND SAMPLING.**

The City will inspect the facilities of any user to ascertain whether the purpose of This Chapter is being met and all requirements are being complied with. Persons or occupants of premises where wastewater is created or discharged shall allow the City, approval authority, and EPA or their representative ready access at all reasonable times to all parts of the premises for the purposes of inspection, sampling, and records examination and copying or in the performance of any of their duties. The City, approval authority, and EPA shall have the right to set up on the user's property such devices as are necessary to conduct sampling, inspection, compliance monitoring, and/or metering operations. Where a user has security measures in force which would require proper identification and clearance before entry into their premises, the user shall make necessary arrangements with their security guards so that upon presentation of suitable identification, personnel from the City, approval authority, and EPA will be permitted to enter, without delay, for the purposes of performing their specific responsibilities. Denial of the POTW Director's City's, approval authority's, or EPA's access to the user's premises shall be a violation of This Chapter. Unreasonable delays may constitute denial of access.

**§ 52.42 SEARCH WARRANTS.**

If the POTW Director City, approval authority, or EPA has been refused access to a building, structure, or property, or any part thereof, and is able to demonstrate probable cause to believe that there may be a violation of This Chapter, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program of the City designed to verify compliance with This Chapter or any permit or order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the POTW Director City, approval authority, or EPA may seek issuance of a search warrant from the Magistrate's Office of Randolph County.

### **CONFIDENTIAL INFORMATION**

#### **§ 52.45 CONFIDENTIAL INFORMATION.**

(A) Information and data on a user obtained from reports, questionnaires, permit applications, permits, and monitoring programs and from inspections shall be available to the public or other governmental agency without restriction unless the user specifically requests and is able to demonstrate to the satisfaction of the POTW Director that the release of such information would divulge information, processes, or methods of production entitled to protection as trade secrets of the user. Any such request must be asserted at the time of submission of the information or data.

(B) When requested by the person furnishing a report, the portions of a report which might disclose trade secrets or secret processes shall not be made available for inspection by the public, but shall be made available upon written request to governmental agencies for uses related to This Chapter, the National Pollutant Discharge Elimination System (NPDES) Permit, Non-discharge Permit and/or the pretreatment programs; provided, however, that such portions of a report shall be available for use by the state or any state agency in judicial review or enforcement proceedings involving the person furnishing the report. Wastewater constituents and characteristics will not be recognized as confidential information.

(C) All records relating to compliance with pretreatment standards shall be made available to officials of the approval authority and EPA upon request.

(A) Information and data identifying the nature and frequency of a discharge that is provided by an Industrial User to the POTW Director pursuant to This Chapter shall be available to the public without restriction. All other information which may be submitted by an Industrial User to the POTW Director in connection with any required reports shall also be available to the public unless the Industrial User or other interested person specifically identifies the information as confidential upon submission and is able to demonstrate to the satisfaction of the POTW Director that the disclosure of such information or a particular part thereof to the general public would divulge methods or processes entitled to protection as trade secrets.

(B) Information provided by an Industrial User to the POTW Director that is determined to be entitled to confidential treatment shall be made available upon written request to the Division of Water Quality or any state agency for uses related to the Pretreatment Program, the National Pollutant Discharge Elimination System (NPDES) Permit, collection system permit, stormwater permit, and/or Non-discharge permit, and for uses related to judicial review or enforcement proceedings involving the person furnishing the report.

(C) Information and data received by the Division or other state agency under division (B) above shall be subject to the processes set forth in G.S. 143-215.3C.

### **ENFORCEMENT**

#### **§ 52.50 ADMINISTRATIVE REMEDIES.**

(A) *Notification of violation.* Whenever the POTW Director finds that any Industrial User has violated or is violating This Chapter, wastewater permit, or any prohibition, limitation, or requirement contained therein or any other pretreatment requirement, the POTW Director may serve upon such a person or user a written notice stating the nature of the violation. Within ~~thirty (30) 30~~ days from the date of this notice, an explanation for the violation and a plan for the satisfactory correction thereof shall be submitted to the City by the user. Submission of this plan does not relieve the discharger of liability for any violations occurring before or after receipt of the notice of violation.

(B) *Consent orders.* The POTW Director is hereby empowered to enter into consent orders, assurances of voluntary compliance, or other similar documents establishing an agreement with the person or entity responsible for the noncompliance. Such orders will include specific action to be taken by the discharger to correct the noncompliance within a time period also specified by the order. Consent orders shall have the same force and effect as an administrative order issued pursuant to division (D) below.

(C) *Show cause hearing.* The POTW Director may order any Industrial User who causes or is responsible for an unauthorized discharge, has violated This Chapter, or is in noncompliance with a wastewater discharge permit to show cause why a proposed enforcement action should not be taken. In the event the POTW Director determines that a show cause order should be issued, a notice shall be served on the user specifying the time and place for the hearing, the proposed enforcement action, the reasons for such action, and a request that the user show cause why this proposed enforcement action should not be taken. The notice of the hearing shall be served personally or by registered or certified mail (return receipt requested) at least ten ~~(10)~~ days before the hearing. Service may be made on any agent or officer of a corporation.

(1) The POTW Director shall review the evidence presented at the hearing and determine whether the proposed enforcement action is appropriate.

- (2) A show cause hearing under this Subdivision is not a prerequisite to the assessment of a civil penalty under § 52.99 nor is any action or inaction taken by the POTW Director under this division subject to an administrative appeal under § ~~52.21(4)~~ 52.58.

(D) *Administrative orders.* When the POTW Director finds that an Industrial User has violated or continues to violate This Chapter, permits, or orders issued hereunder, or any other pretreatment requirement, the POTW Director may issue an order to cease and desist all such violations and direct those persons in noncompliance to do any of the following:

- (1) Immediately comply with all requirements;
- (2) Comply in accordance with a compliance time schedule set forth in the order;
- (3) Take appropriate remedial or preventive action in the event of a continuing or threatened violation;
- (4) Disconnect unless adequate treatment facilities, devices, or other related appurtenances are installed and properly operated within a specified time period.

(E) *Emergency suspensions.* The POTW Director may suspend the wastewater treatment service and/or wastewater permit when such suspension is necessary in order to stop an actual or threatened discharge which presents or may present an imminent or substantial endangerment to the health or welfare of persons or the environment, interferes with the POTW, or causes the POTW to violate any condition of its NPDES or Non-discharge Permit. Any user notified of a suspension of the wastewater treatment service and/or the wastewater permit shall immediately stop or eliminate the contribution. A hearing will be held within ~~fifteen (15)~~ 45 days of the notice of suspension to determine whether the suspension may be lifted or the user's waste discharge permit terminated. In the event of a failure to comply voluntarily with the suspension order, the POTW Director shall take such steps as deemed necessary, including immediate severance of the sewer connection, to prevent or minimize damage to the POTW system or endangerment to any individuals. The POTW Director shall reinstate the wastewater permit and the wastewater treatment service upon proof of the elimination of the noncompliant discharge. The Industrial User shall submit a detailed written statement describing the causes of the harmful contribution and the measures taken to prevent any future occurrence to the POTW Director prior to the date of the above-described hearing.

(F) *Termination of Permit or Permission to Discharge.* The POTW Director may revoke a wastewater discharge permit or permission to discharge for good cause, including, but not limited to, the following reasons:

- (1) Failure to accurately report the wastewater constituents and characteristics of his discharge; or
- (2) Failure to report significant changes in operations, or wastewater constituents and characteristics; or
- (3) Refusal of reasonable access to the user's premises for the purpose of inspection or monitoring; or
- (4) Violation of conditions of the permit or permission to discharge, conditions of ~~this ordinance~~ **This Chapter**, or any applicable state or federal regulations.

(G) Noncompliant Industrial Users will be notified of the proposed termination of their wastewater permit and will be offered an opportunity to show cause under § 52.50 why the proposed action should not be taken.

#### **§ 52.51 OTHER AVAILABLE REMEDIES.**

Remedies, in addition to ~~the civil penalties authorized in § 52.99 and other remedies those previously mentioned~~ **authorized elsewhere** in This Chapter, are available to the POTW Director who may use any single one or combination against a noncompliant user. Additional available remedies include, but are not limited to:

(A) *Criminal violations.* The District Attorney for the 19-B Judicial District, which includes Randolph County, may, at the request of the City, prosecute noncompliant users who violate the provisions of G.S. § 143-215.6B.

(B) *Injunctive relief.* Whenever a user is in violation of the provisions of This Chapter or an order or permit issued hereunder, the POTW Director, through the City Attorney, may petition the Superior Court of Justice for the issuance of a restraining order or a preliminary and permanent injunction which restrains or compels the activities in question.

(C) *Water supply severance.* Whenever an Industrial User is in violation of the provisions of This Chapter or an order or permit issued hereunder, water service to the Industrial User may be severed and service will only recommence, at the user's expense, after the user has satisfactorily demonstrated its ability and willingness to comply.

(D) *Public nuisances.* Any violation of the prohibitions or effluent limitations of This Chapter or of a permit or order issued hereunder, is hereby declared a public nuisance and shall be corrected or abated as directed by the POTW Director. Any person creating a public nuisance shall be subject to the provisions of the Code of Asheboro and the North Carolina General Statutes governing such nuisances, including reimbursing the POTW for any costs incurred in removing, abating, or remedying the nuisance.

#### **§ 52.52 REMEDIES ARE NONEXCLUSIVE.**

The remedies provided for in This Chapter are not exclusive. The POTW Director may take any, all, or any combination of these actions against a noncompliant user. Enforcement of pretreatment violations will generally be in accordance with the City's enforcement response plan. However, the POTW Director may take other action against any user when the circumstances warrant. Furthermore, the POTW Director is empowered to take more than one enforcement action against any noncompliant user.

#### ***ANNUAL PUBLICATION OF SIGNIFICANT NONCOMPLIANCE***

#### **§ 52.55 ANNUAL PUBLICATION OF SIGNIFICANT NONCOMPLIANCE.**

At least annually, the POTW Director shall publish in a newspaper of general circulation that provides meaningful public notice within the jurisdiction(s) served by the POTW, a list of those Industrial Users which were found to be in significant noncompliance, also referred to as reportable noncompliance in 15A NCAC 2H .0903(b)(40)(34), with applicable pretreatment standards and requirements, during the previous 12 months.

#### **ADJUDICATORY HEARINGS**

#### **§ 52.58 ADJUDICATORY HEARINGS.**

(A) *Initial adjudicatory hearing.* An applicant whose permit is denied or is granted subject to conditions he or she deems unacceptable, a permitted user assessed a civil penalty under § 52.99, or a permitted user issued an administrative order under § 52.50 shall have the right to an adjudicatory hearing before the POTW Director or other hearing officer designated by the POTW Director upon making written demand, identifying the specific issues to be contested, to the POTW Director within thirty (30) days following receipt or denial of the Significant Industrial User permit, civil penalty assessment, or administrative order. Unless such written demand is made within the time specified herein, the action shall be final and binding and further appeal is barred. For modified permits, only those parts of the permit being modified may be adjudicated. The hearing officer shall make a final decision on the contested permit, penalty, or order within forty-five (45) days of the receipt of the written demand for a hearing. The POTW Director shall transmit a copy of the hearing officer's decision by registered or certified mail as described in division (C) below. The terms and conditions of a permit under appeal shall be as follows:

- (1) *New permits.* Upon appeal, including judicial review in the General Courts of Justice, of the terms and conditions of a newly issued permit, the terms and conditions of the entire permit are stayed and the permit is not in effect until either the conclusion of judicial review or until the parties reach a mutual resolution.
- (2) *Renewed permits.* Upon appeal, including judicial review in the General Courts of Justice, of the terms and conditions of a renewed permit, the terms and conditions of the existing permit remain in effect until either the conclusion of judicial review or until the parties reach a mutual resolution.
- (3) *Terminated permits.* Upon appeal, including judicial review in the General Courts of Justice, of a terminated permit, no permit is in effect until either the conclusion of judicial review or until the parties reach a mutual resolution.

(B) *Final appeal hearing.* Any decision of a hearing officer made as a result of an adjudicatory hearing held under division (A) above may be appealed to the City Council upon filing a written demand within ten (10) days of receipt of notice of the decision. Hearings held under this division shall be conducted in accordance with the quasi-judicial hearing principles and procedures utilized by the City Council when conducting quasi-judicial hearings for land use cases. Failure to make written demand within the time specified herein shall bar further appeal. The City Council shall make a final decision on the appeal within ninety (90) days from receipt of the demand filed under division (A) and shall transmit a written copy of its decision by registered or certified mail as described in division (C) below. The decision is a final decision for the purposes of seeking judicial review.

**(C) Official record.** When a final decision is issued under division (B) above, the City Council shall prepare an official record of the case that includes:

(1) All notices, motions, and other like pleadings.

(2) A copy of all documentary evidence introduced.

(3) A certified transcript of all testimony taken, if testimony is transcribed. If testimony is taken and not transcribed, then a narrative summary of any testimony taken.

(4) A copy of the final decision of the City Council.

**(D) Judicial review.** Any person against whom a final order or decision of the City Council is entered, pursuant to the hearing conducted under division (B) above, may seek judicial review of the order or decision by filing a written request for judicial review with the Superior Court of Randolph County, along with a copy to the City, within thirty (30) days after receipt of notice by registered or certified mail of the order or decision, but not thereafter. Within thirty (30) days after receipt of the copy of the written request for judicial review, the City shall transmit to the reviewing court the original or a certified copy of the official record.

#### **AFFIRMATIVE DEFENSES TO DISCHARGE VIOLATIONS**

##### **§ 52.60 UPSET.**

(A) An upset shall constitute an affirmative defense to an action brought for noncompliance with categorical pretreatment standards if the requirements of division (B) below are met.

(B) A user who wishes to establish the affirmative defense of upset shall demonstrate through properly signed, contemporaneous operating logs or other relevant evidence that:

(1) An upset occurred and the user can identify the cause of the upset; and

(2) The facility was at the time being operated in a prudent and workmanlike manner and in compliance with applicable operation and maintenance procedures; and

(3) The user has submitted (verbal notification of the required information is acceptable so long as the verbal notification is followed-up with written notification that is submitted within five (5) days) the following information to the POTW Director within **twenty-four (24) 24** hours of becoming aware of the upset:

(a) A description of the indirect discharge and cause of noncompliance; and

(b) The period of noncompliance, including exact dates and times or, if not corrected, the anticipated time the noncompliance is expected to continue; and

(c) The steps being taken and/or planned to reduce, eliminate, and prevent recurrence of the noncompliance.

(C) In any enforcement proceeding, the user seeking to establish the occurrence of an upset shall have the burden of proof.

(D) Users will have the opportunity for a judicial determination on any claim of upset only in an enforcement action brought for noncompliance with categorical pretreatment standards.

(E) Users shall control production of all discharges to the extent necessary to maintain compliance with categorical pretreatment standards upon reduction, loss, or failure of its treatment facility until the facility is restored or an alternative method of treatment is provided. This requirement applies in the situation where, among other things, the primary source of power of the treatment facility is reduced, lost, or fails.

