

**REGULAR MEETING
ASHEBORO CITY COUNCIL
CITY COUNCIL CHAMBER, MUNICIPAL BUILDING
THURSDAY, JANUARY 8, 2015
7:00 p.m.**

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)
Linda H. Carter) – Council Members Present
Michael W. Hunter)
Walker B. Moffitt)
Charles W. Swiers)

John N. Ogburn, III, City Manager
D. Jason Cheek, Police Lieutenant
Holly H. Doerr, CMC, NCCMC, City Clerk/Paralegal
Jason A. Hanson, Police Lieutenant
Leigh Anna Johnson, Public Information Officer
Michael L. Leonard, P.E., City Engineer
Arthur L. Milligan, Master Police Officer
Ralph W. Norton, Chief of Police
Trevor L. Nuttall, Community Development Director
Deborah P. Reaves, Finance Director
Michael D. Rhoney, P.E., Water Resources Director
James O. Smith, Police Major
Jeffrey C. Sugg, City Attorney
E. Todd Swaney, Police Captain
Jody P. Williams, Assistant Chief of Police

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. Moment of silent prayer and pledge of allegiance.

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

3. Update on the following zoning cases for which notices of withdrawal have been received from the applicants:

(a) **Zoning Case RZ-14-08: An application to rezone property located at 217 N.C. Highway 49 South from B2 (General Commercial) to I1 (Light Industrial).**

Mr. Nuttall reported to the Council that the above-referenced case has been withdrawn by the Applicant.

(b) **Zoning Case RZ-14-14: An application to rezone property located at 520 Greensboro Residential) Street from R7.5 (Medium-Density Residential) and RA-6 (High-Density Residential) to CU-O&I (Conditional Use Office and Institutional)**

Mr. Nuttall reported that the above-referenced case has been withdrawn by the Applicant.

4. The city's fiscal year-end audit report.

The City Council received from Mr. Steve Hackett, CPA the audit report for the fiscal year that ended June 30, 2014. During his presentation, Mr. Hackett reported that the city received what is commonly referred to as a "clean audit" (currently also referred to as an "unmodified audit") that reflects an unqualified acceptance of the City's financial statements. A copy of the written report submitted by Mr. Hackett is on file in the City Clerk's office along with a copy of the City's comprehensive Annual Financial Report.

5. Recognition of Master Police Officer Arthur Milligan as the Asheboro Police Department's Officer of the Year for 2014.

Chief Norton explained the process of selecting the Asheboro Police Department's Officer of the Year in that officers are nominated by the supervisors in each individual unit based on his/her merit and service throughout the year. The command staff reviews the nominations and votes for one officer.

Chief Norton recognized Master Police Officer Arthur Milligan as the Asheboro Police Department's Officer of the Year for 2014 and presented him with a plaque. Officer Milligan has been involved in coordinating "Booze and Lose It" campaigns and training young police recruits.

Mayor Smith congratulated Officer Milligan on his achievement.

6. Presentation by Eastside Improvement Association.

Dr. Danni Gladden-Green spoke on behalf of the Eastside Improvement Association and utilized a visual presentation in order to highlight the association's challenges and progress over the past few years. Since a notice of foreclosure was received due to the default of the loan used to pay for renovations of Central Gym, the Eastside Improvement Association's Board of Directors has made efforts to preserve the property. The Association held a "Save the Buildings" campaign and raised approximately \$33,000 of the remaining debt of \$82,940.99.

In order to secure the long-term future of this community asset, the association will continue to work with community partners to create a sustainable path forward with tenants such as a daycare, the Boys and Girls Club, and a police substation.

7. Consent agenda.

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

- (a) **The minutes of the City Council's regular meeting on December 4, 2014.**
- (b) **Acknowledgement of the receipt of the Asheboro ABC Board's minutes of the meeting on December 1, 2014.**

[A copy of the above-referenced minutes from the Asheboro ABC Board is on file in the City Clerk's office.]

- (c) **A resolution awarding a service side arm to a retiring officer of the Asheboro Police Department.**

RESOLUTION NUMBER _____ **01 RES 1-15**

CITY COUNCIL OF THE CITY OF ASHEBORO, NORTH CAROLINA

**AWARD OF A SERVICE SIDE ARM TO A RETIRING OFFICER OF
THE ASHEBORO POLICE DEPARTMENT**

WHEREAS, after rendering honorable and valuable service to the City of Asheboro and its citizens since the date of his initial employment with the Asheboro Police Department on May 19, 1986, effective March 1, 2015, Master Police Sergeant David Ray Kennedy will begin his retirement from employment with the City of Asheboro; and

WHEREAS, pursuant to and in accordance with Section 20-187.2 of the North Carolina General Statutes, the Asheboro City Council wishes to recognize and honor Sergeant Kennedy for his dedicated service to the city by awarding to him, at a minimal monetary cost, the service side arm issued to the officer at the time of his retirement;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Asheboro, North Carolina that, effective March 1, 2015, in consideration of the combination of his dedicated service to the City of Asheboro and the payment to the City of Asheboro of one dollar (\$1.00), David Ray Kennedy, upon a determination by the Chief of Police that Mr. Kennedy is not ineligible to own, possess, or receive a firearm under the provisions of federal or North Carolina law, is to be awarded ownership of his city-issued service side arm (a Glock 23 Generation 4 with serial no. SFS984 and three magazines).

This Resolution was adopted by the Asheboro City Council in open session during a regular meeting that was held on the 8th day of January, 2015.

/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

- (d) **Appointment of Finance Director Deborah Reaves to another 2-year term (January 2015 to January 2017) on the Asheboro Board of the North Carolina Firefighters Relief Fund.**

8. Community Development Items:

- (a) **Zoning Case RZ-14-11: A legislative zoning hearing on an application to rezone property located at 379 Patton Avenue from R10 (Medium-Density Residential) to OA6 (Office-Apartment).**

Mayor Smith opened the public hearing on the following request.

The requested rezoning pertains to approximately 3.68 acres of land. The property of Neale A. Kearns and John W. Kearns is located at 379 Patton Avenue. The land for which rezoning has been requested is identified by Randolph County Parcel Identification Number 7761510840.

Mr. Nuttall presented the Community Development Division staff's analysis of the request submitted by Mr. H.R. Gallimore to rezone the above-described property from R10 (Medium-Density Residential) to OA6 (Office-Apartment).

The staff report noted the following:

1. East Salisbury Street is a state-maintained minor thoroughfare at this location. Patton Avenue is a state-maintained road.
2. The area includes a mix of residential, office/institutional, commercial and industrial uses.
3. A portion of the property is outside of the city limits. New development proposed to connect to city services will require the entire tax parcel to be annexed.
4. The proposed land use map designates the northern portion of the property inside the city limits for office and institutional use. The southern portion of the property outside of the city limits is designated for urban residential use.
5. According to the Zoning Ordinance (Article 200, Section 210): "The OA6 District is intended to produce moderate intensity office and residential development to serve adjacent residential areas and to provide a transition from residential to commercial uses. Land designed [sic] OA6 shall normally be located with access to a major or minor thoroughfare with access to local residential streets discouraged."
6. The pavement width of Patton Avenue is approximately 15 to 16 feet in front of the property. Depending on the specific development proposal and subject to North Carolina Department of Transportation (NCDOT) approval, the addition of a driveway(s) on Patton Avenue may require the developer to widen Patton Avenue from the proposed driveway(s) to East Salisbury Street.

The Planning Board concurred with the following Community Development Division staff's analysis and recommended approval of the requested rezoning.

"The request complies with the Land Development Plan proposed land use map which designates the property for office/institutional and urban residential uses, which are consistent with the uses allowed in the OA6 district. The Central Small Area Plan encourages office uses and urban residential uses in strategically designated locations. In this context, the property's proximity to other office, institutional, and commercial uses make the OA6 district appropriate for the property. Additionally, while there is concern over existing conditions on Patton Avenue, driveway permitting requirements and potential improvements required by N.C. Department of Transportation should help ensure safe traffic movements into and out of any future development."

Mr. H.R. Gallimore was available to answer questions, and no one spoke in opposition to the requested rezoning. There being no further comments, Mayor Smith transitioned to the deliberative phase of the hearing.

Upon motion by Mr. Bell and seconded by Mr. Moffitt, Council voted unanimously to adopt the recommendation/analysis of the Community Development Division staff and the Planning Board and approved the requested rezoning as well as adopting the following consistency statement that was initially proposed in the staff report:

After considering the above factors (the excerpt from the staff report that is quoted above), the OA6 designation is in the public interest by allowing a reasonable use of the property and ensuring consistency with the LDP.

(b) Zoning Case SUP-15-01: A quasi-judicial hearing concerning a requested Special Use Permit authorizing a Small Child Day Care Center located at 1016 South Cox Street.

Mayor Smith opened the public hearing on the above-stated request.

Mr. Nuttall was placed under oath and presented the Community Development Division staff's analysis of the Applicant's request that included a properly submitted site plan. This request pertains to approximately 25,551 square feet of land owned by Charles S. and Sherry Johnson that is located at 1016 and 1022 South Cox Street. Randolph County Parcel Identification Number 7750875799 more specifically identifies the property.

The Applicant, Ms. Sheila Robbins, is seeking a SUP authorizing a small child day care center at 1016 South Cox Street which is currently an unoccupied single-family residential dwelling. A small child day care center is characterized as being for approximately 13-29 children and requires a Special Use Permit when it is located in an OA-6 (Office-Apartment) District. The property is also currently being used for personal services (i.e. hair salon) which is permitted by right in the OA-6 District.

The property has frontage on South Cox Street, which is a state-maintained minor thoroughfare, and Oakdale Street, which is a city-maintained street. The proposed site plan indicates a one-way entrance from South Cox Street and a one-way exit onto Oakdale Street. There is reciprocal parking between the proposed use at 1016 South Cox Street and the existing hair salon at 1022 South Cox Street.

The property is located within the Center City Planning Area, Tier 3. As noted on the submitted site plan, an alternate buffer is proposed on the southeastern property boundary. The Asheboro Zoning Ordinance permits staff review and approval of alternate buffering and the use of existing vegetation to meet buffering requirements. Staff has reviewed alternative buffering as shown in the site plan and it is in conformity with the Zoning Ordinance.

Ms. Sheila Robbins and Ms. Heather Grant were placed under oath and addressed the four standard tests. No witnesses came forward in opposition to the Applicant's request for the issuance of the Special Use Permit. There being no comments and no opposition from the public, Mayor Smith transitioned to the deliberative phase of the public hearing.

Upon motion by Mr. Bell and seconded by Ms. Carter, Council found that the proposed use satisfied the four tests for a permit, and the Council Members voted unanimously to approve, with the staff recommended conditions, the requested Special Use Permit.

The formal findings of fact, conclusions of law, and order authorizing the Special Use Permit will be entered by the Council during regular session on February 5, 2015. This order will reflect the conditions imposed upon this permit as a consequence of the testimony presented during the public hearing.

(c) Report on staff's intent to apply for \$50,000 from the North Carolina Housing Finance Agency through its 2015 Urgent Repair Program to assist low-income homeowners with critical home repairs that will ensure the safety of the dwelling.

Utilizing a visual presentation, Mr. Nuttall highlighted that the Community Development Division intends to request \$50,000 in funding from the North Carolina Housing Finance Agency through its 2015 Urgent Repair Program. The goal of the program is to assist low-income homeowners (i.e. the elderly, disabled, single-parent, large households) improve their housing conditions. Randolph County is designated as 1 of 4 counties underserved by the past cycles of the program.

In order to qualify for funding, approximately 50% of assisted households must have incomes below 30% of the area's median income. No funds may be awarded to households exceeding 50% of the area's median income. City staff intends to request funding and proposes to offer a

match of up to 10% of funds received towards hard costs. The submission deadline is January 26, 2015, and awards will be announced in Spring 2015.

Council Members felt this program would benefit the citizens of Asheboro. With a general consensus of support from the Council Members, Mr. Nuttall and the Community Development Division will apply for funding from the North Carolina Housing Finance Agency.

- (d) **Announcement of a public workshop related to the update of the Asheboro 2020 Land Development Plan's map components at the Randolph County-Asheboro Public Library Meeting Room on Tuesday, January 27, 2015 from 4:30 p.m. until 6:30 p.m.**

Mr. Nuttall announced that there will be a public workshop on January 27, 2015 at the Randolph County-Asheboro Public Library in the meeting room. The workshop will focus on the updating of the Asheboro 2020 Land Development Plan's map components.

9. Engineering Department items:

- (a) **Consideration of permanently closing the section of public right-of-way formerly known as "Old Hammer Road" located on the western side of Shamrock Road, approximately 130 feet south of the intersection of Shamrock Road and Stowe Avenue.**

- (i) **Public hearing**

- Mayor Smith opened the public hearing on the proposed permanent closure of the section of the public right-of-way formerly known as "Old Hammer Road" located on the western side of Shamrock Road, approximately 130 feet south of the intersection of Shamrock Road and Stowe Avenue.

- There being no comments and no opposition from the public, Mayor Smith moved to the deliberative phase of the public hearing.

- (ii) **Order of closing**

- Mr. Leonard presented and recommended adoption, by reference, of an ordinance/order to permanently close a section of the public right-of-way formerly known as "Old Hammer Road."