##### **§ 52.61 PROHIBITED DISCHARGE STANDARDS DEFENSE.**

A user shall have an affirmative defense to an enforcement action brought against it for noncompliance with the general prohibitions in § 52.05(A) or the specific prohibitions in § 52.05(B)(2), through (B)(3), and ~~§ 52.05(B)(5) through (B)(7)~~ § 52.05(B)(3), § 52.05(B)(5-7), and § 52.05(B)(9-23) if it can prove that it did know, or have reason to know, that its discharge, alone or in conjunction with discharges from other sources, would cause pass through or interference and that either:

(A) A local limit exists for each pollutant discharged and the user was in compliance with each limit directly prior to, and during, the pass through or interference; or

(B) No local limit exists, but the discharge did not change substantially in nature or constituents from the user's prior discharge when the City was regularly in compliance with its NPDES permit, and in the case of interference, was in compliance with applicable sludge use or disposal requirements.

**§ 52.62 BYPASS.**

(A) A user may allow any bypass to occur which does not cause pretreatment standards or requirements to be violated, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of divisions (B) and (C).

(B) The following notification requirements shall apply specifically to a bypass:

(1) If a user knows in advance of the need for a bypass, it shall submit prior written notice to the POTW Director at least ten **(10)** days before the date of the bypass, if possible.

(2) A user shall submit verbal notice to the POTW Director of an unanticipated bypass that exceeds applicable pretreatment standards within **twenty-four (24) 24** hours from the time the user becomes aware of the bypass. A written submission shall also be provided within five **(5)** days of the time when the user became aware of the bypass. The written submission shall contain a description of the bypass and its cause; the duration of the bypass, including exact dates and times, and, if the bypass has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the bypass. The POTW Director may waive the written report on a case-by-case basis if the verbal report has been received within 24 hours.

(C) In addition to the exception prescribed by division (A), the following exceptions apply to the general prohibition on bypass:

(1) Bypass is prohibited, and the POTW Director may take an enforcement action against a user for a bypass unless:

(a) Bypass was unavoidable due to the need to prevent loss of life, personal injury, or severe property damage; and

(b) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventative maintenance; and

(c) The user submitted notices as required under division (B).

(2) The POTW Director may approve an anticipated bypass, after considering its adverse effects, if the POTW Director determines that it will meet the three conditions listed in division (C)(1) above.

**§ 52.99 CIVIL PENALTY.**

(A) Any user who is found to have failed to comply with any provision of This Chapter, or the orders, rules, regulations, and permits issued hereunder, may be ~~fined~~ **assessed a civil penalty of** up to \$25,000 per day per violation.

~~(1) Penalties between \$10,000 and \$25,000 per day per violation may be assessed against a violator only if:~~

**(B) Penalties between \$10,000 and \$25,000 per day per violation may be assessed against a violator only if:**

(1) For any class of violation, only if a civil penalty has been imposed against the violator within the five years preceding the violation; or

(2) In the case of failure to file, submit, or make available, as the case may be, any documents, data, or reports required by This Chapter, or the orders, rules, regulations, and permits issued hereunder, only if the POTW Director determines that the violation was intentional and a civil penalty has been imposed against the violator within the five **(5)** years preceding the violation.

~~(B)~~ **(C)** In determining the amount of the civil penalty, the POTW Director shall consider the following:

- (1) The degree and extent of the harm to the natural resources, to the public health, or to public or private property resulting from the violation; and
- (2) The duration and gravity of the violation; and
- (3) The effect on ground or surface water quantity or quality or on air quality; and
- (4) The cost of rectifying the damage; and
- (5) The amount of money saved by noncompliance; and
- (6) Whether the violation was committed willfully or intentionally; and
- (7) The prior record of the violator in complying or failing to comply with the pretreatment program; and
- (8) The cost of enforcement to the City.

~~(C)~~ (D) Appeals of civil penalties assessed in accordance with this section shall be as provided in ~~§ 52-21(l)~~ § 52.58.

**Section 2.** If any court of competent jurisdiction invalidates any provision, paragraph, word, section, or article of this ordinance, the remaining provisions, paragraphs, words, sections, and articles shall not be affected and shall continue in full force and effect.

**Section 3.** All other ordinances and parts of other ordinances inconsistent or conflicting with any part of this ordinance are hereby repealed to the extent of such inconsistency or conflict.

**Section 4.** This ordinance shall be in full force and effect upon and after the 1<sup>st</sup> day of January, 2013.

INTRODUCED: November 8, 2012

FIRST READING: November 8, 2012

SECOND READING: December 6, 2012

RECEIVED initial approval after the first reading on the 8<sup>th</sup> day of November, 2012.

AYES: 7

NAYS: 0

ABSENT: 0

NOT VOTING: 0

PASSED after the second and final reading on the 6<sup>th</sup> day of December, 2012.

AYES: 6

NAYS: 0

ABSENT: 1

NOT VOTING: 0

APPROVED this 6<sup>th</sup> day of December, 2012.

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

ATTEST:

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

- (f) **An ordinance setting the Asheboro City Council's schedule for regular meetings during the 2013 calendar year.**

32 ORD 12-12

**AN ORDINANCE SETTING THE DATES OF THE REGULAR MEETINGS OF THE ASHEBORO CITY COUNCIL DURING THE 2013 CALENDAR YEAR**

**WHEREAS**, Section 31.04(A) of the Code of Asheboro provides that the "City Council shall hold a regular meeting on Thursday after the first Monday of each month;" and

**WHEREAS**, the Thursday after the first Monday in July 2013 is July the 4<sup>th</sup>, and the Thursday after the first Monday in September 2013 is September the 5<sup>th</sup>, which falls within the same week as the Labor Day holiday on September 2, 2013; and

**WHEREAS**, in an effort to lessen the possibility of other events and obligations negatively impacting attendance at the regular council meetings in July and September 2013, the members of the Asheboro City Council have agreed to reschedule these regular meetings;

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

**Section 1.** The regular meeting of the Asheboro City Council in July 2013 shall be held in the Council Chamber of the Asheboro Municipal Building at 7:00 p.m. on the 11<sup>th</sup> day of July, 2013, and the regular meeting of the Asheboro City Council in September 2013 shall be held in the Council Chamber of the Asheboro Municipal Building at 7:00 p.m. on the 12<sup>th</sup> day of September, 2013.

**Section 2.** For purposes of clarity, the schedule for regular meetings of the Asheboro City Council during the 2013 calendar year is as follows:

| <u>Month</u> | <u>Meeting Date</u> |
|--------------|---------------------|
| January      | 10 <sup>th</sup>    |
| February     | 7 <sup>th</sup>     |
| March        | 7 <sup>th</sup>     |
| April        | 4 <sup>th</sup>     |
| May          | 9 <sup>th</sup>     |
| June         | 6 <sup>th</sup>     |
| July         | 11 <sup>th</sup>    |
| August       | 8 <sup>th</sup>     |
| September    | 12 <sup>th</sup>    |
| October      | 10 <sup>th</sup>    |
| November     | 7 <sup>th</sup>     |
| December     | 5 <sup>th</sup>     |

**Section 3.** All ordinances and clauses of ordinances in conflict with this ordinance are hereby repealed to the extent that such ordinances conflict with the intent of the Asheboro City Council to hold its regular meetings in accordance with the schedule found in Section 2 of this Ordinance. With the exception of rescheduling the Asheboro City Council's July 2013 and September 2013 regular meetings, the provisions of Section 31.04 of the Code of Asheboro remain in full force and effect.

**Section 4.** This ordinance shall become effective upon adoption and shall sunset on December 31, 2013.

This ordinance was adopted in open session during a regular meeting of the Asheboro City Council that was held on December 6, 2012.

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

ATTEST:

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

**(g) Approval of budget amendments:**

**(i) Ordinance to amend the Airport Improvements Fund (#66) FY 2012-2013.**

**33 ORD 12-12**

**ORDINANCE TO AMEND THE AIRPORT IMPROVEMENTS FUND (#66) FY 2012-2013**

WHEREAS, the City of Asheboro Regional Airport has been approved to receive additional federal funds under the Federal Aviation Century of Flight Authorization Act of 2003 (Vision 100) in conjunction with the State Aid to Airports Program, and these funds have been awarded for "Airfield Improvements" and are referenced as State Project 36237.23.13.1 and;

WHEREAS, project expenses outlined for two previous grant awards referenced as project 36237.23.8.1 and project 36237.23.11.1 have changed from those initially budgeted and the State of NC Department of Transportation had approved amendments to these grants, and:

WHEREAS, due to the award of these new funds and approved grant modifications, revenues and expenditures have changed from the amounts currently shown in the Airport Improvements Fund, and;

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

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

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

| <u>Account</u> | <u>Description</u>               | <u>Increase</u> | <u>Amended Budget</u> |
|----------------|----------------------------------|-----------------|-----------------------|
| 66-349-1700    | Fed Grant (12-13) #36237.23.13.1 | 150,000         | 150,000               |
| 66-367-1021    | GF Contribution (12-13)          | 16,667          | 16,667                |
|                | Total increase                   | 166,667         |                       |

Section 2: That the following expense line items are increased / (decreased):

| <u>Account</u> | <u>Description</u>                  | <u>Increase (decrease)</u> | <u>Amended Budget</u> |
|----------------|-------------------------------------|----------------------------|-----------------------|
| 66-982-0400    | Engineering                         | 50,000                     | 50,000                |
| 66-982-0500    | Administration                      | 2,000                      | 2,000                 |
| 66-982-4500    | Const. & Project Improvement (13.1) | 114,667                    | 114,667               |
| 66-970-0400    | Engineering Services                | 117,800                    | 154,495               |
| 66-970-0500    | Administration                      | 1,318                      | 2,288                 |
| 66-970-4500    | Construction                        | (134,618)                  | 327,718               |
| 66-980-0400    | Engineering                         | 1,200                      | 17,050                |
| 66-980-0500    | Administration                      | 520                        | 520                   |
| 66-980-4500    | Construction                        | 13,780                     | 164,597               |
|                | Total increase                      | 166,667                    |                       |

Adopted this the 6th day of December 2012.

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

ATTEST:

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

**(ii) Ordinance to amend the Asheboro Housing Development Fund (#62) FY 2012-2013.**

**34 ORD 12-12**

**ORDINANCE TO AMEND THE ASHEBORO HOUSING DEVELOPMENT FUND (#62) FY 2012-2013**

WHEREAS, the City Council has shown interest in maintaining and developing the downtown area as exemplified in its support of the City of Asheboro's investment in a variety of historical projects such as

the downtown streetscape project, Bicentennial park, downtown farmer's market installation of new special directional signage and the current project of renovation of the Sunset Theatre Project, and;

WHEREAS, the City Council has consistently planned and invested in community revitalization using founded urban design and strategic planning methods, and;

WHEREAS, the Redevelopment Commission approved at their November 5, 2012 meeting to give \$1000 for assistance with façade paint removal at 103 Worth Street and \$1500 for assistance with construction of a handicap assessable ramp at 139 South Church Street, and;

WHEREAS, revenues and expenses in the Asheboro Housing Development Fund have changed over time in relation to the current budget, and;

WHEREAS, the City Council of 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 that the special revenue project fund be renamed to Asheboro Housing Development Fund and the following revenue and expense line items are changed as follows:

Section 1: Revenues

| <u>Account #</u> | <u>Revenue Description</u>     | <u>Increase</u> | <u>Amended Line<br/>Item Budget</u> |
|------------------|--------------------------------|-----------------|-------------------------------------|
| 62-360-0100      | Repayment-Owner Occupied Rehab | 2,500           | 124,305                             |

Section 2: Expenses

| <u>Account #</u> | <u>Revenue Description</u> | <u>Increase</u> | <u>Amended line<br/>Item Budget</u> |
|------------------|----------------------------|-----------------|-------------------------------------|
| 62-500-0001      | Downtown Improvements      | 2,500           | 2,500                               |

Adopted this the 6th day of December 2012.

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

ATTEST:

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

- (h) **An ordinance to stop traffic on West Pritchard Street entering York Street, and to rescind an existing ordinance that stops traffic on York Street at West Pritchard Street, as requested by Martin Brown.**

35 ORD 12-12

**AN ORDINANCE DESIGNATING THE INTERSECTION OF WEST PRITCHARD STREET AND YORK STREET AS A STOP INTERSECTION FOR TRAFFIC ENTERING FROM WEST PRITCHARD STREET**

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

**WHEREAS**, Section 70.29(B) of the Code of Asheboro provides, in pertinent part, as follows:

Pursuant to instructions given to him by the City Council from time to time and entered in the council minute book, the City Manager shall:

(B) Cause all intersections designated as stop intersections when entered from designated streets to be posted accordingly. He shall then notify the City Clerk, who shall enter the description of such intersections and the streets of . . . (entry) thereto upon which stops are required in schedule 7 of § 72.02 (of the Code of Asheboro); and

**WHEREAS**, on April 14, 1988, the erection of a stop sign on York Street to stop traffic from entering West Pritchard Street was approved by the Asheboro City Council; and

**WHEREAS**, an entrance to Fayetteville Street Christian School is located at the intersection of West Pritchard Street and York Street; and

**WHEREAS**, subsequent to the Council action in 1988, a portion of West Pritchard Street was closed, and this street, which is now a short, dead-end street, does not connect to Fayetteville Street; and

**WHEREAS**, Mr. Martin Brown, who is a law enforcement officer and a parent of a student at Fayetteville Street Christian School, stated in a letter to the city, dated October 18, 2012, his belief that moving the current stop sign from York Street to West Pritchard Street and allowing the heavier flow of traffic on York Street to continue moving into the school driveway would enhance the safety and convenience of everyone involved; and

**WHEREAS**, the administrator(s) at Fayetteville Street Christian School have expressed no opposition to this request; and

**WHEREAS**, the Asheboro City Council has concluded that the request submitted by Mr. Brown is well considered;

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

**Section 1.** The intersection of West Pritchard Street and York Street is hereby declared to be a stop intersection that must be properly posted to cause vehicles to stop on West Pritchard Street before entering the intersection with York Street.

**Section 2.** The City Manager is hereby instructed to cause the removal of the existing stop sign on York Street at the intersection with West Pritchard Street and, furthermore, to cause the proper placement of a new stop sign on West Pritchard Street in order to stop traffic on West Pritchard Street before entering York Street.

**Section 3.** The City Clerk shall properly record this action in schedule 7 of Section 72.02 of the Code of Asheboro.

**Section 4.** All ordinances and clauses of ordinances in conflict with this ordinance are hereby repealed to the extent that such ordinances conflict with the intent of the Asheboro City Council to relocate the above-described stop sign from York Street to West Pritchard Street.

**Section 5.** This ordinance shall take effect and be in force from and after the date of its adoption.

This ordinance was adopted in open session during a regular meeting of the Asheboro City Council that was held on December 6, 2012.