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

CITY OF ASHEBORO STREET CLOSURE ORDINANCE NO. 01 ORD 1-15

STATE OF NORTH CAROLINA

COUNTY OF RANDOLPH

**IN RE THE PERMANENT CLOSURE OF
A SECTION OF AN UNOPENED STREET
LABELED AS OLD HAMMER ROAD**

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ORDER

WHEREAS, pursuant to the provisions of Section 160A-299 of the North Carolina General Statutes, the City Council of the City of Asheboro adopted on the 6th day of November, 2014, during a regular meeting, a Resolution (Resolution Number 40 RES 11-14) declaring the intent of the city council to permanently close approximately 0.1891 of an acre (8,236 square feet) of unopened street right-of-way, which has never been accepted or maintained by the city, but is labeled as street right-of-way for Old Hammer Road on a plat recorded in the office of the Randolph County Register of Deeds in the following location: Plat Book 8, Page 43; and

WHEREAS, Resolution Number 40 RES 11-14 properly called for a public hearing to be held on the question of whether the proposed permanent street closure would be detrimental to the public interest or the property rights of any individual, and, furthermore, the said Resolution of Intent called for the public hearing to be held during the regular council meeting scheduled to begin at 7:00 o'clock p.m. on the 8th

day of January, 2015, in the Asheboro City Hall Council Chamber at 146 North Church Street, Asheboro, North Carolina 27203; and

WHEREAS, pursuant to Section 160A-299 of the North Carolina General Statutes, the said Resolution of Intent was published in *The Courier-Tribune*, a newspaper with general circulation in the City of Asheboro, Randolph County, North Carolina, once a week for four successive weeks prior to the above-referenced public hearing (this notice was published on December 11, 2014; December 18, 2014; December 25, 2014; and January 1, 2015); and

WHEREAS, a copy of the said Resolution of Intent was sent by certified mail, return receipt requested, to all of the owners, as determined by reviewing the county tax records, of property adjoining the section of unopened street known as Old Hammer Road, the said property owners are more particularly identified as follows:

1. David Carter and Linda Carter;
2. Mary K. Lemons;
3. Truc T. Nguyen;
4. Thomas S. Such and Bernadette S. Such;
5. Jerry M. Ward and Christopher W. Ward; and

WHEREAS, notice of the city council's intention to permanently close the unopened section of platted street right-of-way for Old Hammer Road, including the call for a public hearing on the question of the proposed permanent street closure, was prominently posted in two locations along the said section of unopened street right-of-way; and

WHEREAS, after holding the public hearing called by the adopted Resolution Number 40 RES 11-14, the City Council of the City of Asheboro has concluded that the permanent closure of the unopened section of platted street right-of-way for Old Hammer Road described below is not contrary to the public interest and that no individual owning property in the vicinity of the platted and unopened section of street right-of-way proposed for permanent closure would thereby be deprived of reasonable means of ingress and egress to his or her property;

NOW, THEREFORE, BE IT ORDAINED AND ORDERED by the City Council of the City of Asheboro, North Carolina as follows:

Section 1. The approximately 0.1891 of an acre (8,236 square feet) of platted and unopened street right-of-way labeled as Old Hammer Road that is described below is hereby permanently closed. The permanently closed section of platted right-of-way for Old Hammer Road is located within the corporate limits of the City of Asheboro and is more particularly described by metes and bounds as follows:

Asheboro Township, Randolph County, North Carolina:

BEGINNING at a ½" new iron rod set flush with the ground in the western margin of the public right-of-way for Shamrock Road, this ½" new iron rod is located the following courses and distances from the centerline intersection of Shamrock Road and Stowe Avenue: North 07 degrees 10 minutes 29 seconds West 1.34 feet from the said ½" new iron rod to a computed point on the western margin of the public right-of-way for Shamrock Road; thence departing from the western margin of the public right-of-way for Shamrock Road and proceeding North 04 degrees 22 minutes 35 seconds East 104.79 feet to the centerline intersection of Shamrock Road and Stowe Avenue; thence from the said beginning point along the western margin of the public right-of-way for Shamrock Road the following courses and distances: South 07 degrees 10 minutes 29 seconds East 20.63 feet to a computed point; thence South 07 degrees 10 minutes 29 seconds East 20.63 feet to a ½" new iron rod set flush with the ground; thence departing from the western margin of the public right-of-way for Shamrock Road and following the southern margin of the 40-foot right-of-way shown for the unopened Old Hammer Road on a plat of survey recorded in Plat Book 8, Page 43, Randolph County Registry by proceeding in accordance with the following courses and distances across the property of Jerry M. Ward (the Ward property that is located to the north and south of the unopened Old Hammer Road is described in the Office of the Randolph County Register of Deeds in Deed Book 549, Page 228; Deed Book 573, Page 21; and Deed Book 585, Page 324): South 68 degrees 34 minutes 42 seconds West 69.26 feet to a computed point; thence continuing in a southwesterly direction along the southern margin of the platted right-of-way for the unopened Old Hammer Road by following the arc of a curve with a radius of 248.68 feet and an arc length of 104.41 feet a chord bearing and distance of South 56 degrees 55 minutes 32 seconds West 103.64 feet to a computed point; thence South 86 degrees 23 minutes 09 seconds West 30.91 feet within the above-described Jerry M. Ward property and along the southern terminus of the unopened Old Hammer Road to a ½" new iron rod that is 6" above the ground at the northeast corner of the Mary K. Lemons property described in Deed Book 1569, Page 1216, Randolph County Registry; thence continuing along the southern terminus of Old

Hammer Road and the Lemons property line South 86 degrees 10 minutes 37 seconds West 24.71 feet to a ½" new iron rod that is 6" above the ground at the southwest corner of the platted right-of-way for Old Hammer Avenue; thence departing from the southern terminus of the platted right-of-way and following the northern margin of the unopened street along the Thomas S. and Bernadette Such property described in Deed Book 1389, Page 833, Randolph County Registry North 52 degrees 49 minutes 15 seconds East 3.66 feet to a ½" new iron rod that is 6" above the ground on the boundary line between the Such and Ward properties; thence continuing within the Ward property along the northern margin of the platted right-of-way for Old Hammer Road in a northeasterly direction by following the arc of a curve with a radius of 288.68 feet and an arc length of 160.37 feet a chord bearing and distance of North 52 degrees 49 minutes 15 seconds East 158.32 feet to a computed point; thence North 68 degrees 34 minutes 42 seconds East 78.02 feet along the northern margin of the platted right-of-way to the point and place of the BEGINNING, and being all of that certain 0.1891 of an acre (8,236 square feet) of land, more or less, encompassed by the preceding metes and bounds description, specifically including the entirety of the platted right-of-way for the above-described section of the unopened Old Hammer Road. The right-of-way to be permanently closed is shown on the plat of survey referenced below.

The preceding description is in accordance with a plat of survey drawn under the supervision of Glenn Lee Brown, a Professional Land Surveyor with registration number L-3663. The said plat, which is identified as job no. G14060P and is dated September 18, 2014, is titled "ROAD CLOSURE PLAT PREPARED FOR CITY OF ASHEBORO OLD HAMMER ROAD." The plat of survey identified in the two (2) immediately preceding sentences is hereby incorporated into this Ordinance by reference as if copied fully herein.

Section 2. This ordinance shall take effect and be in force from and after the date of its adoption.

Section 3. Any person aggrieved by the permanent closure of the above-described section of right-of-way labeled as Old Hammer Road may appeal the adoption of this Ordinance and Order to the General Court of Justice of Randolph County, North Carolina within 30 days after the adoption of the Ordinance and Order.

Section 4. In the event there is no appeal within 30 days after the adoption of this Ordinance and Order, a certified copy of this Ordinance and Order shall be filed in the office of the Randolph County Register of Deeds as provided by law.

This Ordinance and Order was approved by the Asheboro City Council in open session during a regular meeting held on the 8th day of January, 2015.

CITY SEAL

/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

- (b) Consideration of authorizing the City Manager to enter into a Terminal Building Concept/Preliminary Design Phase Services Agreement between the City of Asheboro and W.K. Dickson & Co., totaling \$49,665.00, and to use Federal Non-Primary Entitlement Funds at a ratio of 90% federal and 10% local match. Work will be in accordance with the contract for professional services dated July 14, 2011.**

Mr. Leonard recommended that the city enter into a Terminal Building Concept/Preliminary Design Phase Services Agreement between the City of Asheboro and W.K. Dickson & Co. totaling \$49,665.00, and to use Federal Non-Primary Entitlement Funds at a ratio of 90% federal and 10% local match for professional services. This work authorization includes conceptual/design phase services for a new terminal building at the Asheboro Regional Airport.

Upon motion by Mr. Baker and seconded by Mr. Swiers, Council voted unanimously to authorize the city manager to enter into the above-referenced agreement.

A copy of the agreement is on file in the City Clerk's office.

10. Public comment period

Mayor Smith opened the floor for comments from the public.

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

11. Vehicle Bids:

Ms. Reaves presented a bid summary for new vehicles to be purchased by the water/wastewater maintenance departments and the water quality department. A copy of the bid summary is on file in the City Clerk's office.

After receiving the bids, Ms. Reaves recommended the following purchases be made off of the state contract:

- (a) A 2015 Silverado 1500 from Sir Walter Chevrolet for the Water Maintenance/Wastewater Maintenance Department at the price of \$26,918.
- (b) A 2015 Ford F250 from Capital Ford for the Water Maintenance Department at the price of \$35,342.
- (c) A 2015 Equinox AWD from Sir Walter Chevrolet for the Water Quality Department at the price of \$20,500.

Upon motion by Mr. Burks and seconded by Ms. Carter, Council unanimously accepted the above-referenced bid summary and authorized the purchase of the recommended vehicles.

12. Wastewater Treatment Plant Operations Items:

(a) Consideration of a change order (Change Order No. 2) for the Wastewater Treatment Plant Digester Gas-Holder Cover and Mixing System Project.

Mr. Rhoney presented Change Order No. 2 for the Wastewater Treatment Plant Digester Gas-Holder Cover and Mixing System Project. This change order will add an access platform to the mixer assembly in order to facilitate operator access for maintenance. The contract price will be increased by \$17,918.14 for a new contract price of \$841,299.16.

Upon motion by Mr. Bell and seconded by Ms. Carter, Council voted unanimously to adopt Change Order No. 2 for the Wastewater Treatment Plant Digester Gas Holder Cover and Mixing System project.

A copy of the change order is on file in the City Clerk's office.

(b) Consideration of a resolution authorizing the city to enter into a biosolids management agreement with EMA Resources, Inc.

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

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

RESOLUTION NUMBER 02 RES 1-15

CITY COUNCIL OF THE CITY OF ASHEBORO, NORTH CAROLINA

A RESOLUTION APPROVING THE ENTRY OF THE CITY INTO A BIOSOLIDS MANAGEMENT AGREEMENT WITH EMA RESOURCES, INC.

WHEREAS, the city owns and operates a wastewater treatment plant located at 1032 Bonkemeyer Drive, Asheboro, North Carolina 27203; and

WHEREAS, the city is currently seeking a contractor to provide professional, full biosolids management services that specifically include taking primary responsibility for Class B biosolids management activities; and

WHEREAS, after reviewing the responses to a request for proposals to provide biosolids management services, the city's water resources director, with the approval of the city manager, has concluded that it is in the best interest of the city to select the proposal submitted by EMA Resources, Inc.

as the basis for negotiating the city's next contract for the management of biosolids; and

WHEREAS, city staff members and authorized representatives of EMA Resources, Inc. have tentatively agreed upon the terms and conditions of a biosolids management agreement between the parties (this proposed agreement with EMA Resources, Inc. shall be hereinafter referred to as the "Contract"); and

WHEREAS, the Contract is attached hereto as EXHIBIT 1 and is hereby incorporated into this Resolution by reference as if copied fully herein; and

WHEREAS, the Asheboro City Council concurs with the recommendation received from the city manager and the water resources director to enter into the Contract attached to this Resolution as EXHIBIT 1;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Asheboro, North Carolina that the attached Contract is hereby approved; and

BE IT FURTHER RESOLVED that the city manager and all other necessary city officials are hereby authorized to execute duplicate originals of the said Contract with EMA Resources, Inc.

This resolution was adopted by the Asheboro City Council in open session during a regular meeting held on the 8th day of January, 2015.

/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

EXHIBIT 1

STATE OF NORTH CAROLINA

**BIOSOLIDS MANAGEMENT
AGREEMENT**

COUNTY OF RANDOLPH

THIS BIOSOLIDS MANAGEMENT AGREEMENT (the "Agreement") is entered into as of this _____ day of January, 2015, by and between the **City of Asheboro, North Carolina**, a North Carolina municipal corporation (the "City"), and **EMA Resources, Inc.**, a North Carolina corporation ("EMA").

RECITALS

WHEREAS, the City owns and operates one (1) wastewater treatment plant located in Randolph County, North Carolina at 1032 Bonkemeyer Drive, Asheboro, North Carolina 27203; and

WHEREAS, the City is seeking a contractor that can provide professional, full biosolids management services that specifically include taking primary responsibility for Class B biosolids management activities; and

WHEREAS, EMA and the City have mutually agreed that EMA will provide the requested professional services upon the terms and conditions set forth below.

AGREEMENT

NOW, THEREFORE, in consideration of these premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, each intending to be legally bound, agree as follows:

ARTICLE 1. BIOSOLIDS MANAGEMENT PROGRAM

1.01 Throughout this Agreement, the term "biosolids" will be used to refer to all wastewater solids that are processed to meet the standards and requirements defined in 40 CFR 503 for the beneficial reuse of wastewater solids. The City produces a Class B biosolids product at its wastewater treatment plant. The purpose of this Agreement is to beneficially reuse all of the Class B biosolids produced at the City's wastewater treatment plant (the "WWTP").

1.02 The Class B biosolids produced at the WWTP are a cake of approximately 18% to 25% total solids.

1.03 The WWTP is subject to redesign, expansion, repairs, and changes in operation. The City has the right, throughout the initial term of this Agreement and throughout any and all extension terms, if any, to modify the operations at the WWTP, specifically including by way of illustration and without limitation the solids processing and handling systems.

ARTICLE 2. TERM OF THE AGREEMENT

2.01 Unless earlier terminated pursuant to Article 6 of this Agreement, the term of this Agreement shall commence at 12:01 a.m. Eastern Standard Time on February 1, 2015, and shall remain in full force until 11:59 p.m. Eastern Standard Time on January 31, 2017.

2.02 The parties shall have the right to extend this Agreement for a total of no more than three (3) consecutive one-year extension terms upon the mutual written agreement of both of the parties. Any such extension term(s) shall be upon the same terms and conditions set out in this Agreement.

2.03 Either party may elect to allow this Agreement to expire by not agreeing to an extension term. Such an election may be made by either party, with or without cause, so long as such decision is communicated to the other party in writing no less than ninety (90) days in advance of the expiration date of the then current term, whether that term is the initial term or an extension term, of the Agreement.