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

ATTEST:

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

- (i) **A resolution exempting the City of Asheboro from the advertisement/qualification based selection procedure to contract for surveying services needed to process a voluntary annexation request received from the Cross Road Retirement Community located at 1302 Old Cox Road.**

54 RES 12-12

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

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

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

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

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

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

**WHEREAS**, the City of Asheboro needs to procure the services of a professional land surveyor for the Cross Road Retirement Community Voluntary Annexation Project; and

**WHEREAS**, the city's professional staff has concluded that the requisite surveying services can be procured in consideration of the payment of a professional fee that will not exceed four thousand and no hundredths dollars (\$4,000.00);

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Asheboro that, on the basis of the estimated amount of the professional services fee needed to procure the required professional land surveyor services, the aforementioned Cross Road Retirement Community Voluntary Annexation Project is hereby exempted from the provisions of Article 3D of Chapter 143 of the North Carolina General Statutes; and

This resolution was adopted by the Asheboro City Council in open session during a regular meeting held on the 6<sup>th</sup> day of December, 2012.

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

ATTEST:

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

- (j) **An amendment to the City of Asheboro's Policy for Water and Sewer Line Extensions to allow the City to participate in the costs for water and sewer improvements when grant funding becomes available.**

**POLICY FOR WATER AND SEWER LINE EXTENSIONS CITY OF ASHEBORO, NORTH CAROLINA**  
**APPROVED BY THE ASHEBORO CITY COUNCIL ON OCTOBER 4, 2001**  
**AMENDED BY THE ASHEBORO CITY COUNCIL ON NOVEMBER 6, 2008**  
**AMENDED BY THE ASHEBORO CITY COUNCIL ON DECEMBER 6, 2012**

The City of Asheboro will allow property owners and developers to extend water lines and gravity sewer lines into areas not presently served under the following conditions:

- The City of Asheboro will provide or pay for materials meeting or exceeding specifications and standards set by the City for water lines and gravity sewer lines extended along existing streets to serve property inside the City Limits. Materials provided by the City shall consist of water pipe, valves, hydrants, fittings, sewer pipe and manholes.
- The City of Asheboro will provide or pay for materials meeting or exceeding specifications and standards set by the City for gravity sewer outfall lines extended along creeks to serve property inside the City Limits. Materials provided by the City shall consist of sewer pipe, piers for sewer pipe and manholes.
- The owner or developer will pay the total cost of water lines or gravity sewer lines extended to serve property outside the City Limits.
- The owner or developer will acquire easements, provide engineering plans for the extension desired, obtain City and NCDENR approvals, and install the lines per City of Asheboro specifications and standards.
- The City of Asheboro will own and maintain the extensions upon approval for use. In addition to the requirements imposed by the Asheboro Subdivision Ordinance and prior to the approval of use of the extensions, the owner or developer responsible for the installation of the extensions shall assume liability for any and all costs, damages, or injuries arising from the method and/or manner of installation of the extensions. This assumption of liability shall be effectuated by means of the proper execution by the owner or developer responsible for the installation of the extensions of a RELEASE AND HOLD HARMLESS DECLARATION that is approved by the City Attorney.

- The owner or developer will pay the total cost for service connections, or the City will provide the service connections to property outside of developments upon receipt of payment for the applicable fee for inside or outside the City Limits.

- The City will not participate in any costs for water and sewer improvements within a property being developed unless the proposed infrastructure is located within a public right-of-way shown on an approved preliminary subdivision plat that is under review in accordance with the City of Asheboro Subdivision Ordinance and grant funding becomes available for all or a significant portion of the costs. [The immediately preceding underlined text is the text added to the policy by the amendment approved on December 6, 2012.]

- The owner or developer will pay the total cost of sewer pump stations and sewer force mains, except that the City Council may consider participation in the cost when these facilities will provide service to other areas that will benefit the City.

- Expenditures by the City of Asheboro on water and sewer lines extended to property being annexed will be considered by the City Council concurrently with a petition requesting annexation.

- Expenditures by the City of Asheboro on water and sewer line extensions will be subject to budget priorities as determined by the City Council.

**(k) Acknowledgement of the receipt of the minutes of the Asheboro ABC Board's meeting on October 1, 2012.**

A copy of the minutes of the Asheboro ABC Board's meeting on October 1, 2012 is on file in the City Clerk's office.

**OLD BUSINESS:**

**4. (a) Continuation of the public hearing on the possible adoption of a Revised 2012 Extraterritorial Planning Jurisdiction (ETPJ) Boundary Map.**

Mayor Smith opened the public hearing that was continued from the Council's November 8, 2012 regular meeting on the possible adoption of a Revised 2012 Extraterritorial Planning Jurisdiction (ETPJ) Boundary Map.

**(i) Staff report on the joint city/county planning staff ETPJ workshop held on November 29, 2012.**

Mr. Nuttall reported to the Council that the Community Development Division staff held a public workshop regarding proposed revisions to the City's ETPJ boundary in conjunction with the Randolph County Planning and Zoning staff on Thursday, November 29, 2012 at the City of Asheboro Public Works Facility. The workshop held from 6:00 p.m. to 8:00 p.m. and was designed to give interested parties an opportunity to informally speak with City and County planning staffs prior to the City Council's continuation of the public hearing on December 6, 2012.

In addition to being advertised in *The Courier-Tribune* and the *Randolph Guide*, information about the workshop was posted on Channel 8 and the City's website. Three citizens, Representative Hurley, and one reporter attended the workshop. No one raised any objections to the proposed ETPJ Boundary Map.

**(ii) Consideration of legislative action on the proposed revisions to the boundary line of the city's extraterritorial planning jurisdiction.**

During his report, Mr. Nuttall reminded Council Members that additional notices had been mailed to the property owners that had been inadvertently omitted from the original list used to mail notices of the public hearing that was continued from the regular November Council meeting. For this reason, Mr. Nuttall once again used a visual presentation and summarized the Community Development Division staff's analysis of the proposed reduction in territory subject to the City's ETPJ. A copy of this presentation is on file in the City Clerk's office.

A segment of Mr. Nuttall's slide presentation contained the following text:

**Extraterritorial Planning Jurisdiction Summary:**

- Cities can regulate development beyond boundaries with County approval if certain criteria met;
  - Asheboro extends up to 2 miles in some areas.
  - First extended in 1970s and last extended in 1987.

- Intent was to help cities plan for developing areas that may require city services in future.
- At time of state enabling legislation in 1950s, few Counties regulated land use.
- Area must be based on existing or projected urban development in accordance with city plans.
- ETPJ not part of city corporate limits:
  - Property owners don't pay city property taxes, nor do they receive full city services.
  - Residents don't vote in city elections.
- Land development permit requests in ETPJ, like City Limits, must comply with city ordinances pertaining to development.
- All city zoning and subdivision standards are enforced by City in the ETPJ area. Under current arrangement, Randolph County performs permitting and inspections in the ETPJ area

#### **Why is Reduction Proposed?**

- Effects of Session Law 2012-11.
- Anticipated legislative interest in examining ETPJ statutes in upcoming Session.
- County-wide zoning in place; good working relationship with Randolph County.
- Opportunity to review arrangement with County in terms of permitting and inspections in ETPJ area.
  - "Gray" areas in terms of building code enforcement.
- City retains ability to annex property, whether in ETPJ area or not, through processes outlined by state statute.
- **ETPJ Revision Consideration:**
- City infrastructure locations and viability of extensions into ETPJ area/anticipated urban growth areas.
- Example: City has planned for urban growth on eastern edge of City with purchase of property for future Fire Station 3 and completed water and sewer feasibility studies.
- Strategic corridors for economic development purposes and gateway management.
- Identifying "holes" in existing City Limits.
- LDP recommendations related to growth and economic development areas and how changes since 2000 may affect those areas.
- Obstacles to annexation, referendum requirement.
- Meeting statutory requirements for ETPJ boundary: readily identifiable on the grounds.

During his presentation, Mr. Nuttall reported that if the proposed revision is adopted, Randolph County would have 60 days from the effective date (January 1, 2013) of the new boundary to apply County zoning to the affected properties. City staff has already met with Randolph County staff and discussed the jurisdictional transition issues.

In order to address previous inquiries, Mr. Nuttall noted that the proposed revision would not change the taxes with which citizens must currently comply. Likewise, the proposed revision would have no effect on the school districts.

Mayor Smith invited members of the public to express their concerns and ask questions. Ms. Patricia Patillo of Old Cox Road inquired about the enforcement of city and county zoning regulations and ordinances. Mr. Christopher Black inquired about the impact of the proposed revision on the growth of the city and the city's finances.

Mr. Luther Hollingsworth, Asheboro Planning Board Member, presented comments in support of the proposed revision.

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

Mr. Nuttall presented to the Council Members an ordinance revising the boundary of the extraterritorial planning jurisdiction of the City of Asheboro.

Upon motion by Mr. Bell and seconded by Mr. Swiers, Council Members Baker, Bell, Burks, Hunter, Moffitt, and Swiers voted unanimously to adopt the following ordinance by reference.

**36 ORD 12-12**

#### **AN ORDINANCE DEFINING THE BOUNDARY OF THE EXTRATERRITORIAL PLANNING JURISDICTION OF THE CITY OF ASHEBORO**

**WHEREAS**, Section 160A-360 of the North Carolina General Statutes authorizes the City of Asheboro to apply its land development regulations to a defined area in which the city may exercise extraterritorial regulatory authority; and

**WHEREAS**, Section 10.21 of the Code of Asheboro provides as follows:

(A) This section shall be known and cited as the "City of Asheboro Extraterritorial Jurisdiction Ordinance" and the map referred to in division (C) of this section shall be identified by the title "Boundaries of Extraterritorial Jurisdiction, City of Asheboro."

(B) This section shall be for the purpose of defining the boundaries of the area within which extraterritorial zoning and subdivision regulations powers shall be exercised by the city.

(C) Pursuant to G.S. Art. 19, Ch. 160A, the boundaries of the area within which extraterritorial zoning and subdivision regulations powers shall be exercised by the city, are as shown on the map entitled "Boundaries of Extraterritorial Jurisdiction, City of Asheboro", which map bears the date of June 8, 1972, and is on file in the office of the City Clerk and recorded in the office of the County Register of Deeds.

**WHEREAS**, a single boundary must be used for all of the city's extraterritorial land use powers;  
and

**WHEREAS**, the Asheboro City Council is fully committed to reviewing and updating its exercise of extraterritorial land use regulatory powers in a manner that follows the sound policy guidance found within the enabling legislation that authorized the city to exercise these regulatory powers in the first place; and

**WHEREAS**, this guidance for defining the area in which extraterritorial planning jurisdiction is exercised includes, without limitation, the following mandates:

(a) Base the boundary of the area on the existing or projected urban development and areas of critical concern to the city, as evidenced by officially adopted plans;

(b) To the extent feasible, follow geographic features on the ground;

(c) While not required, the use of property lines is a good practice; and

(d) At a minimum, describe the extraterritorial planning jurisdiction boundary with sufficient precision to allow landowners to determine, without hiring a surveyor, whether the owner's property is subject to the city's extraterritorial land use powers;  
and

**WHEREAS**, the city's professional staff has followed the city council's general policy directive to constantly review for opportunities for improvement the municipal corporation's operations and exercise of regulatory authority; and

**WHEREAS**, on the basis of such a review, the city's community development division, with the assistance of the city engineering department, has developed a revised map that follows the above-listed guidelines and proposes a new boundary for a much reduced extraterritorial planning jurisdiction area for the City of Asheboro; and

**WHEREAS**, the revised map, which is dated September 12, 2012, is entitled "City of Asheboro 2012 Revised Extra-Territorial Planning Jurisdiction Area," and consists of seven (7) sheets collectively prepared under Job No. 12030 by Thomas Scaramastra, Professional Land Surveyor with License No. L-4221, is attached to this ordinance as EXHIBIT 1 and is hereby incorporated into this ordinance by reference as if copied fully herein; and

**WHEREAS**, a properly advertised public hearing on the proposed new boundary for the city's reduced extraterritorial planning jurisdiction area was held over the course of two (2) regular meetings of the Asheboro City Council on November 8, 2012, and December 6, 2012; and

**WHEREAS**, on the basis of the totality of the information received and considered during the extended review of the proposed relinquishment of a significant amount of territory currently within the city's extraterritorial planning jurisdiction area, the Asheboro City Council has concluded that approval of the proposal will constitute the implementation of sound public policy and land development regulation;

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

**Section 1.** Effective January 1, 2013, the boundary line shown on the map attached hereto as EXHIBIT 1 for the extraterritorial planning jurisdiction of the City of Asheboro is hereby approved and adopted as the official boundary line for the extraterritorial planning jurisdiction of the City of Asheboro.

**Section 2.** The City Manager is hereby instructed to cause the recordation in the Office of the Randolph County Register of Deeds of the map attached hereto as EXHIBIT 1.

**Section 3.** Section 10.21 of the Code of Asheboro is hereby rewritten to provide as follows:

~~(A) This section shall be known and cited as the "City of Asheboro Extraterritorial Jurisdiction Ordinance" and the map referred to in division (C) of this section shall be identified by the title "Boundaries of Extraterritorial Jurisdiction, City of Asheboro."~~

~~(B) This section shall be for the purpose of defining the boundaries of the area within which extraterritorial zoning and subdivision regulations powers shall be exercised by the city.~~

~~(C) Pursuant to G.S. Art. 19, Ch. 160A, the boundaries of the area within which extraterritorial zoning and subdivision regulations powers shall be exercised by the city, are as shown on the map entitled "Boundaries of Extraterritorial Jurisdiction, City of Asheboro", which map bears the date of June 8, 1972, and is on file in the office of the City Clerk and recorded in the office of the County Register of Deeds.~~

All of the powers for the planning and regulation of development authorized by Chapter 160A, Article 19 of the North Carolina General Statutes for municipalities shall be exercised by the City of Asheboro within the extraterritorial planning jurisdiction area shown on the map (a total of seven (7) sheets) dated September 12, 2012, prepared under City of Asheboro Engineering Department Job No. 12030, and entitled "City of Asheboro 2012 Revised Extra-Territorial Planning Jurisdiction Area."

**Section 4.** In terms of the allocation of resources, the City of Asheboro shall devote all of its available resources to fully implementing within the redrawn extraterritorial planning jurisdiction area, which is defined by the map identified in Section 1 of this Ordinance, the entirety of the regulatory powers found within Chapter 160A, Chapter 19 of the North Carolina General Statutes.

**Section 5.** City personnel are to fully cooperate with Randolph County personnel in making the transition from city zoning to county zoning in the territory released from the city's jurisdiction by virtue of the adoption of this ordinance. However, effective January 1, 2013, no city resources shall be expended on enforcement actions within the territory released from the city's jurisdiction by virtue of the adoption of this ordinance unless enforcement action is authorized and required in order to address any imminent peril to life and/or property.

**Section 6.** All ordinances and clauses of ordinances in conflict with this ordinance are hereby repealed.

**Section 7.** This ordinance shall take effect and be in force from and after January 1, 2013.

This ordinance was adopted in open session during a regular meeting of the Asheboro City Council that was held on December 6, 2012.

/s/David H. Smith

David H. Smith, Mayor

ATTEST:

/s/Holly H. Doerr

Holly H. Doerr, CMC, NCCMC, City Clerk

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

**(b) Continuation of the public hearing on the request to remove the properties located at 638, 665, and 672 Green Valley Road from the City's ETPJ (Case No. RZ-12-09).**

Mayor Smith opened the public hearing that was continued from the Council's regular November meeting on the above-referenced request.