ARTICLE 3. COMPENSATION AUTHORIZED UNDER THIS AGREEMENT

3.01 Subject to the City's right in the event of a breach of contract to deduct or holdback payments in accordance with Article 6 of this Agreement, the amount of consideration, whether labeled as compensation, expenses, reimbursements, surcharges, or fees of any type or kind, paid by the City to EMA for the services provided to the City during any and all terms of this Agreement shall be controlled exclusively by the provisions contained within this Article (Article 3) of the Agreement. No sum of money can be paid by the City to EMA unless such payment is explicitly authorized by this Article. Except as explicitly provided within Article 3, no prices stated herein may be adjusted during the course of the initial term or any extension term of this Agreement.

3.02 The compensation to EMA for performing the requisite permitting services and for the application of Class B biosolids and lime is as follows:

Land Application of Class B Biosolids	=	\$17.95/Cubic Yard
Ag Lime Application (including soil analysis)	=	\$59.00/Acre
Permitting	=	\$17.00/Acre

3.03 Beginning in calendar year 2016, the compensation rate prescribed above in Section 3.02 may be adjusted on an annual basis in accordance with the Consumer Price Index - All Urban Consumers (South Region, All Items, Not Seasonally Adjusted) as published by the U. S. Department of Labor, Bureau of Labor Statistics with an index base period of 1982-84 = 100. Such a price adjustment shall become effective on the 1st day of July of the year in which the following calculation is made. On such an adjustment date, the then current prices may be increased by a percentage equal to the percent change, if any, in the above-referenced index during the twelve (12) month period preceding February the 1st of the calendar year in which the adjustment is to be made. If the Consumer Price Index (hereinafter referred to as the "CPI") ceases to use as the basis of calculation the standard of 1982-84 = 100, or if a change is made in the items contained in the CPI, or if the CPI is altered, modified, converted, or revised in any other manner, then the foregoing computations shall be made with the use of such conversion factor, formula, or table for converting the CPI as may be published by the Bureau of Labor Statistics. If the Bureau of Labor Statistics does not publish such conversion information, then the foregoing computations shall be made with the use of a conversion factor that adjusts the modified CPI to the figure that would have been calculated had the manner of computing the CPI not been altered.

3.04 A fuel surcharge per load of biosolids transported, both positive and negative, when outside the range of \$3.51- \$4.25 per gallon is authorized by this Agreement. Average diesel fuel price will be the monthly average price for Diesel (On-Highway) -All Types – Central Atlantic (PABB 1B) as reported by the US Energy Information Administration.

Fuel Surcharge per Trip								
One Way Distance (Miles)	Average Diesel Fuel Price							
	Less than \$3.00	\$3.01-\$3.25	\$3.26 - \$3.50	\$3.51 - \$4.25	\$4.26 - \$4.50	\$ 4.51 - \$4.75	\$4.76 - 5.00	\$5.01 or greater
0-10	-\$3.00	-\$2.00	-\$1.00	\$0	\$1.00	\$2.00	\$3.00	\$4.00
10.1-20	-\$6.00	-\$4.00	-\$2.00	\$0	\$2.00	\$4.00	\$6.00	\$8.00
20.1-30	-\$9.00	-\$6.00	-\$3.00	\$0	\$3.00	\$6.00	\$9.00	\$12.00
30.1-40	-\$12.00	-\$8.00	-\$4.00	\$0	\$4.00	\$8.00	\$12.00	\$16.00
40+	-\$15.00	-\$10.00	-\$5.00	\$0	\$ 5.00	\$10.00	\$15.00	\$20.00

3.05 EMA shall send the City, on a monthly basis, an invoice for the fees calculated and owed pursuant to this Agreement. Subject to the provisions of Article 6 of this Agreement, the City shall pay EMA the full amount within twenty (20) calendar days of receipt of the invoice. Unpaid invoices that are not subject to deductions and/or holdbacks in accordance with the said Article 6 shall carry interest at the lesser of (i) of one and one-half percent (1.5%) per month, or (ii) the maximum amount permitted under applicable law.

ARTICLE 4. SERVICES TO BE PERFORMED BY EMA

4.01 Except for the specific responsibilities assigned to the City and detailed in Article 5 of this Agreement, EMA shall furnish all permits, labor, materials, and equipment necessary to lawfully remove, transport, and beneficially reuse/dispose of all Class B biosolids produced at the WWTP. Limited authorization is hereby provided for EMA to utilize subcontractors for the sole and exclusive purpose of executing transportation and application event operations. Management functions, specifically including without limitation site management of residuals application, may not be delegated to a subcontractor.

4.02 EMA will conduct short and long term planning efforts in conjunction with the City to ensure that there will be reliable methods and resources available for biosolids and residuals management. The City's intent is to have a professionally managed residuals reuse program which will employ state of the art methods, equipment, and systems. The services to be performed by EMA include monitoring and evaluating local, state, and federal rules and policy changes; assisting the City in improving the quality of its products and reuse program; and utilizing creative means for the implementation of a sustainable high quality, cost effective management program for all of the City's Class B biosolids and thereby enhance the public acceptance of the City's biosolids management program. EMA's planning, administration, and performance of the services to be provided pursuant to this Agreement shall be undertaken with these goals in mind.

4.03 EMA will provide and maintain the requisite land application permit, maps, and operations and maintenance plan, which may incorporate to the extent lawfully feasible the existing permit, maps, and plan. This plan will include a copy of the Residuals Land Application Program Form, Site Deletion Sheet, Land Application Site Certifications, County Manager Notification Cover Letters and Attachment forms, Residuals Source Facility Summary, Site Location Maps, Site Specific Information (by Application Site), Soil Scientist and Agronomist Reports, the Operations and Maintenance Plan, and EMA's Spill Response Plan.

4.04 EMA must strictly comply with the standard operating and safety procedures used at the City's WWTP. The City will provide EMA with annual training and updates of such procedures. EMA is responsible under this Agreement for ensuring that all of its employees and contractors attend such training and are provided with procedural updates and revisions as communicated by the City to EMA.

4.05 EMA understands and acknowledges that the City does not own the land needed to fulfill the services required by this Agreement. This Agreement is a requirements contract under which EMA agrees, without reservation or limitation of any kind other than the explicit terms and conditions of this Agreement, to meet all of the City's service requirements for the removal, transport, and lawful application to land permitted to the City of all of the Class B biosolids produced at the City's WWTP. Accordingly, EMA is responsible for locating all of the land necessary to apply the entirety of the quantities of Class B biosolids produced at the City's WWTP. EMA will be responsible for lawfully obtaining the requisite permits for the land needed for Class B biosolids applications, and EMA will be responsible for renewing all of the permits necessary for the land application of the Class B biosolids produced at the WWTP. Furthermore, EMA will provide to the City copies of the vicinity, soil, aerial, application area, and topography maps of land that will be permitted as part of the performance of this Agreement by EMA. All land utilized to perform the land applications required by this Agreement shall be permitted to the City, and EMA shall notify the City before contacting the North Carolina Department of Environment and Natural Resources ("NCDENR") and/or the United States Environmental Protection Agency ("EPA") concerning a land application permit or permit application.

4.06 EMA is responsible for securing, maintaining, and insuring the necessary equipment for the loading, transport, and application of the City's biosolids in a timely and expedient manner. The City is not responsible for downtime of biosolids loading equipment, and such equipment downtime does not excuse performance under this Agreement. EMA has the obligation to familiarize itself, its employees, and its contractors with the City's facilities and equipment in order to perform in a timely manner the services to be rendered under this Agreement.

4.07 EMA shall provide to the City a detailed equipment list to include the number and type of units that will be utilized to perform the services required by this Agreement. At a minimum, the equipment needed to perform the contracted services and, therefore, included in the said equipment list, is as follows:

- (a) All of the equipment necessary to load trailers from covered and uncovered storage on a concrete pad at the WWTP.

- (b) United States Department of Transportation and North Carolina Department of Transportation (collectively referred to as "DOT") approved dump trailers capable of safely transporting biosolids cake of 18% - 25% total solids.
- (c) All of the road tractors needed to safely and efficiently transport the above-referenced trailers.
- (d) All of the equipment necessary to properly apply the entirety of the City's Class B biosolids, specifically including without limitation biosolids cake at proper application rates as approved by NCDENR and/or the EPA.
- (e) Land application equipment that minimizes soil compaction and/or damage to the land application sites.

4.08 EMA shall ensure that all equipment utilized to perform the services required by this Agreement is operated lawfully, safely, and in compliance with the City's safety policies and procedures in addition to complying with all applicable DOT and Occupational Safety and Health Administration ("OSHA") regulations.

4.09 All trailers will be numbered, and the identifying number for each trailer will be noted on the daily trip tickets.

4.10 Any and all road tractors as well as the trailers pulled by the road tractors shall be marked with all required DOT placards, as well as the contractor's name and contractor's telephone number.

4.11 All road tractors and their trailers must be equipped with mud flaps. All trailers must be equipped with covers that are used without fail to properly secure the load hauled with the trailer.

4.12 EMA is responsible for ensuring all DOT weight requirements are met. The City has the right to weigh and/or inspect any and all transport vehicles (inclusive of the road tractors and trailers) to verify at any time that such transport equipment is filled to its proper volume and is lawfully operated. Any failure by the City to detect noncompliance with the applicable laws does not relieve EMA of its ultimate and final responsibility to ensure that the services provided under this Agreement are performed in a safe and lawful manner.

4.13 All equipment shall be clean and provide a positive public image at all times. Good housekeeping, efficient performance, and safety are priorities of the City.

4.14 All equipment used to perform the services required by this Agreement shall be equipped and maintained to prevent leakage, spillage, and/or overflow.

4.15 EMA shall comply with the following specific operational requirements for the removal, transport, and land application of the City's Class B biosolids:

- (a) All removal, transport, and application of biosolids shall occur during the WWTP's normal business hours of 7:00 AM to 5:00 PM, Monday through Friday. In general, and in the absence of prior permission or directive from authorized City personnel, no transport or application of biosolids shall occur on Saturdays, Sundays, or legal holidays recognized by the City or outside of the City's normal business hours. Under exceptional circumstances, the removal, transport, and application of biosolids may be required on Saturdays, Sundays, and holidays, but such events shall occur only with prior permission or directive from the City.
- (b) A removal, transport, and application schedule shall be coordinated with the City by means of submitting advance notice to the WWTP manager at least one (1) week in advance of an event. A need to alter this schedule will be communicated immediately to the WWTP manager, and a reschedule date will be coordinated at this time. All schedule changes must be approved by the City.
- (c) EMA shall communicate with a designated representative of the WWTP to confirm daily activities and plans for the current application event. The City has the right to cancel, without penalty or contract cost of any kind, an application event at any time if concerns arise over application site conditions, changes in weather that will promote biosolids run-off, and/or public concerns.
- (d) All Class B biosolids removal, transport, and application events and activities must be scheduled so as to avoid any and all conflicts with WWTP facility operations and/or work schedules. In all cases, the operational needs of the WWTP will take precedence over biosolids removal, transport, and application schedules.

4.16 All field personnel, whether direct employees or contractors, utilized by EMA shall be knowledgeable of local, state, and federal site management requirements and practices for Class B biosolids. Accordingly, such field personnel will undergo a training class on application site management practices and receive continuing education in this area as rules and requirements change. All field managers are required under this Agreement to be licensed or certified Biosolids Operators.

4.17 The application of biosolids to any land not properly permitted or approved by NCDENR is strictly prohibited. EMA is responsible for ensuring that its operators know the boundaries of the application sites and the proper procedures and practices for the land application of biosolids. Accordingly, EMA shall ensure that buffer area markers are properly placed on the application sites along with all other necessary

site notices for Class B biosolids application sites. EMA shall ensure that all work areas and field entry/exit roads remain clean and well-marked for traffic purposes. Application events will be conducted in a manner that strictly adheres to all WWTP permits issued by NCDENR.

4.18 Biosolids/residuals removed from the WWTP by EMA shall be documented on a daily trip ticket. The daily trip ticket will serve as a manifest for the transport and as necessary support documentation for the monthly invoice submitted to the City for payment. The City shall be provided with a copy of each daily trip ticket, and EMA will use its copies of the daily trip tickets to invoice the City for services rendered. During the transport of biosolids/residuals from the WWTP to the application/disposal site, the driver will maintain in his or her possession at all times during such a transport the daily trip ticket that serves as the manifest for the transport performed by the driver. All trip tickets will contain the following information:

- (a) The generation site of the biosolids/residuals.
- (b) A description of the biosolids/residuals transported.
- (c) The amount in cubic yards of biosolids removed from the WWTP.
- (d) Road tractor and trailer, including their respective identifying numbers.
- (e) Driver's name and signature.
- (f) Location and/or land application site ID number where biosolids/residuals were applied or disposed.
- (g) Date and time of biosolids/residuals removal and application/disposal.
- (h) Name and Signature of Field Supervisor.

4.19 A summary report for each haul event summarizing the quantities of biosolids removed from the WWTP, the location where biosolids are applied/disposed, and the method of application/disposal shall be furnished to the WWTP according to permit requirements. The summary report may be emailed to the City.

4.20 In addition to the permitting and reporting requirements specified earlier in this Article (Article 4) of the Agreement, and in order to demonstrate the compliance of EMA's activities under this Agreement with local, state, and federal requirements, EMA shall develop and implement to the satisfaction of the City an appropriate monitoring, record keeping, and reporting program. As part of this reporting program, EMA will prepare the annual report in accordance with the schedule mandated by the land application permit.

4.21 EMA is responsible for determining and tracking proper application rates for Class B biosolids. EMA will provide all nutrient, metal, and pollutant sampling at the frequency specified by the permit. These results shall be used by EMA to calculate the appropriate application rates according to crop agronomic needs. EMA shall annually perform a toxicity characteristic leaching procedure (TCLP) with polychlorinated biphenyls (PCB's) and chlorinated hydrocarbons (RCl's), and the results shall be received prior to the first application event of the calendar year. EMA is responsible for all soil sampling required by the permit. All sampling activities, whether for biosolids or soils, will adhere to state sampling requirements.