Mr. Nuttall reported that, based on the Council's immediately preceding action to revise the boundary line of the City's extraterritorial planning jurisdiction; the above-referenced zoning case is now moot. This case involves properties located at 638, 665, and 672 Green Valley Road, and these properties are not included within the City's redrawn ETPJ boundary line that becomes effective January 1, 2013.

Due to the Council's earlier adoption of the ordinance redefining the boundary of the extraterritorial planning jurisdiction of the City of Asheboro, the Applicant, Mr. Hershel Rutledge withdrew the request to remove the above-referenced properties from the city's extraterritorial zoning jurisdiction.

**(c) Continuation of the public hearing on the request to amend the zoning ordinance to reflect changes made in the ETPJ boundary line (Case No. RZ-12-13).**

Mayor Smith opened the public hearing that was continued from the Council's regular November meeting on the request to amend the zoning ordinance to reflect changes made in the ETPJ boundary line.

Mr. Nuttall summarized the Community Development Division staff's proposed amendments to Article 100 and Article 1100 of the Asheboro Zoning Ordinance. These amendments are necessary to conform the text of the zoning ordinance with the new maps of the extraterritorial planning jurisdiction boundary of the City of Asheboro as previously adopted.

The actual proposed text amendments are as follows:

**Article 100: General Regulations:**

**101 Affected Territory:**

This ordinance shall apply to all territory within the corporate limits of the City of Asheboro and to such extraterritorial area as is shown on the map entitled "City of Asheboro 2012 Revised Extra-Territorial Planning Jurisdiction Area Boundaries of Extraterritorial Jurisdiction, City of Asheboro", said map bearing the date of September 12, 2012 ~~May 7, 1987~~.

**Article 1100 Definitions:**

**Extraterritorial Area Planning Jurisdiction:**

The land beyond the corporate limits ~~extending for a distance of up to 2 miles in all directions~~ as delineated on the official zoning Extraterritorial Planning Jurisdiction map of the City of Asheboro, recorded in the office of the Randolph County Register of Deeds, which is subject to the City of Asheboro's land development regulations pursuant to North Carolina General Statute 160A-360.

The Planning Board concurred with the following Community Development Division staff's analysis:

"Staff recommends approving this request (subject to the ETJ map amendments) to improve the administration and clarity of the Ordinance and to ensure that references to the extraterritorial jurisdiction (ETJ) boundary map are correctly referenced in the Zoning Ordinance and other references in the Zoning Ordinance are kept up to date."

The Community Development Division staff's analysis of this text amendment case included the following evaluation of the consistency of the proposal with the adopted comprehensive plan:

"Based on the above factors, the Staff believes that the proposed text amendments are consistent with the adopted Land Development Plan, and therefore reasonable and in the public interest."

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

Upon motion by Mr. Bell and seconded by Mr. Baker, Council Members Baker, Bell, Burks, Hunter, Moffitt, and Swiers voted unanimously to approve the proposed text amendment by accepting and adopting, without alteration, the stated analysis and recommendations of the Community Development Division staff and Planning Board.

**5. Consideration of a request received from Todd Lassiter, owner of the Shepherd's Way Day School at 314 North Cox Street.**

Mr. Todd Lassiter, owner of the Shepherd's Way Day School located at 314 North Cox Street, presented a request to the Council for an ordinance allowing three (3) marked parking spaces on the east side of North Cox Street between the main Coxborough entrance and the south exit. According to Mr. Lassiter, these spaces would be additional spaces for employees to use.

After listening to Mr. Lassiter's request, the questions posed by the Council Members reflected concerns about the consistency of the requested with sound, long-term street and sidewalk management issues. Mr. Lassiter listened to these concerns and wanted a better opportunity to consider the proposal in light of his discussion with the Council Members. With the general consent of the Council, the request was withdrawn without prejudice to any future consideration of an on-street parking space request.

**NEW BUSINESS:**

**6. Community Development Division Items:**

**(a) Quasi-Judicial Hearing: A request for a Special Use Permit authorizing repair to a legal non-conforming sign located at 773 West Dixie Drive (Case No. SUP-12-03).**

Mayor Smith opened the public hearing on the following request.

The McDonald's Restaurant located at 773 West Dixie Drive (Randolph County Parcel Identification Number 7750455636) has a free-standing legal non-conforming sign on its premises that is approximately fifty-six feet (56') in height. This sign is a legal non-conforming sign because the 56-foot high sign was erected prior to the imposition of regulations limiting a free-standing sign's height to thirty feet (30').

The Asheboro Zoning Ordinance requires the issuance of a Special Use Permit for the repair of a non-conforming sign if the repair costs exceed ten percent (10%) of the sign's appraised value. McDonald's corporation wishes to perform work on the above-described sign, and the repair costs are estimated to be equivalent to between forty percent (40%) and forty-one percent (41%) of the sign's value. Consequently, a Special Use Permit that would authorize the contemplated work has been requested.

In terms of the work itself, McDonald's is requesting authorization to remove the existing steel pole supporting the sign, as well as the existing footing, and install a new footing and pole structure approximately five feet (5') from the existing location. The existing sign itself will be reused on the new pole structure. No increase in the sign area is proposed.

During the hearing of this matter, Mr. Nuttall was placed under oath and presented the City Community Development Division staff's analysis of the request. The other witnesses who were placed under oath and presented testimony were as follows:

1. Mr. Lacy Reaves, Esq., who was the attorney retained by McDonald's Corporation.
2. Mr. Jerry McKenzie, President of Sign World, Inc. which is doing the sign work for McDonald's.
3. Mr. Neil Gustafson, MAI, who is a certified real estate appraiser

In conjunction with their testimony, the above-listed individuals entered into the record the following documentary evidence:

1. Ten (10) illustrative photographs,
2. A written evaluation prepared by Mr. Neil C. Gustafson, MAI;
3. A design and engineering plan from U.S. Signs dated 10-17-12; and
4. An aerial photograph from Google Maps.

No one offered evidence in opposition to the request.

Upon motion by Mr. Moffitt and seconded by Mr. Hunter, Council Members Baker, Bell, Burks, Hunter, Moffitt and Swiers voted unanimously to approve the requested Special Use Permit. This approval is based on the four standard tests being met.

The formal findings of fact, conclusions of law, and order for this Special Use Permit will be entered by the Council in regular session on January 10, 2012.

**(b) Public Hearing: A request to amend the subdivision ordinance provisions related to street trees within Planned Unit Developments.**

Mayor Smith opened the public hearing on the following request.

Mr. Nuttall presented an overview of the Community Development Division staff's proposed amendment to Article X of the Subdivision Ordinance pertaining to street trees within Planned Unit Developments. In 2008, the Subdivision Ordinance was amended to provide for the inclusion of street trees within Planned Unit Developments. Article X, Section IV, Subsection F of the Subdivision Ordinance contains an expiration or sunset clause of December 31, 2012. This street tree provision was originally set to expire on December 31, 2010, and the expiration date was subsequently extended to December 31, 2012. Due to economic conditions, the program has not had an opportunity to be fully tested to determine its feasibility, and the Community Development Division staff recommends extending the life of this street tree regulation to December 31, 2015.

Upon motion by Mr. Bell and seconded by Mr. Burks, Council Members Baker, Bell, Burks, Hunter, Moffitt, and Swiers voted unanimously to accept the recommendation of the Community Development staff and unanimously approved the proposed amendment to the City of Asheboro Subdivision Ordinance.

**(c) Consideration of a request to extend the time allowed between Preliminary and Final Plat subdivision reviews for Fairway Townhomes.**

Mr. Nuttall presented a written request from representatives of Fairway Townhomes on Sherwood Avenue to extend the time allowed between the preliminary and final plat subdivision reviews. This subdivision is still in the development phase.

Upon motion by Mr. Baker and seconded by Mr. Swiers, Council Members Baker, Bell, Burks, Hunter, Moffitt, and Swiers voted unanimously to approve the requested 1-year extension.

**(d) Consideration of a Resolution in Support of Funding for the Zoo Connector Project.**

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

Upon motion by Mr. Moffitt and seconded by Mr. Bell, Council Members Baker, Bell, Burks, Hunter, Moffitt, and Swiers voted unanimously to adopt the following resolution by reference.

**55 RES 12-12**

**RESOLUTION IN SUPPORT OF FUNDING FOR THE ZOO CONNECTOR PROJECT**

**WHEREAS**, the North Carolina Department of Transportation is planning to improve U.S. 64 by constructing a new 14-mile freeway bypassing Asheboro to the south known as TIP Project No. R-2536, and

**WHEREAS**, the purpose of and need of the proposed transportation improvements are to improve traffic flow, reduce congestion thereby improving safety on the existing U.S. 64, and enhance high-speed regional travel on the U.S. 64 Intrastate Corridor; and

**WHEREAS**, an additional purpose of the project was to improve access to the North Carolina Zoological Park by constructing a Zoo Connector which would include an interchange on the future U.S. 64 By-Pass known as Section D of the U.S. 64 Bypass project; and

**WHEREAS**, the purpose of the Zoo Connector was to ease congestion and traffic backups along N.C. Hwy 159 (Zoo Parkway) that are due to local traffic mixing with traffic destined for the North Carolina Zoo which creates delays experienced by Zoo visitors and residents along N.C. 159 to access their homes; and

**WHEREAS**, this Zoo Connector is not currently funded and is not scheduled in the Draft 2013-2023 STIP which means that it will not be funded until after 2023; and

**WHEREAS**, the North Carolina Zoo has nearly 750,000 visitors annually generating an economic impact of \$140 million to the surrounding area each year; and

**WHEREAS**, tourism is a key sector of Randolph County's economy with nearly 900 jobs in the County directly attributable to the travel and tourism industry in 2011 and the five percent lodging tax collected in 2011 representing \$13,770, 542 in lodging sales; and

**WHEREAS**, travel matters to Randolph County's economic prosperity and its image, to business wealth, to individual travelers, and provides significant economic benefits for the County.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Asheboro that the appropriate local and state agencies ensure through their transportation planning process that the construction of the Zoo Connector be given a higher construction priority on the State Transportation Improvement Plan.

This resolution was adopted by the Asheboro City Council in open session during a regular meeting held on the 6<sup>th</sup> day of December, 2012.

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

ATTEST:

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

**7. Discussion of vacancies on the Asheboro Planning Board and the Asheboro Airport Authority.**

Mr. Nuttall reported that due to the pending relocation of Frank Havens' residence, Mr. Havens' who is a city resident, has resigned from the Asheboro Planning Board. Mr. Havens' term of office is not scheduled to expire until January 2015.

The two Planning Board members whose terms of office expire in January 2013 are city resident Dave Whitaker and extraterritorial jurisdiction representative Ernest Confer. Mr. Whitaker has expressed interest in continuing to serve on the Planning Board, but, due to the fact that Ernest Confer does not reside in the revised extraterritorial jurisdiction area that comes into effect on January 1, 2013, Mr. Confer has asked to not be considered for reappointment to the board.

The term of office of extraterritorial jurisdiction representative Chris Corsbie, who resigned due to his relocation to a new residence, was not to expire until January 2016. The Randolph County Board of Commissioners, during their meeting on December 3, 2012, appointed Benjamin Tuggle to serve the remainder of this unexpired term of office.

With regard to the vacancy on the Asheboro Airport Authority that occurred with the retirement of Ed Dunn, no applications for this office were received during November 2012.

The opportunities for service on the Planning Board and the Airport Authority will be posted on the City's website and Channel 8. In order to be considered during the January 2013 City Council meeting, interest forms from candidates must be received by the City Clerk by 5:00 p.m. on December 31, 2012.

**8. Red Bird Cab, LLC's application to renew its taxicab franchise:**

**(a) Public hearing on the renewal application and (b) Second reading of an ordinance granting a Certificate of Convenience and Necessity to Red Bird Cab, LLC for the operation of three (3) taxicabs.**

Mayor Smith opened the public hearing on the application by Red Bird Cab, LLC to renew its taxicab franchise and asked the city attorney if he had information to provide.

With the permission of the Mayor, Mr. Sugg asked those in attendance if anyone was present to speak on behalf of Red Bird Cab, LLC. No one from Red Bird Cab, LLC was present, and there were no comments from the public in regards to this taxicab franchise application submitted by Red Bird Cab, LLC.

Mr. Sugg reported that subsequent to the Council's regular November meeting, city staff has had ongoing discussions with representatives of Red Bird Cab, LLC in regards to the limited liability company's status with the Secretary of State's office. The company has been administratively dissolved by the Secretary of State's office, and these issues have not been resolved.

In light of the questions as to the legal status of the applicant and the absence of any company representatives, Mr. Sugg recommended that this matter be continued to the Council's regular January meeting. Notice will be sent to the last known address of Red Bird, LLC of the company's franchise expiration on December 9, 2012. Additionally, notice will be sent to each taxicab driver of the expiration of his or her taxicab driver's permit on December 31, 2012.

Upon motion by Mr. Bell and seconded by Mr. Burks, Council Members Baker, Bell, Burks, Hunter, Moffitt, and Swiers voted unanimously to continue this matter to the Council's regular January meeting.

**9. Public comment period.**

Mayor Smith opened the floor for comments from the public, and none were offered.

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

**10. Consideration of (a) amendments to the City of Asheboro Personnel Policies and Procedures Manual and (b) adoption of an ordinance allowing access to state criminal history information.**

Initially, Mr. Johnson presented and recommended adoption, by reference, of a resolution with amendments made by the City Manager to the City of Asheboro Personnel Policies and Procedures Manual. After discussing the proposed amendments to the personnel policies and procedures manual, Mr. Johnson also discussed the possibility of enhancing the City's evaluation of potential employees and potential volunteer coaches in the youth sports program by adopting an ordinance that would allow access to state criminal history information.

After general discussion, the Council Members expressed their approval for both proposals. A combined motion was then used to approve the resolution amending the personnel policies and procedures manual and the ordinance facilitating access to state criminal history information.

Upon motion by Mr. Bell and seconded by Mr. Baker, Council Members Baker, Bell, Burks, Hunter, Moffitt, and Swiers voted unanimously to take the following legislative action.