4.22 A goal of the City's solids management program is to provide a quality Class B biosolids product at all times and to continuously seek methods of improving the quality of the City's biosolids and biosolids processes. EMA will provide assistance to the City in these efforts and will suggest ways of improving the efficiency of producing, processing, removing, transporting, and applying all Class B biosolids.

4.23 With regard to spill control and clean-up processes, EMA shall have the following responsibilities and duties under this Agreement:

- (a) EMA shall manage, contain, remove, and properly dispose of any spillage of biosolids and/or wastewater residuals that occurs on City property, roadways regardless of whether the roadway is public or private, or on land application sites during the removal, transport, application, and/or disposal of biosolids.
- (b) Upon the commencement of this Agreement, EMA shall initiate and implement a plan and procedures for spill control and clean-up. Such a plan and the accompanying procedures shall comply with all DOT, OSHA, NCDENR, and EPA regulations and guidelines. Additionally, the plan and procedures must comply with the WWTP's standard operating procedures as well as the safety procedures adopted by the WWTP. A copy of this plan and procedures will be inserted with the land application permit, the maps, and the operations and maintenance plans.
- (c) EMA shall immediately notify NCDENR and the City once a spill has occurred. A written report describing the nature of the spill; the quantity of biosolids spilled; the actions taken to manage, contain, remove, and clean-up the spill; the environmental impact of the spill; and an identification of the preventative steps that will be taken in the future to avoid any additional spills shall be submitted to the City within 24 hours of the spill.
- (d) EMA shall pay for all expenses incurred as a consequence of a spill occurring during the performance by EMA and/or its contractors of the following services pursuant to this Agreement: the removal, transport, unloading, land application, and/or disposal of biosolids and/or wastewater residuals from the WWTP. This contractual obligation

on the part of EMA is inclusive of EMA's obligation to pay all expenses related to or in any way arising out of managing, containing, cleaning-up, removing, conducting environmental testing, undertaking remediation measures, and disposal costs at a licensed site, if necessary, that may occur as a consequence of a spill.

4.24 Upon the expiration or termination of this Agreement, EMA shall supply the City with copies of all records or documents generated in connection with the performance of this Agreement.

4.25 Prior to the effective date and time of the expiration or termination of this Agreement, EMA shall remove all of its equipment and clean-up in accordance with generally accepted industry standards and all work areas disturbed by EMA's personnel and/or contractors.

4.26 EMA shall procure all permits and licenses and pay all charges and fees necessary and incidental to the lawful conduct of its business throughout the initial term and any extension terms of this Agreement. EMA shall keep itself fully informed of existing and future federal, state, and local laws, ordinances, and regulations that in any manner affect the fulfillment of this Agreement and shall comply with the same.

ARTICLE 5. TASKS AND FUNCTIONS TO BE PERFORMED BY THE CITY

5.01 Aside from the compensation to be paid in accordance with Articles 3 and 6 of this Agreement and the provision of City safety program information and updates in accordance with Article 4 of this Agreement, the tasks and functions to be performed by the City under this Agreement are as follows:

- (a) The City will operate all solids processing units of the WWTP, specifically including thickeners, digesters, and belt filter press.
- (b) The City will ensure that all Class B biosolids to be beneficially reused meet product quality specifications before removal, transport, and application.
- (c) The City will arrange for all laboratory analyses of WWTP biosolids necessary for daily operation.
- (d) The City will be responsible for sampling all of the biosolids generated from the WWTP prior to the biosolids removal and reuse for vector attraction and pathogen reduction requirements. This information will be reported on a Pathogen and Vector Attraction Reduction Report (PVAR).
- (e) All Class B biosolids generated at the WWTP shall meet EPA and NCDENR 503 Metal, Pathogen, and Vector requirements for beneficial reuse.
- (f) The City will maintain all of the WWTP biosolids and storage facilities.
- (g) The City will perform periodic inspections of the removal, transport, and application of Class B biosolids by EMA.

5.02 In order for EMA to address the removal of excessive biosolids volumes in the most efficient manner, the City will notify EMA when the total biosolids storage level reaches the 40% - 50% mark.

ARTICLE 6. RIGHTS OF TERMINATION AND REMEDIES IN THE EVENT OF A BREACH OF THE AGREEMENT

6.01 Either party hereto may terminate this Agreement upon any breach or default of any covenant or agreement of the other party hereto set forth in this Agreement upon thirty (30) days written notice and such breach or default remaining uncured at the end of such thirty (30) day period, unless such breach or default can be cured and the other party is undertaking reasonable, good faith efforts to cure the same, in which case an additional thirty (30) days shall be allowed to cure such breach or default prior to any rights of termination. Upon any such termination pursuant to the preceding sentence, either party shall have the right to recover any damages against the other party including, without limitation, any amount necessary to compensate the aggrieved party for all detriment or damages proximately caused by the breaching party's failure to perform its obligations under this Agreement or which in the ordinary course of events would be likely to result therefrom.

6.02 In case of default by EMA, the City may procure services from other sources and may recover the loss occasioned thereby from any unpaid balance otherwise due to EMA under this Agreement.

6.03 In addition to the termination and recovery options found in paragraphs 6.01 and 6.02 of this Article, the City has additional rights of deduction and holdbacks in the event of a breach of this Agreement by EMA. By way of clarification and not limitation of its otherwise available rights and remedies, the specific additional rights that may be exercised under this Agreement by the City in the event of an uncured default by EMA are as follows:

- (a) The City shall be entitled to full reimbursement for any costs incurred by the City by reason of EMA's failure to perform or to satisfactorily perform its responsibilities and duties under this Agreement. Such costs may include, but are not limited to, the cost of using the City's employees or employees of any other entity to perform the obligations that EMA failed to perform in accordance with this Agreement.
- (b) The reimbursement referenced above in subparagraph 6.03(a) may be obtained by the City by means of deduction from payments otherwise due to EMA or by any other

proper and lawful means. The City reserves the right to hold back or withhold all or part of payments otherwise due to EMA when the contractor fails to correct unsatisfactory work, deficiencies, or breaches of this Agreement. All deductions from any money due to EMA are to be as liquidated damages and not as a penalty. The City's intent is to give EMA a reasonable opportunity, whenever practicable, to correct any such failure to perform or satisfactorily perform its responsibilities and duties under this Agreement. The City will make the following deductions from the contract sum in the event that EMA fails to perform any of the required work within the required time limits and the City carries out the work using public forces or those of another contractor:

- i. For the use of City forces, the deduction will equal the actual cost incurred by the City, as measured by payroll records for labor costs and as measured by "Powell Bill" rates for equipment charges.
- ii. For the use of another contractor, the deduction will be equal to the amount charged by the contractor utilized to fulfill the work left undone or unsatisfactorily performed by EMA.

6.04 Notwithstanding any other provision within this Agreement, and in addition to any other right of termination listed herein, the City has the right to terminate for convenience this Agreement by providing ninety (90) calendar days advance written notice to EMA.

ARTICLE 7. INDEMNIFICATION

7.01 EMA agrees to indemnify and save harmless the City and its personnel, agents, elected and appointed officials, and City Council, in both their individual and official capacities, from any loss, claim, liability, penalty, fine, forfeiture, demand, cause of action, suit, and costs and expenses incidental thereto (including cost of defense, settlement, court costs, reasonable attorneys' fees, and expert witness and consultation fees) caused by or resulting from (i) any negligent or willful act or omission of EMA and its agents, officials, employees, or contractors in connection with this Agreement; or (ii) a breach by EMA of any of the covenants, agreements, representations, or warranties of EMA set forth in this Agreement.

7.02 Notwithstanding the immediately preceding paragraph, nothing in this Agreement shall be deemed or construed to require EMA to indemnify and save harmless the City and its personnel, agents, elected and appointed officials, and City Council from any loss, claim, liability, penalty, fine, forfeiture, demand, cause of action, suit, and costs and expenses incidental thereto (including cost of defense, settlement, court costs, reasonable attorneys' fees, and expert witness and consultation fees) caused by or resulting from (i) any negligent or willful act or omission of the City and its agents, officials, or employees in connection with this Agreement; or (ii) a breach by the City of any of the covenants, agreements, representations, or warranties of the City that are set forth in this Agreement.

ARTICLE 8. INSURANCE REQUIREMENTS

8.01 EMA shall pay for and maintain at its sole expense and at all times during the initial term and any extension terms of this Agreement the following insurance coverage:

- (a) Workers' Compensation Insurance as required by the State of North Carolina.
- (b) Comprehensive and General Liability Insurance, including contractual liability in products/completed operations, with primary limits of liability of no less than One Million and No Hundredths Dollars (\$1,000,000.00) per occurrence for bodily injury and property damage.
- (c) Automobile Liability Insurance as required by the laws of the State of North Carolina, but with limits of not less than One Million and No Hundredths Dollars (\$1,000,000.00) per occurrence for bodily injury and property damage.
- (d) Excess Umbrella Liability Insurance with limits of liability of no less than One Million and No Hundredths Dollars (\$1,000,000.00) layered on top of the policies set forth in subparagraphs 8.01(b) and 8.01(c).
- (e) Pollution Liability Insurance with limits of liability of no less than Two Million and No Hundredths Dollars (\$2,000,000.00).

8.02 During the initial term of this contract and any extensions thereof, the City shall be named as an additional insured in the policies set out in section 8.01(b), 8.01(c), 8.01(d), and 8.01(e). Furthermore, the City shall be furnished annually with Certificates of Insurance in a form satisfactory to the City, and all policies shall provide for thirty (30) days advance written notice of material change, cancellation, or non-renewal.

ARTICLE 9. NOTICES

9.01 All notices or other communications to be given to the City pursuant to this Agreement shall be in writing and shall be sent by overnight delivery or registered or certified United States mail, return receipt requested, properly addressed as follows:

Mailing Address:

City of Asheboro
Attn: Water Resources Director
Post Office Box 1106
Asheboro, North Carolina 27204-1106

Address for Overnight Delivery:

City of Asheboro
Attn: Water Resources Director
1312 North Fayetteville Street
Asheboro, North Carolina 27203
Telephone: (336) 626-1234, Extension 2210

9.02 All notices or other communications to be given to EMA pursuant to this Agreement shall be in writing and shall be sent by overnight delivery or registered or certified United States mail, return receipt requested, properly addressed as follows:

EMA Resources, Inc.
Attn: Erik Blankenship, President
755 Yadkinville Road
Mocksville, North Carolina 27028
Telephone: (336) 751-1441

ARTICLE 10. ASSIGNMENT OF AGREEMENT

10.01 This Agreement, and the rights and privileges granted to the parties hereto pursuant to this Agreement, shall be binding upon and inure to the benefit of the successors and assigns of such parties hereto; provided, however, that no party hereto may transfer or assign, whether by operation of law, merger, or otherwise, this Agreement, or such party's rights or obligations under this Agreement, without the prior written consent of the other party hereto, such consent to be exercised in such party's sole discretion.

10.02 In the event that a party does not consent, in its sole discretion, to any such requested transfer or assignment of this Agreement, or of any of the party's rights or obligations under this Agreement, the party attempting to effectuate an unapproved transfer or assignment of contractual rights shall remain liable to the non-consenting party for the breaching party's agreements and obligations that are set forth in this Agreement.

ARTICLE 11. ARM'S LENGTH NEGOTIATIONS

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

ARTICLE 12. CONSTRUCTION OF THIS AGREEMENT

12.01 The parties agree and acknowledge that they have jointly participated in the negotiation and drafting of this Agreement. In the event of an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties. No presumptions or burdens of proof shall arise favoring any party by virtue of the authorship of any of the provisions of this Agreement.

12.02 Any reference to any federal, state, or local statute or law shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise.

12.03 If any party has breached any representation, warranty, or covenant contained herein in any respect, the fact that there exists another representation, warranty, or covenant relating to the same subject matter (regardless of the relative levels of specificity), which the party has not breached, shall not detract from or mitigate the fact that the party is in breach of the first representation, warranty, or covenant.

ARTICLE 13. MISCELLANEOUS

13.01 This Agreement sets forth the entire agreement and understanding of the parties hereto with respect to the subject matter of this Agreement and supersedes all arrangements, communications, representations, or warranties, whether oral or written, by any officer, employee, or representative of either party hereto.

13.02 This Agreement may not be modified, amended, supplemented, canceled, or discharged, except by written instrument executed by all of the parties hereto.

13.03 There are no restrictions, representations, warranties, covenants, or undertakings other than those expressly set forth or referred to herein.

13.04 No waiver shall be effective unless it is in writing and is signed by the party asserted to have granted the waiver.

13.05 The provisions of this Agreement are independent of and severable from each other, and no provision shall be affected or rendered invalid or unenforceable by virtue of the fact that any other provision may be invalid or unenforceable in whole or in part.

13.06 This Agreement is not intended to confer upon any third parties, other than the parties hereto, any rights or remedies.

13.07 This Agreement shall be construed and enforced in accordance with the laws of the State of North Carolina.

13.08 This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties to this Agreement have caused this instrument to be executed on their behalf by duly authorized officers of the respective corporations on the dates indicated below.

EMA RESOURCES, INC.,
a North Carolina corporation

By: _____
Signature of Authorized Corporate Official

Name: _____
Printed Name of Authorized Corporate Official

Title: _____
Printed Title of Authorized Corporate Official

Date: _____
Printed Date of Execution on behalf of EMA

THE CITY OF ASHEBORO, NORTH CAROLINA,
a North Carolina municipal corporation

By: _____
Signature of Authorized Municipal Official

Name: _____
Printed Name of Authorized Municipal Official

Title: _____
Printed Title of Authorized Municipal Official

Date: _____
Printed Date of Execution on Behalf of the City

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

Deborah P. Reaves, Finance Officer
City of Asheboro, North Carolina

- 13. The next steps to expand the police department's role in providing animal control services**
- (a) Discussion of planning and administrative actions taken by the police department**

Chief Norton utilized a visual presentation and outlined for the Council the preparatory administrative actions that have been taken by the police department in order to provide animal control services to the city. The police department has purchased equipment and two (2) Ford F-250 pickup trucks in order to take on the department's role in providing animal control services. Additionally, Chief Norton highlighted that the department is currently completing the hiring process and ordering uniforms for two animal control officers. He anticipates a tentative startup date for the services on February 1, 2015.