**(a) Pursuant to the above-stated motion, the following resolution was adopted:**

**56 RES 12-12**

**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 (hereinafter referred to as the "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 effective date of the last amendment of the Manual on February 1, 2012, the human resources director, with input from the personnel committee, has forwarded to the city manager a recommendation to improve the clarity of the city's personnel policies by reorganizing the Manual and making certain text amendments within the Manual; and

**WHEREAS**, the city manager agrees with these recommendations and has promulgated corresponding amendments to the Manual; and

**WHEREAS**, the Asheboro City Council has concluded that the city manager's decision to amend the Manual is consistent with the 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 January 1, 2013, to reflect the following changes in the organization and text of the Manual:

**Section 1.** The City of Asheboro Personnel Policies and Procedures Manual will be organized into eleven (11) rather than twelve (12) articles according to the following time table:

*The Manual will be comprised of the following twelve (12) articles until January 1, 2013:*

|             |   |                              |
|-------------|---|------------------------------|
| ARTICLE I   | – | GENERAL PROVISIONS           |
| ARTICLE II  | – | POSITION CLASSIFICATION PLAN |
| ARTICLE III | – | PAY PLAN                     |
| ARTICLE IV  | – | RECRUITMENT AND EMPLOYMENT   |
| ARTICLE V   | – | CONDITIONS OF EMPLOYMENT     |
| ARTICLE VI  | – | BENEFITS                     |

|              |   |                                  |
|--------------|---|----------------------------------|
| ARTICLE VII  | – | LEAVES OF ABSENCE                |
| ARTICLE VIII | – | PROMOTIONS, DEMOTIONS, TRANSFERS |
| ARTICLE IX   | – | FAIR LABOR STANDARDS             |
| ARTICLE X    | – | SEPARATIONS AND REINSTATEMENTS   |
| ARTICLE XI   | – | DISCIPLINARY ACTIONS             |
| ARTICLE XII  | – | GRIEVANCE PROCEDURE              |

*Effective January 1, 2013, the Manual will be comprised of the following eleven (11) articles:*

|              |   |                                                         |
|--------------|---|---------------------------------------------------------|
| ARTICLE I    | – | UNIFIED PERSONNEL SYSTEM                                |
| ARTICLE II   | – | POSITION CLASSIFICATION PLAN                            |
| ARTICLE III  | – | RECRUITMENT AND EMPLOYMENT                              |
| ARTICLE IV   | – | PAYROLL ADMINISTRATION                                  |
| ARTICLE V    | – | LEAVES OF ABSENCE                                       |
| ARTICLE VI   | – | BENEFITS                                                |
| ARTICLE VII  | – | GENERAL WORKPLACE POLICIES/<br>CONDITIONS OF EMPLOYMENT |
| ARTICLE VIII | – | PROMOTIONS, DEMOTIONS, TRANSFERS                        |
| ARTICLE IX   | – | SEPARATIONS AND REINSTATEMENTS                          |
| ARTICLE X    | – | DISCIPLINARY ACTIONS                                    |
| ARTICLE X I  | – | GRIEVANCE PROCEDURE                                     |

**Section 2.** With the exception of the addition of the following policies that are organized as new Sections within ARTICLE I of the reorganized Manual, the Sections within the new ARTICLE I (UNIFIED PERSONNEL SYSTEM) of the reorganized Manual, which comes into effect on January 1, 2013, will be formatted and contain the same text as found in the existing ARTICLE I (GENERAL PROVISIONS) that is in effect on the date of the adoption of this Resolution. The Sections to be added to the new ARTICLE I are as follows:

**Section 6. Equal Employment Opportunity**

It is the policy of the city to foster, maintain, and promote equal employment opportunity. The city shall select employees on the basis of the applicant's qualifications for the job and award them, with respect to compensation and opportunity for training and advancement, including upgrading and promotion, without regard to age, sex, race, color, religion, non job-related handicap, national origin, or political affiliation.

**Section 7. Prohibition of Sexual Harassment**

The City of Asheboro prohibits in any form the sexual harassment of city employees or applicants, and requires that all work sites be free of sexual harassment. Sexual harassment is defined as deliberate, unsolicited, and unwelcomed verbal and/or physical conduct of a sexual nature or with sexual implications by a supervisor or co-worker which: (1) has or may have direct employment consequences resulting from the acceptance or rejection of such conduct; (2) interferes with an individual's work performance; or (3) creates an intimidating, hostile or offensive working place. It is the responsibility of the employee to report sexual harassment to management. The reporting requirement can be met by completing a "City of Asheboro Sexual Harassment Complaint Form." This form can be obtained from either the employee's supervisor, department head, or by coming directly to the human resources department.

**Section 8. Employment of Relatives**

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

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

Seasonal recreational and part-time employees in the Cultural and Recreation Services Division are exempted from the prohibition specified in this Section.

**Section 9. Implementation of Policies**

All personnel, supervisory and line personnel alike, are hereby charged with the responsibility of continually reviewing the personnel policies found in this manual and ensuring that conduct and practices in the workplace conform with the city's policies. Workplace practices or customs are to be constantly reviewed in order to make sure that a divergence does not develop between the workplace practices and the city's written policies. Without limiting the importance of other policies, specific attention is to be given to ensuring that safety policies and guidelines are properly observed, workplace violence is prevented, and equal employment opportunity based on reasonable job-related job requirements is actively advocated and practiced to the end that no employee or applicant for employment shall suffer discrimination because of age, sex, race, color, religion, non-job related disability, national origin, or political affiliation.

**Section 3.** The specific policies listed as sections within ARTICLE II (POSITION CLASSIFICATION PLAN) of the reorganized Manual, which comes into effect on January 1, 2013, will be formatted and contain the same text as found in the existing ARTICLE II that is in effect on the date of the adoption of this Resolution.

**Section 4.** ARTICLE III (RECRUITMENT AND EMPLOYMENT) of the reorganized Manual, which comes into effect on January 1, 2013, will contain the following policies:

**Section 1.** Recruitment and Employment Application Procedures

At the time of an employment vacancy, members of the human resources department, in consultation with the department head, will determine to what extent, if any, the vacancy should be advertised. All vacancy announcements distributed throughout the community will specify qualifying requirements and the pay range of the positions to be filled. Employment advertisement shall contain assurances of Equal Employment Opportunity and shall comply with Federal and State Statutes regarding discrimination in employment matters.

Upon inquiry, each individual interested in employment with the city shall be informed of all current job openings. In order to be considered for employment with the city, an individual must submit a written application on the form prescribed by the human resources department.

In order to ensure that an accurate background check can be completed in the event a conditional offer of employment is extended to an individual, applicants for employment with the city shall, upon request, provide information that can be used to confirm the identity of the applicant along with written consent to conduct a background check, including without limitation a check of the applicant's criminal history record information. The requested information may include, but is not limited to, the applicant's full name, documents such as a birth certificate or driver's license, and/or a completed applicant fingerprint card.

Properly submitted applications shall be kept in an active file for six (6) months.

Qualified persons currently employed by the city shall receive first consideration for filling those vacancies that represent promotional opportunities.

Persons dismissed by the city for unsatisfactory performance of duties or improper personal conduct may not be rehired.

**Section 2.** Initial Selection of a Candidate to Fill a Vacancy

(A) Upon learning of a future vacancy, the department head should **immediately** notify the human resources department, via telephone or in person, of the pertinent information concerning the vacancy.

(B) The human resources department, with guidance from the department head or division director, will complete a Request to Fill Vacancy Form and conduct a file search to review applications on file for potential candidates.

(C) The human resources department, with guidance from the department head, will determine whether or not the vacancy should be advertised and proceed accordingly. If advertisement is deemed necessary, timelines for the closing of the announcement will then be established.

(D) The human resources department will receive and screen applications.

- (E) All qualified candidates will be interviewed by the human resources department.
- (F) The names of these candidates will then be referred to the department head and/or designee for screening and possible interview.
- (G) The department head will select a candidate from the individuals suggested or request that the search process for a candidate be continued.
- (H) Notwithstanding any other provision in this Section, divisions or departments of the city, in consultation with the human resources director and with the approval of the city manager, may utilize a modified screening and selection procedure when such a modification is necessary to comply with occupational licensing board requirements applicable to the position that the division director or department head is attempting to fill.

### Section 3. Conditional Offer of Employment

When a department head notifies the human resources department of the selection of an applicant as the candidate initially identified as best suited for an open position of employment, the human resources department will contact the selected applicant and extend a written conditional offer of employment. This written conditional offer of employment will advise the selected candidate that the granting of employment with the city is contingent upon the successful completion of a pre-employment drug screen, physical, and background check that includes a criminal history record check, verification of information contained within the individual's application materials, and, if the position sought by the applicant requires the ability to operate a motor vehicle, a review of the applicant's driving history. In addition to the items listed in the immediately preceding sentence, this offer of employment may also be conditioned on the completion, to the satisfaction of the city, of any other examinations, tests, or reviews that are mandated by the applicable federal, state, and local laws, ordinances, and administrative regulations for the occupation/job sought by the applicant.

When an inquiry of criminal history record information indicates that an individual has one or more pending criminal charges and/or has been convicted of or accepted responsibility for one or more felonious or misdemeanor criminal offenses, such information will not serve as an automatic disqualifier that mandates the withdrawal of a conditional offer of employment. Any pending criminal charge(s) and/or past criminal conduct will be subjected to an individualized review of the entirety of the available information before a decision is made as to whether to withdraw a conditional offer of employment. At a minimum, this review will take into account the type of crime(s) of which the individual has been charged or was convicted/accepted responsibility, the frequency of violations and/or any pattern of offenses, the time that has elapsed since the date(s) of any conviction(s)/disposition(s), the applicant's age at the time of any conviction(s)/disposition(s), and the impact, if any, of the past criminal conduct or pending charges of criminal conduct on the ability of the applicant to perform the essential job functions of the position for which he or she has applied in a manner consistent with the maintenance of the public trust and confidence that is essential to the city's effective delivery of municipal services.

With regard to the pre-employment drug screen and the physical examination, if the selected candidate tests positive for drugs and/or is found to be unable to perform an essential function of the job for which the individual has been selected, the conditional offer of employment will be withdrawn.

Applicants for employment who refuse to comply with or are unable to fully satisfy the conditions attached to a conditional offer of employment, including without limitation fully cooperating with and completing the mandated physical exam and drug screening, are automatically disqualified from final appointment to the position for which they have applied.

Tests required or administered by the city shall be those measuring the skills actually required to perform the essential functions of the job for which an individual has applied.

### Section 4. Notification of Employment

If and when a selected candidate satisfies the contingencies stated in the conditional offer of employment, the human resources department will transmit to the selected candidate a formal letter of probationary employment with the City of Asheboro. An

effective date of hire will be determined based on the needs of the supervisor/department head.

The human resources department will then provide to the selected candidate a new employee orientation that will include, without limitation, an explanation of the city's safety policies and procedures, the necessary payroll documents, and the enrollment of the new employee in the city's insurance programs along with an explanation of the benefits package.

The human resources department will advise the appropriate supervisor that the new employee has completed orientation and the supervisor can greet the new employee at the human resources department or at the new employee's assigned workplace.

Section 5. Probationary Period of Employment

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

Promoted or transferred employees may be reassigned at any time during the probationary period to comparable positions if the department head or division director concludes that the promoted or transferred employee is not satisfactorily progressing in the new assignment. Such reassignments are not subject to appeal.

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

New probationary full-time employees are eligible for general salary increases or cost of living allowances authorized by the city council. Upon the successful completion of an individual's probationary employment and the attainment of regular employee status, a 2-step salary increase will be granted.

**Section 5.** The specific policies listed as Sections 1 through 6 within the existing ARTICLE III (PAY PLAN) that is in effect on the date of the adoption of this Resolution will be placed, without modification, in the new ARTICLE IV (PAYROLL ADMINISTRATION) of the reorganized Manual, which comes into effect on January 1, 2013. The only other Sections to be placed in the new ARTICLE IV of the reorganized Manual are as follows:

Section 7. Payroll Deductions

Deductions shall be made for each employee's salary as required by law. Additional deductions may be made upon the request of the employee and on determination of the city manager as to the capability of payroll equipment.

Section 8. Workers' Compensation

The City of Asheboro is subject to the North Carolina Workers' Compensation Act. Employees are required to report in writing all injuries arising out of and in the course of their employment with the city to their immediate supervisor at the time of the injury in order that appropriate action may be taken at once.

Subject to the provisions of the North Carolina Workers' Compensation Act and all applicable laws, rules, and regulations pertinent to workers' compensation claims, the following City of Asheboro guidelines shall be applicable to all claims submitted by city employees on and after April 11, 2008:

- (A) Employees may utilize accrued compensatory time and accrued paid leave during the 7-day waiting period prescribed by the North Carolina Workers' Compensation Act. If an employee elects to use accrued compensatory time or accrued paid leave during the 7-day waiting period, all of the available accrued compensatory time shall be used prior to the utilization of any accrued paid leave time. With the commencement of weekly benefits in accordance with the North Carolina Workers' Compensation Act, neither compensatory time nor accrued paid leave time may be used by an employee to supplement the statutorily prescribed weekly benefits. An employee will not be required to reimburse the city for payments made by the city during the 7-day waiting period.

(B) On the eighth day of the authorized absence, the employee will automatically be placed on Workers' Compensation leave. Once the statutorily prescribed weekly benefits and Workers' Compensation leave have begun, qualified employees will be placed on FMLA leave. The FMLA leave and Workers' Compensation leave shall run concurrently with each other.

(C) Timesheets must reflect Workers' Compensation leave on the days in which leave is taken.

(D) Employees will not be required to use accrued compensatory time or accrued paid leave when appointments have been properly made during scheduled work hours as part of the process to resolve a claim filed under the North Carolina Workers' Compensation Act. This use of regular work hours shall be limited in duration to the reasonable period of time needed to satisfy the purpose of the scheduled appointment, including travel time. Employees should try to schedule appointments at a time most convenient for their work unit. The employee is expected to return to work after the appointment has been concluded, unless the authorized health care provider has restricted the employee from doing so.

(E) The city encourages early return to work for employees who suffer work related injuries or illnesses. If the healthcare provider determines that the injured employee cannot return to their job without restrictions, a modified work assignment or reassignment to a different job will be considered. In all cases, division/department heads are expected to consult with the human resources director and to work with employees to identify modified duty opportunities, with the primary focus being the return of the employee to their regular job. Employees who return to a modified duty assignment must perform the work within the restrictions indicated by the healthcare provider. Failure to report to a modified duty assignment may result in disciplinary action. Employees are responsible for providing their division/department head with written notice of any change in restrictions by the healthcare provider. The modified duty assignment will end when the employee reaches maximum medical improvement.

(F) Employees must report to their next scheduled shift once the healthcare provider releases them to work. If the employee reaches maximum medical improvement but cannot return to the original job, the human resources director will consider all other options available under the city's personnel policies.

In compliance with Section 160A-164.1 of the North Carolina General Statutes, the provisions of this Section shall be deemed to be applicable in all respects to city employees that are absent from work due to an adverse medical reaction resulting from the employee receiving in employment vaccination against smallpox incident to the Administration of Smallpox Countermeasures by Health Professionals, Section 304 of the Homeland Security Act, Pub. L. No. 107-296 (Nov. 25, 2002) (to be codified at 42 U.S.C. sec. 233(p)).

#### Section 9. Overtime and Special Duty Assignment

(A) The city abides by all applicable sections of the Fair Labor Standards Act, the Fair Labor Standards Amendments of 1986, and all subsequent amendments. On the basis of time sheets or time cards submitted by the employees, the city will properly record all applicable overtime accrued for each covered employee.

(B) With the exception of subsection (J), this overtime and special duty assignment policy is applicable only to employees of the City of Asheboro who are non-exempt under the Fair Labor Standards Act.