A copy of the visual presentation utilized by Chief Norton is on file in the City Clerk's office.

(b) Request for council approval of an amended animal control ordinance.

Chief Norton presented and recommended adoption, by reference of an amended animal control ordinance.

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

ORDINANCE NUMBER 02 ORD 1-15

CITY COUNCIL OF THE CITY OF ASHEBORO, NORTH CAROLINA

CITY OF ASHEBORO ANIMAL CONTROL ORDINANCE

WHEREAS, Section 160A-174(a) of the North Carolina General Statutes (references to the North Carolina General Statutes will be hereinafter cited with "G.S." in front of the relevant section or chapter/article number) authorizes the city council to utilize its ordinance making authority to exercise the general police power delegated to the city by the North Carolina General Assembly to define, prohibit, regulate, or abate acts, omissions, or conditions that are detrimental to the health, safety, or welfare of the city's inhabitants and the peace and dignity of the city; and

WHEREAS, G.S. 160A-182 specifically authorizes the city, by means of the adoption of an ordinance, to exercise the delegated general police power to define and prohibit the abuse of animals; and

WHEREAS, G.S. 160A-186 specifically authorizes the city, by means of the adoption of an ordinance, to exercise the delegated general police power to regulate, restrict, or prohibit the keeping, running, or going at large of any domestic animals, specifically including dogs and cats; and

WHEREAS, G.S. 160A-187 specifically authorizes the city, by means of the adoption of an ordinance, to exercise the delegated general police power to regulate, restrict, or prohibit the possession or harboring of animals that are dangerous to persons or property; and

WHEREAS, G.S. 160A-188 specifically authorizes the city, by means of the adoption of an ordinance, to exercise the delegated general police power to establish a bird sanctuary within the city limits; and

WHEREAS, the City Council has concluded that it is advisable to enhance the animal control services offered by the city by delegating and providing funding to the Asheboro Police Department to take primary responsibility for animal control operations within the city; and

WHEREAS, the city's current animal control regulations, which are found in Chapter 91 of the Code of Asheboro, must be updated and amended in order to enable the Asheboro Police Department to properly discharge its expanded animal control duties;

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

ORDINANCE SECTION 1. Chapter 91 of the Code of Asheboro is hereby rewritten to provide as follows:

~~§ 91.01 DEFINITIONS.~~

~~Unless otherwise specifically provided or unless otherwise clearly required by the context, the following words and phrases shall have the meaning indicated when used in this chapter:~~

~~**CODE ENFORCEMENT OFFICER.** Any person or persons designated by the City Manager of the City of Asheboro to perform the responsibilities assigned by this chapter to the "Code Enforcement Officer."~~

~~**COUNTY ANIMAL CONTROL ORDINANCE.** The ordinance entitled "An Ordinance Governing the General Control of Animals in Randolph County," as adopted by the Randolph County Board of Commissioners on January 10, 2000, and as amended on June 5, 2000, September 5, 2000, March 11, 2002, July 7, 2003, August 4, 2003, October 4, 2004, January 7, 2008, July 7, 2008, July 11, 2011, and including any future amendments thereto by the Randolph County Board of Commissioners.~~

~~**§ 91.02 ADOPTION OF ANIMAL CONTROL ORDINANCE.**~~

~~Pursuant to G.S. § 153A-122 and Asheboro City Council Resolution Number 12-RES-3-12, the County Animal Control Ordinance, as defined in § 91.01 of this Code, is applicable within the corporate limits of the City of Asheboro. A copy of the County Animal Control Ordinance shall be kept on file in the Office of the City Clerk.~~

~~**§ 91.03 ADMINISTRATION OF ANIMAL CONTROL REGULATIONS.**~~

- ~~(A) *Delegation to county.* The Asheboro City Council hereby expressly authorizes the Randolph County Health Director and animal control officers working under the direction of the Randolph County Health Director to enforce the County Animal Control Ordinance within the corporate limits of the city.~~
- ~~(B) *Enforcement by city employees.* The supplemental animal control laws prescribed by this chapter that are more specific to the City of Asheboro than the provisions of the County Animal Control Ordinance defined in § 91.01 of this Code may be enforced by any employee of the City of Asheboro that has been designated as a Code Enforcement Officer by the City Manager.~~
- ~~(C) *Asheboro Police Department.* The Asheboro Police Department shall provide support to county animal control officers and to Code Enforcement Officer(s) when enforcement actions are needed.~~

~~**§ 91.04 INTEGRATION WITH ANIMAL CONTROL ORDINANCE.**~~

~~All definitions and provisions of the County Animal Control Ordinance shall apply in the city except where provisions of this chapter are inconsistent with the provisions of the County Animal Control Ordinance, the provisions of this chapter are more specific, and the provisions of this chapter prescribe regulatory action that is to be taken by city employees.~~

~~**§ 91.05 MAXIMUM NUMBER OF DOGS ON PREMISES.**~~

- ~~(A) It shall be unlawful for any person to keep or maintain more than three dogs per household on any parcel of land or zoning lot having less than 30,000 square feet, and an additional 7,000 square feet shall be required for each additional dog. A total of no more than five dogs per household shall be allowed on any parcel of land or zoning lot within the city limits regardless of square footage.~~
- ~~(B) The limitation prescribed by this Section on the number of dogs per household on a single parcel of land or zoning lot shall not apply to dogs that are less than six months of age.~~
- ~~(C) Notwithstanding the preceding provisions, and subject to the limitation that, on or after April 1, 2012, no new or additional dogs that would increase or perpetuate the noncompliance of a household with this Section may be kept or maintained in a household, any dog lawfully kept or maintained as part of a household located within the corporate limits of the City of Asheboro prior to April 1, 2012 may continue to be kept or maintained as part of the same household for the remainder of the dog's life.~~

~~**§ 91.06 MAXIMUM NUMBER OF CATS ON PREMISES.**~~

- ~~(A) It shall be unlawful for any person to keep or maintain more than three cats per household on any parcel of land or zoning lot having less than 30,000 square feet, and an additional 7,000 square feet shall be required for each additional cat. A total of no more than five cats per household shall be allowed on any parcel of land or zoning lot within the city limits regardless of square footage.~~
- ~~(B) The limitation prescribed by this Section on the number of cats per household on a single parcel of land or zoning lot shall not apply to cats that are less than six months of age.~~
- ~~(C) Notwithstanding the preceding provisions, and subject to the limitation that, on or after April 1, 2012, no new or additional cats that would increase or perpetuate the noncompliance of a household with this Section may be kept or maintained in a household, any cat lawfully kept or maintained as part of a household located within the corporate limits of the City of Asheboro prior to April 1, 2012 may continue to be kept or maintained as part of the same household for the remainder of the cat's life.~~

§ 91.07 KEEPING SWINE.

- (A) ~~Except as provided in division (B) of this section, it shall be unlawful for any person to keep any hogs, pigs, or swine within the city limits.~~
- (B) ~~A person may have or keep no more than two miniature or potbellied pigs per household within the corporate limits of the city if the following conditions are satisfied:~~
- ~~(1) The miniature or potbellied pig(s) must be provided with adequate shelter to protect it from the elements.~~
 - ~~(2) Any and all miniature or potbellied pigs kept or maintained in the City of Asheboro must be spayed or neutered.~~
 - ~~(3) The owner of the miniature or potbellied pig(s) shall provide the pig(s) with access to food and clean water. Active measures shall be taken to limit the availability of this food and water to rodents, wild birds, and predators.~~
 - ~~(4) If an outdoor pen or enclosure is utilized, the dimensions of such a pen or enclosure must be no less than 10 feet by 12 feet for one pig or no less than 16 feet by 16 feet for two pigs.~~
 - ~~(5) No outdoor pen or enclosure, including without limitation fencing, used for sheltering or confining a miniature or potbellied pig is permitted within 30 feet of any property line or public street right-of-way line, and no such outdoor pen or enclosure may be located within 100 feet of a hospital, school, eating establishment, or dwelling other than the dwelling of the owner of the miniature or potbellied pig. These separation requirements are in addition to and not in lieu of the land use regulations prescribed by the Asheboro Zoning Ordinance. No provision in this chapter shall be construed or interpreted in any manner that preempts or impacts the application of the land use regulations found in the Asheboro Zoning Ordinance.~~
 - ~~(6) A pen or enclosure used for sheltering or confining a miniature or potbellied pig shall be kept clean, sanitary, and free from accumulations of animal excrement that cause an objectionable odor. Such a pen or enclosure shall be cleaned at least twice each week. All waste material removed from a pen or enclosure used to shelter the miniature or potbellied pig shall be disposed of in a manner that is lawful, does not attract flies, and prevents any detectable odor at the property or street right-of-way line.~~
 - ~~(7) All food kept for feeding the miniature or potbellied pig(s) shall be kept and stored in rat-free and rat proof containers, compartments, or rooms unless kept in a rat proof building.~~

§ 91.08 KEEPING OF FOWL.

- (A) ~~Up to two chicken hens or other fowl may be kept by a household within the corporate limits of the City of Asheboro so long as the fowl do not, by reason of noise, odor, or attraction of flies, become a nuisance or health hazard.~~
- (B) ~~Between three and eight chicken hens or other fowl may be kept on any single lot or parcel in the city if the following conditions are satisfied:~~
- ~~(1) The fowl shall not be permitted to run at large and must be maintained in a coop or enclosure of suitable construction and size for the number of fowl maintained in the enclosure.~~
 - ~~(2) The fowl must be provided with adequate shelter for protection from the elements.~~
 - ~~(3) The owner of the fowl shall provide the animal with access to food and clean water. Active measures shall be taken to limit the availability of this food and water to rodents, wild birds, and predators.~~
 - ~~(4) No outdoor coop or enclosure used for keeping fowl is permitted within 30 feet of any property line or public street right-of-way line, and no such outdoor coop or enclosure may be located within 100 feet of a hospital, school, eating establishment, or dwelling other than the dwelling of the owner of the fowl. These separation requirements are in addition to and not in lieu of the land use regulations prescribed by the Asheboro Zoning Ordinance. No provision in this chapter shall be construed or interpreted in any manner that preempts or impacts the application of the land use regulations found in the Asheboro Zoning Ordinance.~~
 - ~~(5) A coop or enclosure used for keeping fowl shall be kept clean, sanitary, and free from accumulations of animal excrement that cause an objectionable odor. Such a pen or enclosure shall be cleaned at least twice each week. All waste material removed from a pen or enclosure used for keeping fowl shall be disposed of in a manner that is lawful,~~

~~does not attract flies, and prevents any detectable odor at the property or street right-of-way line.~~

~~(6) All food kept for feeding the fowl shall be kept and stored in rat-free and rat-proof containers, compartments, or rooms unless kept in a rat-proof building.~~

~~(C) Due to the excessive noise created by the following animals, the keeping of roosters and geese is prohibited within the corporate limits of the City of Asheboro.~~

~~§ 91.09 KEEPING OF HORSES, MULES, DONKEYS, COWS, AND GOATS REGULATED.~~

~~It shall be unlawful for any person who owns, operates, or maintains a stable or enclosure in the city, in which horses, mules, donkeys, cows, or goats are kept, to keep such stable in an unclean or unsanitary condition. The person who owns, operates, or maintains such a stable or enclosure shall be responsible for providing for use within the stable or enclosure a bin or pit which shall be watertight and so arranged that it is fly-proof, or, alternatively, shall provide a watertight barrel with a close-fitting lid. Manure accumulating in such stable shall be placed in the bin, pit, or barrel each day and shall be removed from the premises of the owner at least every five days. Effective fly control methods such as the use of approved insecticide shall be practiced during the fly-breeding period from April 15 to November 1 of each year. All food kept for feeding the livestock shall be kept and stored in rat-free and rat-proof containers, compartments, or rooms unless kept in a rat-proof building.~~

~~§ 91.10 LOCATION OF STABLES; TETHERING OF HORSES, MULES, DONKEYS, COWS, OR GOATS.~~

~~No person shall locate or maintain upon any lot within the city any horse, mule, donkey, cow, or goat stable nearer than 150 feet to any hospital, school, eating establishment, or dwelling; nor shall any person tether or permit to graze or stand any horse, mule, donkey, cow, or goat within 50 feet of any such place.~~

~~§ 91.11 DISPOSAL OF CARCASSES.~~

~~The bodies of dead sheep, goats, hogs, horses, mules, donkeys, and other animals, or any part of any animal, and all dead fish and dead fowl shall be removed from the city immediately or no later than 24 hours of known death and shall be disposed of by incineration, burial, or transportation to a rendering plant. If a carcass is buried, it shall be buried at a depth of not less than three feet below the surface of the ground and shall not be buried within 300 feet of a stream or body of water.~~

~~§ 91.12 RESPONSIBILITY FOR ANIMALS ON PUBLIC PROPERTY AND THE PROPERTY OF OTHERS.~~

~~It shall be unlawful for the owner or custodian of an animal to fail to remove feces deposited by the animal on either of the following types of property:~~

~~(A) Any public street, sidewalk, gutter, park, or other publicly owned property; or~~

~~(B) Any property owned or legally controlled by another person or entity that has not given permission for entry onto the property by the animal that defecated on the property.~~

~~§ 91.13 BIRD SANCTUARY CREATED.~~

~~The area embraced within the corporate limits of the city and all lands owned or leased by the city outside the corporate limits is hereby designated as a bird sanctuary.~~

~~§ 91.14 PROHIBITED ACTIVITIES; EXCEPTIONS.~~

~~(A) Within the bird sanctuary established by § 91.12 of the Code of Asheboro, it shall be unlawful for any person to hunt, kill, trap, or otherwise take any native wild birds.~~

~~(B) Notwithstanding division (A), the protection afforded to native wild birds within the established sanctuary does not extend to the following situations:~~