(C) Employees are expected to work during all assigned periods exclusive of breaks or mealtimes. Employees are not to perform work during any time that they are not scheduled to work unless they receive approval from their immediate supervisor, except in cases of emergency. An emergency exists if a condition arises that could reasonably result in injury or harm to a person, damage to property, or that requires the immediate attention of the employee. Employees who work excess hours because of an emergency shall advise their immediate supervisor of the unscheduled work as soon as practical following completion of the work.

(D) It is the policy of the city, in agreement with its employees, that employees receive compensatory time-off at a rate of one-and-one-half (1-½) hours for each hour of overtime worked. Except for law enforcement officers and firefighters, non-

exempt employees receive compensatory time-off at the rate of one-and-one-half (1-½) hours for every hour worked over forty (40) hours in a seven-day workweek. Non-exempt law enforcement officers are entitled to this overtime rate only for hours worked in excess of one hundred seventy-one (171) hours in a twenty-eight-day cycle, and firefighters are entitled to this overtime rate only for hours worked in excess of two hundred four (204) hours in a twenty-seven-day cycle.

(E) In situations where a non-exempt employee performs work that fails to qualify as overtime work because the employee will not actually work over forty (40) hours during the seven-day workweek, or for law enforcement officers and firefighters the threshold amount set for overtime work during the prescribed twenty-eight-day or twenty-seven-day cycle will not be satisfied, such an employee may accrue, as a bonus, one-and-one-half (1-½) hours of compensatory time-off for every hour worked in furtherance of the assigned task if the work is designated and explained as a special duty assignment by the employee's division director or department head on the employee's time sheet or time card. Alternatively, a non-exempt employee may receive, as a bonus, a monetary payment rather than compensatory time-off for work on an assigned task if such work, along with the request for the payment of a bonus, is designated and explained as a special duty assignment by the employee's division director or department head on the employee's time sheet or time card. Such a bonus monetary payment shall be one-and-one-half (1-½) times the employee's regular rate of pay for each hour worked as a special duty assignment.

(F) When a non-exempt employee is called back to work outside regularly scheduled working hours, the employee's division director or department head is to evaluate the totality of the circumstances and make a determination as to which of the following options will be utilized: (a) The call-back event can be designated as a special duty assignment, including using the rate for calculating bonus compensation described above in subsection (E), with a guarantee that the employee will receive, under this option, credit for no less than two (2) hours of special duty assignment work, or (b) The call-back event can be integrated into flexible, alternative scheduling of the employee's work time during the workweek or the twenty-eight-day/twenty-seven-day cycle in which the call-back event occurred.

(G) Non-exempt law enforcement officers, firefighters, and employees engaged in seasonal activities may accrue not more than four hundred eighty (480) hours of compensatory time-off. All other non-exempt employees may accrue not more than two hundred forty (240) hours of compensatory time-off. When the thresholds specified in this subsection are reached, the non-exempt employee will receive a monetary payment of one-and-one-half (1-½) times the employee's regular rate of pay for each hour in excess of the limits specified in this subsection.

(H) Employees wishing to use accrued compensatory time-off must make a written request to their immediate supervisor. Use of such time will be allowed within a reasonable period following the request as long as the use does not unduly disrupt the operations of the city. Additionally, in order to reduce the amount of accrued compensatory time-off, an employee who has not asked to use accrued compensatory time-off may, nonetheless, be required by his or her supervisor to use that accrued time at the convenience of the city.

(I) Accrued compensatory time-off will be paid upon termination of employment and shall be calculated at the average regular rate of pay for the final three (3) years of employment, or the final regular rate received by the employee, whichever is higher.

(J) Subject to the conditions specified in this subsection, an exempt employee may be granted bonus compensatory time-off or pay to the same extent that such a bonus would be granted to a non-exempt employee for work designated and approved as special duty assignment work by the management official with approval authority for the exempt employee's time sheet or time card. The receipt of bonus compensatory time-off or pay by an exempt employee is subject to the following conditions:

(a) The amount of compensatory time-off or pay shall be calculated on an hour-for-hour basis, not at the rate used for non-exempt employees of one-and-one-half (1-½) hour for each hour of special duty assignment.

(b) As with non-exempt employees, exempt employees wishing to use accrued compensatory time-off must make a written request to their immediate supervisor. Use of such time will be allowed within a reasonable period following the request as long as the use does not unduly disrupt the operations of the city. Additionally, in order to reduce the amount of accrued compensatory time-off, an employee who has not asked to use accrued

compensatory time-off may, nonetheless, be required by his or her supervisor to use that accrued time at the convenience of the city.

(c) Exempt employees who have been allowed to accumulate compensatory time-off, rather than receiving contemporaneous payment for special duty assignment 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. The cap on the amount of approved compensatory time-off that may be accrued by an employee is wholly inapplicable to an exempt employee.

(d) 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. The maximum number of hours that can be accumulated by the typical forty-hour exempt employee is two hundred forty (240) hours. An exempt employee in the police department or the fire department who qualifies for the Section 7k exemption can accumulate up to four hundred eighty (480) hours. 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 prior to the separation from employment or included in the employee's terminal pay in strict accordance with the limits set within this subsection shall be deemed to be forfeited by the employee.

#### Section 10. Payroll Discrepancies

As a term and condition of employment, an employee who believes he or she has detected a payroll error or discrepancy must **report the issue or concern** in writing to his or her supervisor **within two (2) business days** from receipt of the paycheck or receipt of the notice of the payment of wages via direct deposit that displays the alleged error or discrepancy. It is the policy of the city, in agreement with its employees, that the absence of such a report and acceptance of wages will confirm proper payment for all hours worked.

**Section 6.** With the exception of the modification of an existing Section and the addition of a new Section as described below, the Sections within the new ARTICLE V (LEAVES OF ABSENCE) of the reorganized Manual, which comes into effect on January 1, 2013, will be formatted and contain the same text as is currently found in ARTICLE VII (LEAVES OF ABSENCE) that is in effect on the date of the adoption of this Resolution. The existing Section that is to be modified for inclusion in the new Article is Section 9 (Sick Leave – Accumulation), and the modification to Section 9 is as follows:

~~Employees may accumulate unlimited sick leave. When an employee accumulates 1440 hours of sick leave they may elect to substitute all in excess of 1440 hours for vacation leave on an hour for hour basis, or they may elect to allow it to build toward retirement credit. (See section 11).~~

The new Section to be added to ARTICLE V (LEAVES OF ABSENCE) of the reorganized Manual is Section 24 (Workers' Compensation Leave). The new Section 24 provides as follows:

The City of Asheboro is subject to the North Carolina Workers' Compensation Act. The availability and the terms and conditions of Workers' Compensation Leave are discussed in Section 8 of ARTICLE IV (PAYROLL ADMINISTRATION) of this Manual.

**Section 7.** With the exception of the deletion of a single existing Section, and the renumbering of the remaining Sections as a consequence of this deletion, the Sections within the new ARTICLE VI (BENEFITS) of the reorganized Manual, which comes into effect on January 1, 2013, will be formatted and contain the same substantive text as is currently found in ARTICLE VI (BENEFITS) that is in effect on the date of the adoption of this Resolution. The policy that is to be deleted and not included in the new Article is currently located in ARTICLE VI, Section 8 of the existing personnel policies and procedures manual and is entitled "Worker's Compensation" (sic).

**Section 8.** ARTICLE VII (GENERAL WORKPLACE POLICIES/CONDITIONS OF EMPLOYMENT) of the reorganized Manual, which comes into effect on January 1, 2013, will contain the following policies:

Section 1. Gifts and Favors

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

Section 2. Outside and Dual Employment

The work of the city shall have precedence over other occupational interests of employees. All outside employment for salary, wages, or commissions and all self-employment must be reported to the employee's department head. Outside employment is subject to review by the city manager to determine whether or not such employment is in conflict with the interest of the city. Continuation of conflicting outside employment may be grounds for disciplinary action, up to and including dismissal.

Part-time employees of the city may hold another part-time position with the city with the approval of the city manager.

Section 3. Political Activity Restricted

Each employee has a civic responsibility to support good government by every available means and in every appropriate manner. Each employee may join or affiliate with civic organizations of a partisan or political nature, may attend political meetings, may advocate and support the principles or policies of civic or political organizations in accordance with the Constitution and laws of the United States of America. However, no employee shall (1) engage in any political or partisan activity while on duty; (2) use official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for office; (3) be required as a duty of employment or as a condition for employment, promotion, or tenure of office to contribute funds for political or partisan purposes; (4) coerce or compel contributions for political or partisan purposes by another employee of the city, or (5) use any supplies or equipment of the city for political or partisan purposes.

Section 4. Vehicles Owned by the City

Any employee required as part of the essential functions of his or her job to be able to operate a city-owned vehicle must possess a valid driver's license. Use of a city-owned vehicle by an employee is neither a right nor a privilege but a trust conferred to facilitate necessary performance of duties. City-owned vehicles shall be assigned and used only in the performance of official duty and not for any personal use.

Section 5. Telephone and Address

All city personnel must provide and maintain up-to-date, valid telephone numbers and addresses on file in the human resources department and with their supervisor. All department heads shall have listed telephone numbers. Exceptions in unusual circumstances may be granted by the city manager.

Section 6. Substance Abuse Policy

The following rules represent the City of Asheboro's policy concerning substance abuse. They will be enforced uniformly with respect to all employees.

The purposes of the policy are:

- (1) to establish and maintain a safe, healthy working environment for all employees;
- (2) to comply with State and Federal Department of Transportation regulations in regards to holders of a Commercial Drivers License (CDL);
- (3) to provide a drug-free workplace for the City of Asheboro;
- (4) to ensure the reputation of The City of Asheboro and its employees within the community;
- (5) to reduce accidental injuries, absenteeism, tardiness, and other work-related problems; and

(6) to provide the opportunity for rehabilitation assistance to employees who seek such help.

Employees with substance abuse problems are encouraged to seek help from counselors, from other types of medical professionals, or in treatment facilities. Participation in a treatment or rehabilitation program for substance abuse will not be grounds for dismissal provided the employee voluntarily enters such a program prior to being identified as a substance abuser by means identified in this policy.

(A) Definitions:

(1) Alcohol Test: A test for the presence of alcohol in the body. This presence must be determined by the use of a Breath Alcohol Test or other device approved by United States Department of Transportation.

(2) Drug Test: A test for the presence of the following drugs and/or drug metabolite(s) in the urine or blood of an employee:

- (a) Amphetamines (including Methamphetamine)
- (b) Cannabinoids (Marijuana)
- (c) Cocaine (including Crack)
- (d) Opiates
- (e) Phencyclidine (PCP)
- (f) Other drugs may also be included as directed by Federal law or expanded city policy.

(3) Negative Drug Test: A drug test which does not show the presence of drugs and/or drug metabolite(s) at a level specified to be a positive test.

(4) Positive Drug Test: A drug test which does indicate the presence of a drug and/or drug metabolite(s) in the urine or blood at the level specified to be positive by the Substance Abuse and Mental Health Services Administration (SAMHSA). All positive test results will be confirmed using a different technology than the first test, such as the Gas Chromatography Mass Spectrometry (GCMS) process.

(5) Negative Alcohol Test: An alcohol test which indicates a breath alcohol concentration of less than 0.02.

(6) Positive Alcohol Test: An alcohol test which indicates a breath alcohol concentration of 0.04 or greater.

(7) Refusal to Submit: Occurs when an employee:

- (a) Fails to provide an adequate amount of urine for a drug test without a valid medical explanation after he/she has received notice of the test.
- (b) Fails to provide an adequate amount of breath for an alcohol test without a valid medical explanation after he/she has received notice of the test.
- (c) Engages in conduct that clearly indicates that he/she is failing to follow through with the testing process or conduct that interferes with the ability to obtain an adequate specimen.

(8) Employees Required to Have Commercial Driver's License (CDL):

- (a) Drivers of commercial motor vehicles with a gross vehicle weight rating of 26,001 pounds or more.
- (b) Drivers of commercial motor vehicles with a gross combination weight rating of 26,001 pounds or more, including a towed vehicle with a gross vehicle weight rating of 10,000 pounds or more.
- (c) Drivers of motor vehicles designed to transport 16 or more passengers, including the driver.
- (d) Drivers of motor vehicles of any size transporting hazardous materials in amounts that require placarding.
- (e) NOTE: Fire Department personnel who operate emergency equipment are exempt from the CDL requirement.

(9) Safety-Sensitive Function: The following activities constitute safety-sensitive functions as defined by the United States Department of Transportation (this list is not meant to be an exhaustive/exclusive list and other job activities/requirements may also be considered safety sensitive):

- (a) Driving a commercial motor vehicle.
- (b) Inspecting, servicing, or conditioning any commercial motor vehicle.
- (c) All time at a city facility or other public property waiting to operate a commercial motor vehicle.
- (d) Performing all other functions in or upon any commercial vehicle except resting in a sleeper berth.
- (e) Loading or unloading a vehicle, supervising or assisting in the loading or unloading of a vehicle, attending a vehicle being loaded or unloaded, or remaining in readiness to operate the vehicle.
- (f) All time spent performing the driver requirements associated with an accident.
- (g) Repairing, obtaining assistance, or remaining in attendance of a disabled commercial motor vehicle.

(B) Policy:

(1) **Employees Who Are Subject to this Policy.** This policy covers all full-time employees, part-time employees, temporary employees, seasonal employees, employees who are required as part of their job to obtain and maintain a Commercial Driver's License (CDL), and applicants for employment with the City of Asheboro.

(2) **Types of Drug and Alcohol Tests Required.**

(a) Pre-Employment Testing: Drug testing must be conducted prior to employment. This testing must be conducted on external applicants as well as **current employees transferring into jobs that require a Commercial Driver's License (CDL)**. The tests results must indicate a negative drug test in order to be considered for employment and/or transfer.

(b) Post Accident Testing (Non-CDL Holder): A drug test will be conducted on **all employees** who have an on the job accident that requires medical treatment other than first aid, or results in lost work. This test is to be conducted at the time of the employee's first visit to the city physician or substitute medical provider and/or by the next work day whichever is less.

(c) Post-Accident Testing (CDL Holder): For the holder of a commercial driver's license (CDL), post accident testing for drugs and alcohol must be conducted on any surviving driver who was performing safety sensitive functions with respect to the vehicle if:

- (i) The accident involved a fatality; or
- (ii) The driver received a citation under state or local law for a moving traffic violation arising from the accident.

Testing for drugs and alcohol for CDL holders should occur within two (2) hours of the accident. If the employee is unable to be tested within two (2) hours, reasons for the delay must be documented. If an alcohol test required by this section is not administered within eight (8) hours of the accident, attempts to conduct the alcohol test shall cease and the reason for the inability to conduct the test shall be documented. If a drug test required by this section is not administered within thirty-two (32) hours of the accident, attempts to conduct the drug test shall cease and the reason for the inability to conduct the test shall be documented.

(d) Random Testing: Such testing must be conducted on a random, unannounced basis throughout the year on all holders of commercial driver's license (CDL). Random testing for drugs and alcohol for all holders of Commercial Driver's License (CDL) shall be at a rate mandated by Department of Transportation regulations. During the first year of the program, a minimum of twenty-five percent (25%) of the CDL holders must be tested for alcohol and fifty percent (50%) percent of the CDL holders must be tested for drugs.