~~(1) No bird classed as a pest under G.S. Ch. 113, Art. 22A and the Structural Pest Control Act of North Carolina of 1955 or the North Carolina Pesticide Law of 1971 is protected.~~

~~(2) A person may hunt, kill, trap, or otherwise take any bird pursuant to a permit issued by the North Carolina Wildlife Resources Commission under G.S. § 113-274(c)(1a) or under any other license or permit of the Wildlife Resources Commission specifically made valid for use in taking birds within the city limits.~~

~~(3) The use of a firearm for hunting ducks and dark geese (includes Canada geese and white-fronted geese) is permitted at Lake Reese when such hunting is undertaken in compliance with § 91.14 and § 91.15 of the Code of Asheboro.~~

~~§ 91.15 USE OF FIREARMS AT LAKE REESE.~~

- (A) ~~In its discretion, the City Council may approve the date(s) and time(s) each year when the hunting of ducks and dark geese (including Canada geese and white-fronted geese) is allowed upon the waters of Lake Reese.~~
- (B) ~~During the date(s) and time(s) of the hunting season authorized by the City Council in accordance with division (A), the use of a gun for the limited purpose of hunting ducks and dark geese (including Canada geese and white-fronted geese) upon the waters of Lake Reese is permitted. Any guns and ammunition used for such hunting shall comply with all applicable state and federal regulations.~~

~~§ 91.16 HUNTING PROHIBITED ON PROPERTY BEYOND CITY LIMITS.~~

- (A) ~~No person shall hunt, trap or snare, with or without firearms, any wild animals or birds, on any property owned by the city which is located outside the city limits.~~
- (B) ~~*Exceptions.* Duck and dark geese (including Canada geese and white-fronted geese) hunting will be permitted upon the waters of Lake Reese only during the date(s) and time(s) established by the City Council prior to the season opening each year. Additionally, city employees and/or contractors may hunt, trap, or snare wild animals or birds in compliance with the adopted rules and regulations of the North Carolina Wildlife Resources Commission when such action is deemed necessary by the City Manager in order to ensure the safe and efficient operation of city-owned infrastructure.~~

~~§ 91.17 SIGNS ERECTED BY BIRD CLUBS.~~

~~Bird clubs in the city are hereby granted permission to erect artistic signs, giving notice of the regulations provided in this chapter, at such places and of such design as may be approved by the Public Works Director.~~

~~§ 91.18 ANIMALS PROHIBITED AT RANDOLPH ARTS GUILD'S ANNUAL FALL FESTIVAL.~~

- (A) ~~Except as provided by this section, it shall be unlawful for any person to possess any animal(s) within the public areas of the city that are actively utilized for the Randolph Arts Guild's Annual Fall Festival. Furthermore, except as provided by this section, it shall be unlawful for any person to actively encourage or facilitate the entry or continued presence of any animal(s) within the public areas of the city that are actively utilized for the Randolph Arts Guild's Annual Fall Festival.~~
- (B) ~~The provisions of this section are not applicable to "assistance animals," "law enforcement agency animals," and animals allowed to participate in the Annual Fall Festival Parade.~~
- (C) ~~For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning:~~

~~**ANIMAL.** As distinguished from human beings, one of the lower vertebrate animals. By way of illustration and not exclusion, the term includes dogs, cats, birds, reptiles, and fishes.~~

~~**ASSISTANCE ANIMALS.** An animal that is trained and may be used to assist a "handicapped person" as defined in G.S. § 168-1. The term "assistance animal" is not limited to a dog and includes any animal trained to assist a handicapped person as provided in G.S. Ch. 168, Art. 1.~~

~~**LAW ENFORCEMENT AGENCY ANIMALS.** An animal that is trained and may be used to assist a law enforcement officer in the performance of the officer's official duties.~~

~~**PUBLIC AREAS OF THE CITY THAT ARE ACTIVELY UTILIZED FOR THE RANDOLPH ARTS GUILD'S ANNUAL FALL FESTIVAL.** The streets, sidewalks, and public vehicular areas that fall within the perimeter demarcated by the closure, upon order of the City Council, of Fayetteville Street from Salisbury Street to Kivett Street; North Street at Salisbury Street; Sunset Avenue at Church Street; Worth Street, Scarboro Street, East Academy Street, and Cranford Street at Cox Street; and West Academy Street at the entrance to the city parking lot.~~

- (D) ~~The prohibition of animals from public areas of the city that are actively utilized for the Randolph Arts Guild's Annual Fall Festival is only in effect during those times when the Annual Fall Festival is scheduled to be in actual operation.~~
- (E) ~~The City Manager shall cause notices of the prohibition of animals from public areas of the city that are actively utilized for the Randolph Arts Guild's Annual Fall Festival to be prominently posted at the location of the street closures listed in division (C)(4) above.~~

~~§ 91.19 REMEDIES AND PENALTIES.~~

- (A) ~~Any person who violates the provisions of this chapter is guilty of a misdemeanor as provided by G.S. § 14-4 and shall be fined not more than \$500. Each day's violation of this chapter is a separate offense.~~
- (B) ~~Enforcement of the provisions found in this chapter may include any appropriate equitable remedy, injunction, or order of abatement issuing from a court of competent jurisdiction.~~
- (C) ~~In addition to or in lieu of any criminal penalties and other sanctions provided in this chapter, a violation of the provisions found in this chapter may also subject the offender to the civil penalties hereinafter set forth:~~
- (1) ~~The Code Enforcement Officer may issue to the owner or possessor of any animal, or any other alleged violator of this chapter, a written warning or a civil penalty citation giving notice of the alleged violation(s). Written warnings or civil penalty citations may be served on the person charged with a violation by means of personal delivery by the Code Enforcement Officer, mailed by certified or registered mail to the last known address of the person charged, or delivered by a designated delivery service to the person charged. The first civil penalty citation issued to a violator during a rolling 12-month period shall result in the imposition of a civil penalty in the amount of \$50 for each violation of this chapter. The second citation issued to an offender for an uncorrected violation or for a second violation of this chapter within a rolling 12-month period shall result in the imposition of a civil penalty in the amount of \$100 for each violation of this chapter. The third citation for an uncorrected violation or the issuance of citation for the third time, or more, within a rolling 12-month period shall result in the imposition of a civil penalty in the amount of \$150 for each violation of this chapter.~~
 - (2) ~~Each day that any violation exists after the violator receives a written warning or civil penalty citation identifying the unlawful conduct shall be considered a separate offense for purposes of this section.~~
 - (3) ~~Assessed civil penalties shall be paid by the violator or his or her designee in good funds to the City of Asheboro Finance Department within 14 business days of the receipt of the civil penalty citation that gives notice of the fact that the stated civil penalty is due and payable.~~
 - (4) ~~In the event the owner or possessor of an animal, or other violator of this chapter, does not pay the assessed civil penalty within the prescribed time period, a civil action in the nature of a debt may be commenced by the City of Asheboro to recover the assessed civil penalty and costs associated with the collection effort.~~
 - (5) ~~The issuance of a written warning or civil penalty citation by the Code Enforcement Officer may be appealed to the City Manager or his or her designee in accordance with the provisions of this section. An appeal is taken by filing a written notice of appeal with the Code Enforcement Officer. The notice of appeal shall identify the written warning or civil penalty citation from which an appeal is taken and shall also state the basis for the appeal. This notice of appeal must be filed within ten business days of the date upon which the written warning or civil penalty citation was served on the violator. Until a final decision is issued by the City Manager or his or her designee, a properly filed appeal stays all efforts to collect an assessed civil penalty and/or stays any further enforcement actions conducted under the authority of this chapter by the Code Enforcement Officer. The City Manager or his or her designee shall hear the appeal at the earliest practicable date. Due notice of the date and time of the appeal hearing shall be given to the individual who received the written warning or civil penalty citation and to any individual who has filed a complaint with the Code Enforcement Officer about the condition that formed the basis for the issuance of a written warning or civil penalty citation. After conducting the hearing and considering the available information, the City Manager or his or her designee may reverse or affirm, in whole or in part, the Code Enforcement Officer's issuance of a written warning or civil penalty citation. The City Manager or his or her designee may also modify the enforcement action(s) taken by the Code Enforcement Officer and, to this end, the City Manager or his or her designee shall have all of the powers conferred by this chapter on the Code Enforcement Officer. The City Manager or his or her designee's decision is final, and there shall be no appeal from the decision of the City Manager or his or her designee to the City Council.~~
- (D) ~~This chapter may be enforced by any one, all, or a combination of the remedies authorized and prescribed herein.~~

§ 91.20 EXCEPTIONS TO SUPPLEMENTAL ANIMAL CONTROL REGULATIONS.

~~Veterinary clinics and retail pet stores are not subject to the supplemental animal control regulations prescribed in §§ 91.05 through 91.09 of this chapter. The inapplicability of the supplemental regulations found in this chapter to these businesses does not impair or impact to any degree the applicability to~~

~~these businesses of any other federal, state, or local law, ordinance, or regulation, including by way of illustration and not limitation the County Animal Control Ordinance and the Asheboro Zoning Ordinance.~~

§ 91.01 PURPOSE AND TITLE.

- (A) Pursuant to authority granted by the North Carolina General Assembly, this animal control chapter is enacted to regulate, restrict, or prohibit, if necessary, animals; to protect the public from unvaccinated, diseased, stray, roaming, dangerous, wild, or exotic animals; to make unlawful certain acts of animals that interfere with the enjoyment of property or the peace and safety of the city; to protect animals from abuse or conditions harmful to their well-being; and to carry out any other lawful duties authorized by state laws and applicable ordinances.
- (B) Animal control functions are to be performed by city personnel in partnership with the Randolph County Health Department which conducts animal control operations in accordance with the applicable federal and state laws and in accordance with the county animal control ordinance.
- (C) This chapter has been adopted in order to accomplish the above-stated purposes by enacting an animal control ordinance that is enforced by city personnel and is tailored to address the animal control issues that arise in the more densely populated urban setting of the city.
- (D) This chapter may be referred to as the "City of Asheboro Animal Control Ordinance."

§ 91.02 JURISDICTION.

This chapter applies within the corporate limits of the City of Asheboro and upon and within all property owned by the city.

§ 91.03 DEFINITIONS.

For the purposes of this chapter, the following words and phrases are defined and shall be construed as set out below, unless it is apparent from the context that a different meaning is intended:

- (1) Abandon means to intentionally, knowingly, recklessly, or negligently leave an animal at a location for more than 48 consecutive hours without providing for the animal's continued care;
- (2) Adequate feed means the provision at suitable intervals of a quantity of wholesome foodstuff that is suitable for the species and age of each animal and is sufficient to maintain a reasonable level of nutrition in each animal;
- (3) Adequate shelter means an enclosure sufficient to provide shelter from extremes of weather and a means to remain cool, dry, and comfortable;
- (4) Adequate water means the provision of, or ready access to, a supply of clean, fresh, potable water provided in a sanitary manner 24 hours a day;
- (5) Animal means every vertebrate nonhuman species of animal, wild or domestic, male or female, including, but not limited to, dogs, cats, livestock and other mammals, domestic fowl, birds, reptiles, amphibians, and fish;
- (6) Animal control officer means persons charged by the city with enforcing all sections of this chapter and applicable state laws pertaining to animal control;
- (7) Animal control shelter means any holding or other facility designated by the city manager, or designee, for the detention of animals;
- (8) Animal under restraint or under restraint means any animal confined within a vehicle; any animal confined by means of a secure enclosure or an electronic enclosure within the real property limits of its owner; or any animal secured by leash or lead, cage, bridle, or similar physical restraint sufficient to allow the animal to be controlled. Electronic leashes or training collars do not constitute restraint;
- (9) At large means any animal found off of the property of its owner and not under restraint; any animal previously determined to be dangerous or potentially dangerous that is not under restraint when off the property of its owner or is not confined to a secure enclosure while on the property of its owner; and any animal off the owner's property and on an electronic leash or training collar;
- (10) Bite means the act of an animal seizing flesh with its teeth or jaws, so as to tear, pierce or injure the flesh;
- (11) Business days means Monday through Friday, inclusive, and excluding local, state, and national legal holidays;
- (12) Cats means domestic felines;

- (13) Chicken means any of the common domestic birds or fowl of the species *Gallus gallus domesticus* whose eggs or flesh are used for food (also referred to as "poultry"). The female bird is called a "hen;"
- (14) County animal control ordinance means the ordinance entitled "An Ordinance Governing the General Control of Animals in Randolph County" that was adopted by the Randolph County Board of Commissioners on January 10, 2000, and subsequently amended on June 5, 2000, September 5, 2000, March 11, 2002, July 7, 2003, August 4, 2003, October 4, 2004, January 7, 2008, July 7, 2008, and July 11, 2011. Pursuant to G.S. § 153A-122 and Asheboro City Council Resolution Number 12 RES 3-12, the said county animal control ordinance, including any future amendments that may be made to the county ordinance by the Randolph County Board of Commissioners, is applicable within the corporate limits of the City of Asheboro;
- (15) Dangerous dog means any dog that, without provocation, has killed or inflicted severe injury on a person or killed or inflicted severe injury upon a domestic animal when not on the owner's real property, or approached a person when not on the owner's real property in a vicious or terrorizing manner in an apparent attitude of attack;
- (16) Dog means domestic canines;
- (17) Domestic animal means those species of animals that normally and customarily share human habitat in Randolph County and are normally dependent on humans for food and shelter in Randolph County, such as but not limited to cats, dogs, cattle, horses, swine, domestic fowl, sheep, and goats;
- (18) Domestic fowl shall include, but not be limited to, turkeys, geese, chickens, peacocks, guinea fowl, or ducks;
- (19) Electronic enclosure means underground electrical wire which, when used in connection with a pet collar or other device, keeps cats or dogs confined within the limits of the wire on private property. A sign giving notice that an electronic fence is in use must be posted in a manner that complies with the requirements of the city's sign ordinance at some location on the property that is visible from the public right-of-way;
- (20) Exotic mammals means all mammals designated by the Centers for Disease Control and Prevention, Department of Agriculture, or other federal or state public health protection agencies as embargoed or prohibited under legal protection orders. No reference or regulation in this chapter applies to exotic mammals under the control of the North Carolina Zoological Park;
- (21) Exotic reptiles means all reptiles not native to North Carolina. No reference or regulation in this chapter applies to exotic reptiles under the control of the North Carolina Zoological Park;
- (22) Immediately means at once, very close in time;
- (23) Impoundment, Impound, Impounded, or Impounding are all terms utilized in this chapter to mean the possession or seizure of an animal or animals by the animal control unit for placement in the animal control shelter or other appropriate facility;
- (24) In estrus means a female animal in what is commonly called "heat" or "in season;"
- (25) Inoculation means the administration of rabies vaccine by a licensed veterinarian or by a certified rabies vaccinator;
- (26) Kennel, dealer, or breeder means any person, partnership, limited liability company, corporation, or other type of legal entity engaged in buying, selling, breeding, or boarding animals;
- (27) Livestock shall include, but shall not be limited to, equine animals, bovine animals, sheep, goats, llamas, and swine as set forth in G.S. Ch. 68, Art. 3;
- (28) Nighttime means the time each day from sunset until sunrise;
- (29) Owner means any person, group of persons, or any type of legal entity owning, keeping, harboring, possessing, or acting as keeper or custodian of an animal for 72 hours or more, unless the animal is boarded for a fee at a duly licensed facility;
- (30) Owner's property means any real property owned or leased by the owner of the animal, but does not include any public right-of-way or a common area of a condominium, cluster home, apartment complex, or townhouse development, nor does it include the common area of a subdivision or other housing project. A motor vehicle is not a part of the owner's property unless it is physically located on the area described in a deed of conveyance or the area described in a lease. A motor vehicle that is physically located in or on any common areas as described above, or on any other public areas shall be treated as being off of the owner's property;