(e) For Cause Testing: This testing is required of any employee who has been arrested or has had his/her driver's license suspended for any alcohol or drug related charge prior to his/her return to work. The employee shall notify his/her supervisor prior to returning to work after said arrest and/or suspension has occurred. Failure to report to his/her department head may result in termination. For Cause Testing may also be required for irrational or unusual behavior, gross negligence, or disregard for safety which results in the damage of property or the lack of well being or injury of any employee or citizen.

(f) Return-To-Duty-Testing: Must be conducted on an employee seeking reinstatement who has had a positive alcohol test and/or drug test as defined in this policy. An employee who has had a positive alcohol or drug test will not be allowed to return to duty until he or she has been evaluated by a Substance Abuse Professional (SAP) and until he or she tests negative on a return to duty test.

(g) Follow-up Testing: Must be conducted on an employee once he or she is allowed to return to duty following a positive alcohol and/or drug test. The employee will be subject to a minimum of six (6) follow-up drug and/or alcohol tests within the first twelve (12) months following his/her return to duty. Follow-up testing may be extended for up to sixty (60) months. Follow-up alcohol testing shall be conducted while the employee is performing safety-sensitive functions, immediately before the employee performs safety-sensitive functions, or immediately after the employee has performed safety-sensitive functions. Follow-up drug testing shall be conducted at any time while the employee is at work.

### **(3) Prohibited Conduct and Consequences.**

(a) No employee shall report for duty or remain on duty while having alcohol and/or drug concentrations in his or her system in amounts that would constitute a positive test. An employee who produces a confirmed positive test result will be removed from duty without pay. The employee must immediately schedule an evaluation with a Substance Abuse Professional (SAP) and must cooperate with any and all recommendations suggested by the SAP for treatment and/or follow-up. Refusal to cooperate will result in termination. The employee must have a negative test result before he or she will be allowed to return to duty.

(b) The City of Asheboro expressly prohibits the possession, sale, use, distribution, dispensation, manufacture, purchase, or storage of illegal drugs/controlled substances or related paraphernalia and/or alcoholic beverages by city employees while at the workplace. By way of illustration, and not limitation, no employee shall be on duty while in the possession of one or more alcoholic beverages and/or controlled substances. Any action taken in violation of this prohibition will result in termination. Notwithstanding the foregoing, this prohibition does not extend to law enforcement officers who are performing their lawful duties and shall not be construed or interpreted in any manner that impairs lawful operations conducted by the Asheboro Police Department. Furthermore, no employee who discovers alcoholic beverages and/or controlled substances in the course of performing his or her work duties and immediately contacts the Asheboro Police Department to take possession of the prohibited item(s) shall be deemed to be in violation of this policy.

(c) No employee required to take a post-accident alcohol test as defined in this policy shall use alcohol for eight hours following the accident, or until he or she undergoes a post-accident alcohol test,

whichever comes first. Refusal to cooperate will result in termination.

(d) A refusal by an employee to submit to and fully cooperate with an alcohol and/or drug test required by this policy shall be deemed to be a direct and intentional act of insubordination that will result in the termination of employment.

(e) Employees are prohibited from reporting for duty or remaining on duty when the employee uses any controlled substance, except when the use is pursuant to the instructions of a physician who has advised the employee that the substance does not adversely affect the employee's ability to safely perform his or her assigned work.

(f) A second occurrence of a positive drug and/or alcohol test will result in termination.

(g) An employee who has a confirmed Breath Alcohol Test result of 0.02 - 0.039 shall not be allowed to continue to perform safety-sensitive functions. The employee will be removed from duty without pay for this 24-hour period and will receive a notation in his/her personnel file about the importance of reporting to work without the presence of alcohol in his/her system. The employee will be subject to a return-to-duty alcohol test prior to returning to a safety sensitive position.

(h) No applicant will be offered employment if a confirmed positive pre-employment drug test result is produced.

**(4) Supplemental Requirements.**

(a) The Omnibus Transportation Employee Testing Act of 1991 (final rules implemented February 15, 1994) requires, in part, that any commercial motor vehicle operator who is subject to the commercial driver's license (CDL) requirement in the State of North Carolina be tested for alcohol and controlled substances.

(b) Compliance with the Department of Health and Human Services (DHHS) mandatory guidelines for controlled substances testing shall be maintained by only using a laboratory certified by the Substance Abuse and Mental Health Services Administration (SAMHSA).

(c) Federally mandated alcohol testing must be conducted by a Breath Alcohol Technician (BAT) trained to a level of proficiency that is demonstrated by successful completion of a generally recognized and accepted course of instruction. Alcohol testing shall be conducted using an Evidential Breath Testing (EBT) device.

(d) As required by the Federal Drug-Free Workplace Act, if an employee is convicted of a violation of a criminal drug statute and the violation occurred while the employee was at work, the employee must notify his department head of the conviction within five (5) days after the conviction. Failure to notify the department head will result in termination.

(e) All drug test results shall be reviewed and interpreted by a Medical Review Officer, or MRO. The MRO must be a licensed physician with specific training in substance abuse. If the laboratory reports a positive test result to the MRO, the MRO or designee will contact the employee, typically by telephone, and discuss the results with him/her. The MRO will then attempt to determine if there is a verifiable medical explanation for the employee to have the detected drug in his/her system. If there is none, the test result is to be reported as positive. If there is a verifiable medical explanation for the use of the drug, the result is to be reported as negative.

(f) An employee who does not pass a drug and/or alcohol test and is terminated, or an applicant who does not pass the pre-employment drug test, will not be considered for re-employment for a two-year period following the date of the test and then will be considered only when he/she provides documentation suitable to management that he/she has successfully completed an alcohol and/or drug

rehabilitation program and passes a pre-employment drug and/or alcohol test.

**Section 7.**     Workplace Violence

The City of Asheboro has a zero-tolerance policy relating to the communication of threats, harassment whether it be verbal or physical, physical assaults, or any other forms of inappropriate, intimidating, or unreasonably aggressive behavior. This type of behavior is unacceptable and, in terms of implementing the disciplinary actions prescribed by Article X of the City of Asheboro Personnel Policies and Procedures Manual, shall be deemed to constitute improper personal conduct. Employees found in violation of this policy shall be subject to discipline as provided in Article X of this Manual. In addition to any disciplinary action(s) taken pursuant to the city's personnel policies and procedures, employees violating this policy may be subject to criminal prosecution.

**Section 9.**     The specific policies listed as sections within ARTICLE VIII (PROMOTIONS, DEMOTIONS, TRANSFERS) of the reorganized Manual, which comes into effect on January 1, 2013, will be formatted and contain the same text as found in the existing ARTICLE VIII (PROMOTIONS, DEMOTIONS, TRANSFERS) that is in effect on the date of the adoption of this Resolution.

**Section 10.**    The specific policies listed as sections within ARTICLE IX (SEPARATIONS AND REINSTATEMENTS) of the reorganized Manual, which comes into effect on January 1, 2013, will be formatted and contain the same text as found in the existing ARTICLE X (SEPARATIONS AND REINSTATEMENTS) that is in effect on the date of the adoption of this Resolution.

**Section 11.**    With the exception of the modification of certain Sections as described below, the Sections within the new ARTICLE X (DISCIPLINARY ACTIONS) of the reorganized Manual, which comes into effect on January 1, 2013, will be formatted and contain the same text as is currently found in ARTICLE XI (DISCIPLINARY ACTIONS) that is in effect on the date of the adoption of this Resolution.

Section 5 (Dismissal/Demotion) of the new Article X will be modified to provide, effective January 1, 2013, as follows:

An employee may be demoted/dismissed for unsatisfactory performance of duties after the employee has received prior written warning (s) on his/her job performance. An employee may be demoted/dismissed for improper personal conduct without prior warnings (s). Before an employee is demoted/dismissed for either reason, the following shall apply:

(1) A written summary of facts and circumstances leading to the decision will be prepared by the supervisor or a higher level administrator. A copy of the report shall be submitted to the human resources department prior to informing the employee of the decision.

(2) Documentation of previous disciplinary action taken ~~(oral and written warning (s))~~ (such as previous oral and written warnings) and other documents that support the decision shall be attached to the summary.

~~(3) The summary shall be reviewed by the division/department head, the Human Resources Department and City Manager for approval, prior to the demotion/dismissal.~~ Prior to conducting a pre-dismissal hearing, which is also conducted in advance of taking final action on a contemplated demotion, the division director/department head shall forward the above-referenced summary to the human resources director and the city manager for approval to proceed with a pre-dismissal hearing.

~~(4) After the division/department head has held a pre-dismissal hearing with the employee and it is determined that the employee will be demoted/dismissed, he shall present the employee with the letter the next working day after the hearing. This letter must include the specific:~~ Within two (2) business days of the date of the pre-dismissal hearing, the division director/department head that conducted the hearing shall transmit to the employee written notice of the decision made by the division director/department head. If the decision is to demote or dismiss the employee, the division director/department head shall, at a minimum, include the following information in the notice:

- (a) Reason(s) for demotion or dismissal;
- (b) An effective date of the action;
- (c) A numerical list of the specific ~~acts~~ findings relied upon by the division director/department head in order to reach a decision; and

(d) The employee's right to appeal the decision through the city's administrative review process.

~~(5) Upon dismissal on the basis of unsatisfactory job performance, an employee may be given up to two (2) week's notice.~~

~~(6) Upon dismissal on the basis of personal conduct, an employee may be dismissed without notice. Management should consult with the Human Resources Department and receive prior approval from the City Manager.~~

~~The dismissal/demotion of probationary employees shall be governed by Article V, Section 4 of the City of Asheboro Personnel Policies and Procedures Manual. Furthermore, Section 6 of this Article shall be deemed to be inapplicable to probationary employees.~~

(5) The dismissal/demotion of probationary employees shall be governed by Article III, Section 5 of the City of Asheboro Personnel Policies and Procedures Manual. Furthermore, Section 6 of this Article shall be deemed to be inapplicable to probationary employees.

The existing Section 6 (Rights of Appeal) is to be modified for inclusion in the new Article X as follows:

In the cases of suspension, demotion, or dismissal, a regular employee has appeal rights. The appeal procedure shall be as provided in Article XII, Section 1(C) governed by Article XI of the City of Asheboro Personnel Policies and Procedures Manual. The first level of appeal from a decision by a division director/department head to suspend, demote, or dismiss an employee will be to the human resources director in accordance with the procedures prescribed by Article XI, Section (C) of this Manual. If an appeal is made from the decision of the human resources director, such an appeal is to be made to the city manager in accordance with Article XI, Section (D) of this Manual.

In the case of the suspension, demotion, or dismissal of a regular employee holding the rank of department head or higher, the city manager will specify the appeal procedure that will be available to the employee in the event of an adverse personnel action at the same time the city manager designates the employee who will conduct, on behalf of the manager, the administrative investigation of the circumstances leading to the need to evaluate whether a suspension, demotion, or dismissal is warranted.

The existing Section 7 (Administrative Guidelines) is to be modified for inclusion in the new Article X as follows:

~~A.~~ (A) Unsatisfactory Performance of Duties

This category covers all types of performance-related inadequacies. This policy does not require that the progressive warnings address the same type of unsatisfactory performance, but it does require that all warnings be related to job performance. Unsatisfactory performance of duties may include, but is not limited to:

- (1) Inefficient or incompetence in performing duties;
- (2) Negligence in performance of duties;
- (3) Physical or mental incapability for performing duties;
- (4) Careless or improper use of city property;
- (5) Failure to maintain satisfactory and harmonious working relationships with fellow employees and the public;
- (6) Habitual pattern of failure to report for duty at the assigned time and place;
- (7) Absence without approved leave;
- (8) Habitual and improper use of sick leave privileges;
- (9) Failure to obtain or maintain current license or certificate required as a condition for performing the job;

(10) Failure to wear and use appropriate safety equipment or otherwise to abide by safety rules and policies.

~~B.~~ (B) Improper Personal Conduct

~~If the infraction or behavior is extremely serious or injurious to the city, fellow employees, or the public, supervisors may suspend an employee without warning. However, before any further formal disciplinary action such as demotion or dismissal is taken against an employee, the employee's division/department head must consult with the Human Resources Department. Improper personal conduct may include, but is not limited to: An employee who engages in a single act of improper personal conduct is subject to dismissal from employment with the City of Asheboro regardless of whether the employee has previously received a warning of any kind during his or her career with the city. The following list is illustrative, and is not an exhaustive or exclusive list, of the types of improper personal conduct that will lead to the termination of an individual's employment with the city:~~

- (1) Conduct unbecoming a city employee;
- (2) Conviction of a felony;
- (3) Committed a criminal act;
- (4) Misusing city funds;
- (5) Falsifying job information to secure position;
- (6) Engaging in any action that would in any way seriously disrupt or disturb the normal operation of the city;
- (7) Trespassing on the grounds or home of any official or employee for the purpose of harassing or forcing dialogue or discussion for the occupants;
- (8) Willful acts that would endanger the lives or property of others;
- (9) Willfully damaging city property;
- (10) Possessing unauthorized weapons, alcoholic beverages, or illegal substances while on the job;
- (11) Threats, pressure or physical actions against others;
- (12) Insubordination;
- (13) Reporting to work under the influence of alcohol or drugs, or partaking of such items on the job;
- (14) Accepting gifts for "favors" or "influence";
- (15) ~~Betraying confidential information~~ Without proper authorization, disseminating or otherwise releasing in any manner information that is lawfully maintained by the city as confidential information;
- (16) Unauthorized possession of the city's or another employee's property;
- (17) Leaving the work area repeatedly for excessively long periods without proper authorization;
- (18) ~~Sexual harassment~~ Violation of the city's policies prohibiting sexual harassment, unlawful discrimination, workplace violence, and/or substance abuse;
- (19) Providing or maintaining false or improper records/documents;
- (20) Sleeping during work time;
- (21) Gambling during work time; and
- (22) Providing an untruthful statement or statements during an administrative investigation conducted by the city and/or otherwise attempting to impede the ability of the city to conduct an accurate and complete administrative investigation.

(C) Written Warning(s)

During the period after written warnings have been issued for unsatisfactory performance of duties, management may choose to counsel with the employee concerning his/her employment status before a decision to demote or dismiss is made. Such counseling should involve a candid discussion about the actions that an employee must take in order to correct the unsatisfactory performance. As a part of this counseling, management may request the employee to take up to one (1) day's leave with pay to consider whether or not the employee wishes to continue his/her employment with the city. It should be stressed to the employee that a decision to continue employment with the city will require a commitment to improve performance, and that a lack of improvement will lead to dismissal. Management is expected to use its discretion to determine when this procedure would benefit the employee and the city.

~~D.~~ (D) Suspension(s)

Investigatory or disciplinary suspension may be used by management in appropriate circumstances. The following general guidelines shall be utilized when deciding whether to place an employee on suspension:

(1) If the infraction or behavior is extremely serious or injurious to the city, fellow employees, or the public, a supervisor may suspend an employee without warning. However, before any further formal disciplinary action such as demotion or dismissal is taken against an employee, the employee's division director/department head must consult with the human resources department.

~~(1)~~ (2) An employee who has been suspended for either investigatory or disciplinary reasons may be placed on compulsory leave without pay.

~~(2)~~ (3) Investigatory suspension with or without pay may be appropriate:  
(a) To provide time to investigate, establish facts, and reach a decision concerning an employee's status in those cases where it is determined the employee should not continue to work pending a decision; and

(b) When management elects to use investigatory suspension in order to avoid undue disruption of work or to protect the safety of persons or property.

~~(3)~~ (4) Investigatory suspension without pay shall not exceed thirty (30) calendar days. ~~Investigatory suspension with pay will be at the request of the division/department head and authorized only by the City Manager, and shall not exceed thirty (30) calendar days.~~

(5) Investigatory suspension with pay will be at the request of the division director/department head and must be authorized by the city manager.

~~(4)~~ (6) An employee who has been suspended with or without pay must be furnished a letter with the specific reasons for his/her suspension and notice of right to appeal. A copy of the letter shall be forwarded to the human resources department in advance.

~~(5)~~ (7) Suspension with or without pay must be fully documented.

~~E.~~ (E) Review of Documentation

(1) In accordance with Section 160A-168(d) of the North Carolina General Statutes, an employee is hereby expressly authorized to submit for inclusion in his or her personnel jacket a statement relating to material in his or her file that the employee objects to on the basis of the employee's contention the material is inaccurate or misleading. Additionally, management shall periodically review any documented disciplinary actions which have been placed in an employee's personnel jacket. Where disciplinary actions noted in the employee's personnel jacket are deemed by the division/department head to have served their purpose and to be no longer necessary, the division/department head shall submit documentation to support this conclusion. Any such documentation shall be subject to review and approval by the Human Resources Director and the City Manager prior to inclusion in the employee's personnel jacket. An employee who objects to material in his or her personnel jacket may place in the file a statement relating to the material the employee considers to be inaccurate or misleading. The employee may seek the removal of such material by filing a grievance and

following the grievance procedures specified in Article XI of the City of Asheboro Personnel Policies and Procedures Manual.

(2) Probationary employees who have been subject to disciplinary action for improper personal conduct, and are ineligible for access to the city's grievance procedure, may submit to the human resources director a written request for an informal name-clearing proceeding that will be conducted by the human resources director. The human resources director must receive such a written request within ~~30~~ thirty (30) business days of the date of receipt by the probationary employee of ~~notification that the problem causing documentation had been placed in the employee's personnel jacket.~~ In his or her request, the probationary employee must state the basis for his or her belief that the submitted documentation should be amended, supplemented, or removed.

(a) During the informal hearing of this matter, the human resources director shall review all pertinent written reports and may request additional information and documentation. Also, the human resources director may receive new evidence, written or oral, from the division director/department head and/or employee, which so long as the evidence is germane to the issue relevant to whether the problem causing documentation should be removed, amended, or supplemented. In deciding the question presented by the probationary employee, the human resources director may ~~confirm or note the need to modify~~ reject the probationary employee's contention or agree to amend, supplement, or remove the documentation previously placed in the employee's personnel jacket.

(b) If an individual is dissatisfied with the decision rendered by the human resources director, the individual may appeal the human resources director's decision by submitting a written request to the city manager for an informal hearing before the city manager. Such a request must be received by the city manager within ~~45~~ fifteen (15) business days of the date on which the individual received the human resource director's written decision.

(c) The city manager shall review the entirety of the information previously reviewed by the human resources director during his or her consideration of the matter. Additionally, the city manager may receive new evidence, written or oral, from the division director/department head and/or employee that is germane to the issue so long as the evidence is relevant to whether the problem causing documentation should be removed, amended, or supplemented. When ruling on the appeal, the city manager may confirm or modify the decision of the human resources director. The decision rendered by the city manager shall be final. The city manager shall furnish written notice to the employee, the division director/department head, and the human resources director of his final ruling.

(d) This name-clearing opportunity is for the limited and sole purpose of ~~affording~~ providing an employee who has no other grievance or appeal rights with an opportunity to properly request the removal or mitigation of ~~potentially allegedly~~ damaging information from previously placed in a personnel jacket. The name-clearing process shall not afford probationary employees access to the city's grievance procedure. During the name clearing process, ~~the~~ the previously suspended, demoted, or dismissed probationary employee does not have the right to appeal his or her suspension, demotion, or dismissal from employment and is expressly prohibited from raising such an appeal.

**Section 12.** The specific policies and procedures listed within the new ARTICLE XI (GRIEVANCE PROCEDURE) of the reorganized Manual, which comes into effect on January 1, 2013, will be formatted and contain the same text as found in the existing ARTICLE XII (GRIEVANCE PROCEDURE) that is in effect on the date of the adoption of this Resolution.

This resolution was adopted by the Asheboro City Council in open session during a regular meeting held on the 6<sup>th</sup> day of December, 2012.

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

ATTEST:

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

**(b) Pursuant to the above-stated motion, the following ordinance was adopted:**

**37 ORD 12-12**

**AN ORDINANCE AUTHORIZING THE USE OF STATE CRIMINAL HISTORY  
INFORMATION TO EVALUATE APPLICANTS FOR CITY EMPLOYMENT  
AS WELL AS VOLUNTEER YOUTH COACH APPLICANTS**

**WHEREAS**, Section 5.1 of the Charter of the City of Asheboro provides that the city council shall appoint a city manager, and the city manager shall be the chief executive officer and head of the administrative branch of the city government; and

**WHEREAS**, Section 5.2 of the Charter of the City of Asheboro provides that the city manager has "the power to appoint and remove . . . officers, department heads, and employees in the administrative service of the . . ." City of Asheboro; and

**WHEREAS**, in order to more effectively and professionally exercise the power to hire employees, the city manager has appointed a full-time human resources director to conduct the recruitment and selection process used to hire city employees; and

**WHEREAS**, in furtherance and support of the professional administration of the city's unified personnel system, the human resources director, with the approval of the city manager, has requested the assistance of the Asheboro Police Department in obtaining North Carolina criminal history information for use as part of the final evaluation of applicants who have received conditional offers of employment from the City of Asheboro; and

**WHEREAS**, consistent with Section 114-19.1 of the North Carolina General Statutes, the North Carolina Department of Justice, upon execution by the city of the appropriate access agreement(s), is authorized to provide the City of Asheboro with state criminal history information pertaining to applicants for employment with the city; and

**WHEREAS**, the Section 160A-353 of the North Carolina General Statutes provides the City of Asheboro with the authority to establish and conduct a system of supervised recreation; and

**WHEREAS**, on the basis of this enabling statute, the City of Asheboro Cultural and Recreation Services Division has established and conducts a youth sports program that utilizes volunteer coaches; and

**WHEREAS**, due to the responsibility placed on a volunteer coach to diligently monitor and provide for the care and well being of the children that have been entrusted to the volunteer as participants on the coach's youth sports program team, the City of Asheboro Cultural and Recreation Services Director, with the approval of the city manager, has requested the assistance of the Asheboro Police Department in obtaining North Carolina criminal history information for use in evaluating the suitability of applicants for appointment as volunteer coaches in the city's youth sports program; and

**WHEREAS**, Section 114-19.3(a)(10) of the North Carolina General Statutes authorizes the North Carolina Department of Justice to provide to the city, in its capacity as an organization that provides direct care for children, criminal history information pertaining to individuals who have applied to serve as volunteer coaches who, in turn, will be given the responsibility of providing care for children on behalf of the city's cultural and recreation services division; and

**WHEREAS**, the Asheboro City Council has concluded that the enactment of an ordinance authorizing the Asheboro Police Department to access state criminal history information via the North Carolina State Bureau of Investigation's Division of Criminal Information for the purposes stated in the preceding recitals will have a positive impact on the city's effort to promote public safety and public confidence in the services offered by the municipal government;

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

**Section 1.** Section 34.80 of the Code of Asheboro is hereby enacted as follows:

**§ 34.80 Police Department Authority Regarding Criminal History Information of Final Candidates for City Employment.**

(A) When requested by the city's human resources director, or his/her designee in the human resources department, the Asheboro Police Department is authorized to seek access to the North Carolina State Bureau of Investigation/Division of Criminal Information Network (SBI/DCIN) Criminal History Record Information in order to obtain a North Carolina state only background check on all persons who have received conditional offers of full-time, part-time, or seasonal employment with the City of Asheboro. The Asheboro Police Department's access to criminal history information and the sharing of this information with designated personnel in the human resources department, and ultimately the city manager, shall be governed by the access agreement prescribed by the SBI/DCIN and entered into by the city.

(B) When an inquiry of SBI/DCIN Criminal History Record Information conducted in accordance with Division (A) of this Section indicates that an individual has one or more pending criminal charges and/or has been convicted of or accepted responsibility for one or more felonious or misdemeanor criminal offenses, such information shall be forwarded to the human resources director, or his/her designee, for evaluation. When evaluating the impact of this information on an individual's potential employment with the city, an individualized review of the entirety of the available information shall be undertaken before a final employment decision is made. At a minimum, this review will take into account the type of crime(s) of which the individual has been charged or was convicted/accepted responsibility, the frequency of violations and/or any pattern of offenses, the time that has elapsed since the date(s) of any conviction(s)/disposition(s), the applicant's age at the time of any conviction(s)/disposition(s), and the impact, if any, of the past criminal conduct or pending charges of criminal conduct on the ability of the applicant to perform the essential job functions of the position for which he or she has applied in a manner consistent with the maintenance of the public trust and confidence that is essential to the city's effective delivery of municipal services.

(C) Prior to seeking final approval from the city manager to act on the basis of criminal history record information obtained pursuant to the authorization found in Division (A) of this Section, the human resources director, or his/her designee, shall verify the existence of a record by obtaining either a certified public record or by submitting a fingerprint card of the individual to the Criminal Information and Identification Section of the SBI for verification that the criminal history record information belongs to the individual that is subject to a pending personnel decision. In order to facilitate the verification process, applicants for employment with the city shall, upon request and as part of the mandated application process, provide all of the identification information necessary to confirm that the criminal history information does in fact pertain to the applicant. The requested identification information may include, but is not limited to, the applicant's full name, documents such as a birth certificate or driver's license, and/or a completed applicant fingerprint card.

(D) The provisions of this Section shall not be construed or interpreted in any manner that lessens or to any degree restricts the authority of the Asheboro Police Department, independent of this ordinance, to access SBI/DCIN Criminal History Record Information as a criminal justice agency.

**Section 2.** Section 34.81 of the Code of Asheboro is hereby enacted as follows:

**§ 34.81 Police Department Authority Regarding Criminal History Information of Volunteer Youth Sports Program Coaches.**

(A) When requested by the city's cultural and recreation services director, or his/her designee in the cultural and recreation services division, the Asheboro Police Department is authorized to seek access to the North Carolina State Bureau of Investigation/Division of Criminal Information Network (SBI/DCIN) Criminal History Record Information in order to obtain a North Carolina state only background check on all persons who have applied to work as volunteer coaches with children in the youth sports program administered by the city's cultural and recreation services division. The Asheboro Police Department's access to criminal history information and the sharing of this information with designated personnel in the cultural and recreation services division, and ultimately the city

manager, shall be governed by the access agreement prescribed by the SBI/DCIN and entered into by the city.

(B) When an inquiry of SBI/DCIN Criminal History Record Information conducted in accordance with Division (A) of this Section indicates that an individual seeking appointment as a volunteer youth sports program coach has one or more pending criminal charges and/or has been convicted of or accepted responsibility for one or more felonious or misdemeanor criminal offenses, such information shall be forwarded to the cultural and recreation services director, or his/her designee in the cultural and recreation services division, for evaluation. When evaluating the impact of this information on an individual's suitability to work with children as a volunteer coach, an individualized review of the entirety of the available information shall be undertaken before a final decision is made. At a minimum, this review will take into account the type of crime(s) of which the individual has been charged or was convicted/accepted responsibility, the frequency of violations and/or any pattern of offenses, the time that has elapsed since the date(s) of any conviction(s)/disposition(s), the applicant's age at the time of any conviction(s)/disposition(s), and the impact, if any, of the potential volunteer coach's past criminal conduct or pending charges of criminal conduct on the ability of the city to offer a safe, high quality youth sports program in which the broadest possible range of parents and guardians will have confidence.

(C) Prior to making a final decision, which may ultimately be appealed to the city manager, to prohibit an individual from serving as a volunteer coach because of information found in the criminal history record information obtained pursuant to Division (A) of this Section, the cultural and recreation services director, or his/her designee, shall verify the existence of a record by obtaining either a certified public record or by submitting a fingerprint card of the individual to the Criminal Information and Identification Section of the SBI for verification that the criminal history record information belongs to the individual that is attempting to volunteer as a youth sports program coach. In order to facilitate the verification process, applicants seeking to volunteer as coaches in the youth sports program shall, upon request and as a mandated part of the application process, provide all of the identification information necessary to confirm that the criminal history information does in fact pertain to the applicant. The requested identification information may include, but is not limited to, the applicant's full name, documents such as a birth certificate or driver's license, and/or a completed applicant fingerprint card.

(D) The provisions of this Section shall not be construed or interpreted in any manner that lessens or to any degree restricts the authority of the Asheboro Police Department, independent of this ordinance, to access SBI/DCIN Criminal History Record Information as a criminal justice agency.

**Section 3.** All ordinances and clauses of ordinances in conflict with this ordinance are hereby repealed.

**Section 4.** The provisions of this ordinance are hereby declared to be severable, and if any provision of this ordinance, or the application thereof to any person or in any circumstance, is declared invalid or unconstitutional by a court of competent jurisdiction, such declaration shall not affect the validity of other provisions or applications of the ordinance that are not specifically declared invalid and can be given separate effect.

**Section 5.** This ordinance shall be in full force and effect upon and after the 1<sup>st</sup> day of January, 2013.

This ordinance was adopted by the Asheboro City Council in open session during a regular meeting of the council that was held on the 6<sup>th</sup> day of December, 2012.

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

ATTEST:

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

**11. Discussion with the city attorney about pending lease negotiations.**

Negotiations concerning the continued lease of city-owned real property are currently underway between the city attorney and two (2) current tenants, SprintCom, Inc. and a subsidiary of Fairway Outdoor Advertising. The city attorney sought confirmation from the Council Members of

the accuracy of his understanding that the Council is willing to allow the city-owned properties to continue to be used by the existing tenants for a term of no more than ten (10) years, including any renewals or extensions, so long as the tenants agree to the city's standardized lease agreements.

During a period of general discussion, the Council Members indicated that Mr. Sugg's understanding of the parameters of any negotiations about renewing the stated leases was in alignment with the governing board's expectations. No formal action was taken. Any proposed lease agreements will be brought to the Council for final approval during a subsequent regular Council meeting.

**12. Upcoming events:**

- Christmas Parade – Friday, December 7, 2012 at 7:00 p.m.
- *Christmas on Sunset* – Friday, December 14, 2012 at 5:30 p.m.

There being no further business, the meeting was adjourned at 9:00 p.m.

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

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