- (31) Person means and includes any individual or any legal entity, including nonprofit corporations;
- (32) Provocation does not include any actions on the part of an individual that pertain to reasonable efforts of self-defense, and provocation must be clearly established;
- (33) Secure enclosure means an enclosure from which an animal cannot escape by means of digging under or jumping over the enclosure, or otherwise becoming free unless freed by the owner. Neither a motor vehicle nor an electronic enclosure shall constitute a secure enclosure;
- (34) Trespass means that the victim has wrongfully invaded the property of the owner. The reason the individual is on the property and any other relevant circumstances shall be considered in order to determine whether or not a trespass has occurred. A child under the age of seven shall not be deemed to be a trespasser; and
- (35) Wild and dangerous animals means animals of the cat, bear, and wolf species and nonhuman primates that are normally born and live in wild habitat, even though such species may be raised and kept in captivity. No reference or regulation in this chapter applies to wild and dangerous animals that are under the control of the North Carolina Zoological Park.

§ 91.04 ADMINISTRATION OF ANIMAL CONTROL SERVICES

- (A) The city police department is responsible for the enforcement of this chapter through the department's animal control unit (sometimes referred to as the "unit") and the nonsworn animal control officers employed therein. All of the police department's sworn officers and nonsworn animal control officers shall have all powers, responsibilities, and immunities granted by law and this chapter.
- (B) The chief of police ("chief") shall be the chief animal control officer charged with enforcing this chapter. The chief is authorized to initiate legal action to enforce this chapter. The chief may delegate any of the powers granted herein to any member of the animal control unit or the police department. Any act done by an animal control officer or a member of the police department that is within the scope of this chapter shall be considered the official act of the chief.
- (C) The nonsworn animal control officers referenced above in division (A) are not authorized to carry on their person any firearms, but they are authorized to store at the animal control unit offices, or carry in departmental vehicles, firearms approved for use when necessary to enforce the provisions of this chapter or other applicable laws for the control of wild, vicious, dangerous, or diseased animals. The nonsworn animal control officers are authorized to store drugs, chemicals, and equipment at the animal control unit offices as necessary to enforce the provisions of this chapter or other applicable laws for the control of wild, vicious, dangerous, or diseased animals. The nonsworn animal control officers shall not have the power of arrest, but shall have all rights, powers, and immunities as described in this chapter. Due to the fact that the nonsworn members of the unit only have that limited authority described in this chapter, these members of the police department shall not be considered police officers or sworn law enforcement officers for purposes of evaluating the animal control officers' eligibility for benefits provided to sworn law enforcement officers.

§ 91.05 GENERAL RESPONSIBILITIES OF ANIMAL CONTROL UNIT; PERSONAL LIABILITY OF MUNICIPAL OFFICERS, AGENTS, EMPLOYEES.

- (A) The animal control unit is hereby authorized and directed to undertake and discharge the following responsibilities:
 - (1) Enforcing and carrying out within the city the provisions of this chapter, any other ordinance assigning animal control duties, and all relevant state laws in addition to coordinating and cooperating with the Randolph County Health Department and other law enforcement agencies in so doing;
 - (2) Canvassing the city, including dwellings, businesses, and institutions located within the city as necessary and practical, for the purpose of ascertaining that all dogs and cats in the city are adequately inoculated against rabies and for the purpose of ascertaining compliance with this chapter and state statutes;
 - (3) Investigating complaints with regard to animals covered by this chapter and protecting animals from abuse;
 - (4) Seizing, relocating, and/or impounding, when necessary, any animals in the city involved in a violation of this chapter or any other ordinance or state law. In addition, employees may scan the animal and utilize any information that may be available through a microchip to locate the owner of the animal, if possible;

- (5) Keeping, or causing to be kept, accurate records of seizures, relocations, impoundments, dispositions of animals coming into the custody of the animal control unit, violations, complaints, investigations, and monies collected; and
 - (6) Issuing citations and orders and assessing civil penalties for violations of this chapter and when otherwise authorized by law.
- (B) Except as may be otherwise provided by federal or state law, no officer, agent, or employee of the city charged with the duty of enforcing the provisions of this chapter or other applicable law shall be personally liable for any damage that may accrue to persons or property as a result of any act required or permitted in the discharge of such duties.

§ 91.06 **INSPECTIONS AND PROHIBITION OF INTERFERENCE WITH ANIMAL CONTROL OFFICERS**

- (A) Whenever it is necessary to make an inspection to enforce any of the provisions of this chapter, or other applicable law, or whenever an animal control officer has reasonable cause to believe that there exists in any building or upon any premises any violation of this chapter or other applicable law, the animal control officer is empowered to enter and inspect such property at any reasonable time and perform any duty imposed upon them by this chapter or other applicable law, but only if the consent of the occupant or owner of the property is freely given or an administrative search warrant or criminal search warrant is obtained as follows:
- (1) If such property is occupied, the animal control officer shall first present credentials to the occupant and request entry, explaining the reasons for the request; or
 - (2) If such property is unoccupied, the animal control officer shall first make a reasonable effort to locate the owner or other persons having control of the property, present proper credentials, and request entry, explaining the reasons for the request; and
 - (3) If entry is refused or cannot be obtained because the owner or other person having control or charge of the property cannot be found after due diligence, an animal control officer may obtain an appropriate warrant to conduct a search or inspection of the property or seizure on the property. Notwithstanding any other provision of this chapter, and so long as the animal control officer's actions are consistent with federal and state Constitutional and statutory protections afforded to persons and their property, an animal control officer shall have the authority to enter upon any land to enforce the provisions of this chapter, specifically including the seizure of animals running at large or to take enforcement action due to any other violation of an applicable animal control law if the violation of such a law is being committed in the presence of the officer and requires immediate action on the part of the officer to protect the health or safety of the animal or the public. In the case of animals at large, so long as the animal is within sight of the officer, this section shall not be interpreted to require that a warrant be obtained before seizing the animal.
- (B) It shall be unlawful for any person to interfere with, hinder, resist, or obstruct employees of the animal control unit while they are carrying out any duty created under this chapter or other applicable animal control law.
- (C) It shall be unlawful for any person to conceal from any employee of the animal control unit any animal for the purpose of evading the requirements of this chapter or any other applicable animal control law.
- (D) It shall be unlawful for any person to refuse to show, upon request, proof of a required rabies inoculation to any employee of the animal control unit.
- (E) It is unlawful for any person to seek to release, attempt to release, or to release any animal in the custody of the animal control unit, except as otherwise specifically provided in this chapter. An animal captured in a trap set by the animal control unit shall be deemed to be in the custody of the animal control unit.

§ 91.07 **IMPOUNDMENT.**

- (A) In performing the duties assigned by this chapter, the chief may impound any seized animal. The chief may also impound any animals released by their owners to the city.
- (B) If an animal is impounded for any reason other than the voluntary release of the animal by the owner to the city, the chief will use all reasonable means to promptly notify the owner(s) of the impoundment of the animal.

- (C) The processing, release, and euthanasia, if necessary, of impounded animals delivered to the animal shelter shall be conducted in strict compliance with the county animal control ordinance and any regulations established by the Randolph County Health Director.

§ 91.08 BIRD SANCTUARY CREATED.

- (A) The territory embraced within the corporate limits of the city and all lands owned by the city outside of the corporate limits are hereby designated as a bird sanctuary.
- (B) Within the bird sanctuary established by division (A) of this section, it shall be unlawful for any person to intentionally hunt, kill, trap, or otherwise take any native wild birds.
- (C) Notwithstanding the provisions of divisions (A) and (B) of this section, the protection afforded to native wild birds within the established sanctuary does not extend to the following situations:
- (1) No bird classed as a pest under G.S. Ch. 113, Art. 22A and the Structural Pest Control Act of North Carolina of 1955 or the North Carolina Pesticide Law of 1971 is protected;
 - (2) A person may hunt, kill, trap, or otherwise take any bird pursuant to a permit issued by the North Carolina Wildlife Resources Commission under G.S. § 113-274(c)(1a) or under any other license or permit of the Wildlife Resources Commission specifically made valid for use in taking birds within the city limits; and
 - (3) The use of a firearm for hunting ducks and dark geese (includes Canada geese and white-fronted geese) is permitted at Lake Reese when such hunting is undertaken in compliance with § 91.10 of the Code of Asheboro.

§ 91.09 SIGNS ERECTED BY BIRD CLUBS.

Bird clubs in the city are hereby granted permission to erect artistic signs, giving notice of the regulations provided in this chapter, at such places and of such design as may be approved by the Public Works Director.

§ 91.10 USE OF FIREARMS AT LAKE REESE.

- (A) In its discretion, the city council may approve specific date(s) and time(s) each year when the hunting of ducks and dark geese (including Canada geese and white-fronted geese) is allowed upon the waters of Lake Reese.
- (B) During the date(s) and time(s) of the hunting season authorized by the city council in accordance with division (A) of this section, the use of a gun for the limited purpose of hunting ducks and dark geese (including Canada geese and white-fronted geese) upon the waters of Lake Reese is permitted. Any guns and ammunition used for such hunting shall comply with all applicable state and federal regulations.

§ 91.11 HUNTING PROHIBITED ON PROPERTY BEYOND THE CITY LIMITS.

- (A) No person shall intentionally hunt, trap, or snare, with or without firearms, animals on any city-owned property that is located outside the city limits.
- (B) Notwithstanding division (A) of this section, the following activities are permitted on city-owned property located outside the city limits:
- (1) Fishing that is conducted in accordance with all applicable federal, state, and local statutes, ordinances, and regulations, specifically including without limitation the regulations adopted by the city's recreation services department, is permitted upon the waters of Lake Reese and Lake Lucas;
 - (2) Duck and dark geese (including Canada geese and white-fronted geese) hunting is permitted upon the waters of Lake Reese only during the date(s) and time(s) established by the City Council prior to the season opening each year; and
 - (3) City employees and/or contractors may hunt, trap, or snare animals in compliance with the adopted rules and regulations of the North Carolina Wildlife Resources Commission when such action is deemed necessary by the city manager in order to ensure the safe and efficient operation of city-owned infrastructure.

§ 91.12 ABANDONED ANIMALS

- (A) It shall be unlawful for any person owning, possessing, or harboring an animal to abandon that animal.

- (B) If the animal control unit finds that an animal has been abandoned, the animal may be impounded. If the animal has been abandoned in a house or within a fenced area, the unit must make a reasonable effort to locate the owner or manager of the property. If the property owner or manager is not the animal owner, then the unit shall secure permission to remove the animal from the person who occupies the property. If the person who occupies the property is the animal owner and cannot be located or refuses to give permission to remove the animal, the animal control officer shall secure an appropriate warrant to seize the animal.
- (C) An animal seized pursuant to this section shall be impounded as provided in § 91.07.

§ 91.13 WILD AND DANGEROUS ANIMALS

- (A) It is unlawful for any person to possess or harbor a wild and dangerous animal or their hybrids.
- (B) Wild and dangerous animals privately owned and maintained within the city limits on or before April 1, 2012 may remain in the city, but such wild and dangerous animals must be registered with the animal control section of the Randolph County Health Department. Furthermore, at the time of registration, owners must submit a recapture plan in the event their animal escapes. Breeding or allowing the reproduction of wild and dangerous animals is prohibited.
- (C) Escapes of wild and dangerous animals must be immediately reported to 911 emergency communications.
- (D) Owners are liable for costs to agencies associated with the recapture of an escaped wild and dangerous animal.
- (E) In order for the owner of a wild and dangerous animal registered in compliance with division (B) of this section to lawfully house such an animal within the city, strict compliance must be maintained at all times with the following requirements:
- (1) The enclosure housing the animal must securely contain the animal, including secondary containment from escape;
 - (2) The enclosure housing the animal must be adequately ventilated, cooled, heated, lighted, and constructed so that it may be kept in a clean and sanitary condition;
 - (3) The enclosure housing the animal must be compliant with the Asheboro Zoning Ordinance;
 - (4) The physical and psychological health and well-being of the animal must not be endangered by the manner of confinement;
 - (5) The keeper/caregiver must have adequate knowledge of the nutritional, physical, and behavioral needs of the species in his or her care; and
 - (6) The owner/caregiver must be able to identify the veterinarian providing medical care for the animal.

§ 91.14 EXOTIC REPTILES.

- (A) Individuals must be greater than 18 years of age to own a venomous exotic reptile or an exotic reptile weighing in excess of 40 pounds.
- (B) Owners are required to report to 911 emergency communications any escapes of venomous exotic reptiles and exotic reptiles weighing in excess of 40 pounds.
- (C) It is unlawful for exotic reptiles to run loose unsupervised.
- (D) Owners are required to register venomous exotic reptiles with the animal control section of the Randolph County Health Department which notifies 911 emergency communications of the location of venomous reptiles in order to protect rescue workers and the public during any emergency situations.
- (E) Owners are liable for costs to agencies associated with the recapture of an escaped exotic reptile.

§ 91.15 EXOTIC MAMMALS.

- (A) It is unlawful for any person to possess, sell, or harbor an exotic mammal or their hybrids.
- (B) Exotic mammals privately owned prior to any embargo or protection orders may remain in the city if so allowed by the order, but such animals must be registered with the animal control section of the Randolph County Health Department.

- (C) Breeding or allowing the reproduction of exotic mammals is prohibited.

§ 91.16 ANIMAL BITE AND NOTIFICATION; RABIES CONTROL.

- (A) It is unlawful for an animal to bite a human being who does not ordinarily reside on the premises of the animal unless the animal has been subject to provocation or unless the victim has been trespassing.
- (B) It is unlawful for a person to fail to report to the animal control unit as soon as possible that an animal has bitten a person.
- (C) It is unlawful for any person to fail to inform the animal control unit of the location to which an animal that has bitten a human being has been taken if the owner has given the animal away, or caused in any way the animal to be taken from the owner's premises.
- (D) The animal control unit shall ensure that all bite notifications are forwarded to the Randolph County Health Department and shall fully cooperate, assist, and strictly comply with all of the rabies control measures required by all applicable state laws and regulations, the county animal control ordinance, specifically including without limitation the county ordinance's quarantine and confinement/destruction measures, and any orders issued by the Randolph County Health Director.
- (E) In furtherance of the prevention component of rabies control, the following prevention measures are required. It is unlawful for an owner to fail to comply with the following requirements:
- (1) In accordance with state law, the owner of every dog, cat, and ferret over four months of age shall have the animal vaccinated against rabies. The time or times of vaccination shall be established by the North Carolina Commission for Health Services, or any successor entity to this Commission;
 - (2) As required by G.S. 130A-190(a), dogs and cats shall wear rabies vaccination tags at all times. The rabies vaccination tag shall show the year issued, a vaccination number, the words "North Carolina" or the initials "N.C.," and the words "rabies vaccine;" and
 - (3) Ferrets are not required to wear the rabies inoculation tags, but the owner of a ferret shall maintain the tag or the rabies vaccination certificate as written evidence to prove the ferret has a current rabies inoculation and shall produce such tag or certificate as requested by animal control and as otherwise required by law.

§ 91.17 DANGEROUS DOGS

- (A) In order to fully and effectively implement the provisions of G.S. Ch. 67, Art. 1A pertaining to dangerous dogs, the Randolph County Health Director is hereby designated as the person responsible for determining within the city when a dog is dangerous or potentially dangerous. The appeals board to hear any appeal from such a decision by the Randolph County Health Director is the appeals board established pursuant to and in accordance with the county animal control ordinance.
- (B) Any and all additional requirements established in the county animal control ordinance for dangerous and potentially dangerous dogs are to be fully implemented within the city.
- (C) The chief is to provide full cooperation and assistance to the Randolph County Health Director with implementing G.S. Ch. 67, Art. 1A and the county animal control ordinance in relation to dangerous dogs and potentially dangerous dogs.

§ 91.18 NUISANCE ANIMALS.

- (A) It is unlawful for any person to own, keep, possess, harbor, or maintain an animal or group of animals in such a manner as to unreasonably annoy humans, endanger the life or health of other persons or animals, or substantially interfere with the rights of other citizens to the enjoyment of life or property. By way of example and not of limitation, the following activities are hereby declared to be a public nuisance and are, therefore, unlawful:
- (1) Allowing an animal to get into or turn over waste or garbage containers;
 - (2) Allowing an animal to repeatedly walk on or sleep on the automobile of another;
 - (3) Allowing an animal to damage the real or personal property of anyone other than its owner;
 - (4) Allowing an animal to repeatedly be or run at large;

- (5) Maintaining an animal in an unsanitary condition so as to render the animal noxious or offensive to sight or smell;
 - (6) Not confining an animal to a building or secure enclosure while the animal is in estrus;
 - (7) Maintaining an animal that is vicious or failing to effectively prevent an animal from chasing, snapping at, attacking, or otherwise molesting others, including pedestrians, bicyclists, motor vehicle passengers, or domestic animals;
 - (8) Allowing or permitting an animal or group of animals to make frequent or long continued sounds, including barking, whining, screeching, calling, howling, or yowling in an excessive, continuous, habitual, or untimely fashion; or to make other noise in such a manner and at such intervals so as to result in a serious annoyance or interference with the reasonable use and enjoyment of neighboring premises (such sounds shall be collectively referred to as "annoying sound"). For illustrative purposes and without limitation, any such sound made by cats or dogs for more than 15 minutes during any 30 minute period shall be deemed to be an annoying sound. The normal clucking of chickens that are otherwise kept in accordance with the provisions of the Code of Asheboro shall not constitute an annoying sound. Any person owning, using, or possessing premises affected by an annoying sound ("person annoyed by sounds") shall follow the procedures specified in division (E) below;
 - (9) Housing or restraining an animal less than five feet from a public street, road, or sidewalk such that the animal, without provocation, molests, attacks, or otherwise interferes with the freedom of movement of persons in a public right of way, or the location of the animal poses a threat to the general safety, health, and welfare of the general public;
 - (10) Keeping an animal that is diseased and creating a threat to the public health; and
 - (11) Keeping or maintaining an animal or group of animals in such a manner as to attract excessive insects, pests, rodents, raccoons, snakes, or other wild animals.
- (B) Upon the initiative of an animal control officer or upon receipt of a detailed complaint made to the animal control unit by any of the city's residents that any person is maintaining a nuisance animal or animals, the animal control unit may cause the owner of the animal or animals in question to be notified that a complaint has been received and may cause the situation complained of to be investigated and a report and findings thereon to be reduced to writing by the investigating animal control officer. Notwithstanding any other provision in this section, any person other than an animal control officer who wants to initiate a complaint pertaining to a nuisance animal or group of animals engaged in the activity described in division (A)(8) above shall follow the procedures specified in division (E) below.
- (C) If the written findings of the investigating animal control officer indicate that the complaint is justified, then the chief or designee shall cause the owner or keeper of the animal or animals in question to be so notified in writing, served by personal delivery or by certified mail, return receipt requested, and ordered to abate such nuisance within a reasonable time that is not to exceed 7 days after notification. A citation may, in the discretion of the animal control unit, be issued at the same time for a violation of this chapter or any other animal control law. The chief may specify the particular abatement measures that must be taken, which measures may include, but are not limited to, a requirement that the animal be penned or that a secure enclosure be erected or improved. In the event the owner of the animal is unknown and cannot be ascertained, the notice and order, along with a general description of the animal, shall be published in a local newspaper.
- (D) If any person actually or constructively receiving notice in the manner herein described shall fail or refuse to abate the nuisance upon order of the chief within the specified time, the chief may cause any of the remedies and enforcement measures authorized by this chapter to be utilized in order to bring about an abatement of the nuisance.
- (E) If a complaint pertains to annoying sound, the person annoyed by the sound shall follow the procedures specified below:
- (1) Upon receipt of a detailed written and signed complaint by the person annoyed by the sound, the animal control unit shall provide written notice to the owner or possessor of the premises on which the animal(s) making an annoying sound is maintained ("animal owner") that a complaint has been received about the animal's (animals') annoying sound. The notice shall detail the complaint and may make suggestions on ways to correct the situation;
 - (2) Upon receipt of such notice of complaint, the animal owner shall cure the violation. If the violation is not cured, or if a second complaint is made to the animal control unit about the same animal(s) within any 6 month period, the animal control unit shall cause the animal owner to be served with an order to abate the annoying sound within a reasonable

period of time, not to exceed 7 days ("Abatement Order"). Such notice shall be served by personal delivery or by certified mail, return receipt requested; and

- (3) If the original complainant, or any other affected person notifies the animal control unit that the animal owner has failed or refuses to abate the annoying sound as provided in the Abatement Order, the animal control unit shall investigate and may utilize any of the remedies and enforcement measures authorized by this chapter to bring about an abatement of the nuisance.

- (F) Nothing in this section shall prevent a private citizen from bringing an action at any time against an animal owner.

§ 91.19 DISPOSAL OF CARCASSES.

The bodies of dead animals, or the parts of any dead animals, shall be removed from the city immediately or no later than 24 hours of known death and shall be disposed of by incineration, burial, or transportation to a rendering plant. If a carcass is buried, it shall be buried at a depth of not less than 3 feet below the surface of the ground and shall not be buried within 300 feet of a stream or body of water.

§ 91.20 ANIMAL ABUSE PROHIBITED.

- (A) All animals shall be kept and treated under sanitary and humane conditions, and it shall be unlawful for any owner to engage in one or more of the following acts:

- (1) Failing to provide adequate feed, water, and shelter for an animal;
- (2) Confining an animal in a storage room, shed, or other building without proper ventilation and access to natural light;
- (3) Failing to keep an animal under sanitary and humane conditions that promote the animal's health and general welfare and which maintain a condition of good order and cleanliness that reduces the possibility of the transmission of disease;
- (4) Failing or refusing to provide adequate medical attention for any sick, diseased, or injured animal;
- (5) Poisoning or exposing a domestic animal to any known poisonous substance or mixing a poisonous substance with food so that it will likely be eaten by a domestic animal. This prohibition does not include attempts or acts of persons to lawfully rid their own property of mice or rats or other vermin, nor does it include other acts permitted by the North Carolina Wildlife Resources Commission;
- (6) Allowing a collar, rope, or chain to become embedded in or cause injury to an animal's neck, or allowing a choke or pinch collar to be used as a primary collar on an unsupervised animal;
- (7) Allowing an animal to be chained or tethered such that the animal is not confined to the owner's property or such that the chain or tether can become entangled and prevent the animal from moving about freely, lying down comfortably, or having access to adequate food, water, and shelter; and
- (8) Placing or confining an animal or allowing an animal to be placed or confined in a motor vehicle under such conditions or for such a period of time as to endanger the health or well-being of such animal due to temperature, lack of food or drink, or such other conditions as may reasonably be expected to cause suffering, disability, or death.

- (B) Nothing in this section shall be deemed to prohibit the following activities:

- (1) The humane transportation of horses, cattle, sheep, poultry, or other livestock in trailers or other vehicles designed, constructed, and adequate for the size and number of animals being transported;
- (2) Nothing in this section shall be construed to prohibit the animal control unit, law enforcement officers, employees of the Randolph County Health Department, or veterinarians from euthanizing dangerous, unwanted, injured, or diseased animals in a humane manner; and
- (3) Nothing in this section shall be construed to prohibit slaughterhouses or medical facilities from the proper, humane, and lawful carrying out of their activities or duties.

- (C) The animal control unit shall have the authority to conduct inspections of pet shops, kennels, dealers, or breeders, to the extent not preempted by state law, in order to determine if there is any abuse of animals. It shall be unlawful for any owner or employee of any pet shop or kennel or any dealers or breeders to violate this section.

§ 91.21 **PROHIBITION OF DOMESTIC ANIMALS AT LARGE**

It is unlawful for the owner of any domestic animal to allow such animal to be or run at large in the city or on any city property.

§ 91.22 **CONFINEMENT OF FEMALE DOGS AND CATS IN ESTRUS.**

Every female dog and cat, while in estrus, shall be confined in a building or secure enclosure in such manner that she will not be in contact with another dog or cat, as the case may be, nor create a nuisance by attracting other animals; provided, this section shall not be construed to prohibit the intentional breeding of animals within an enclosed area on the premises of the owner of an animal being bred.

§ 91.23 **RESPONSIBILITY FOR ANIMALS ON PUBLIC PROPERTY AND THE PROPERTY OF OTHERS.**

It shall be unlawful for the owner or custodian of an animal to fail to remove feces deposited by the animal on either of the following types of property:

- (A) Any public street, sidewalk, gutter, park, or other publicly owned property; or
- (B) Any property owned or legally controlled by another person or entity that has not given permission for entry onto the property by the animal that defecated on the property.

§ 91.24 **MAXIMUM NUMBER OF DOGS ON PREMISES.**

- (A) It shall be unlawful for any person to keep or maintain more than 3 dogs per household on any parcel of land or zoning lot having less than 30,000 square feet, and an additional 7,000 square feet shall be required for each additional dog. A total of no more than 5 dogs per household shall be allowed on any parcel of land or zoning lot within the city limits regardless of square footage.
- (B) The limitation prescribed by this Section on the number of dogs per household on a single parcel of land or zoning lot shall not apply to dogs that are less than 6 months of age.
- (C) Notwithstanding the preceding provisions, and subject to the limitation that, on or after April 1, 2012, no new or additional dogs that would increase or perpetuate the noncompliance of a household with this Section may be kept or maintained in a household, any dog lawfully kept or maintained as part of a household located within the corporate limits of the City of Asheboro prior to April 1, 2012 may continue to be kept or maintained as part of the same household for the remainder of the dog's life.

§ 91.25 **MAXIMUM NUMBER OF CATS ON PREMISES.**

- (A) It shall be unlawful for any person to keep or maintain more than 3 cats per household on any parcel of land or zoning lot having less than 30,000 square feet, and an additional 7,000 square feet shall be required for each additional cat. A total of no more than 5 cats per household shall be allowed on any parcel of land or zoning lot within the city limits regardless of square footage.
- (B) The limitation prescribed by this Section on the number of cats per household on a single parcel of land or zoning lot shall not apply to cats that are less than 6 months of age.
- (C) Notwithstanding the preceding provisions, and subject to the limitation that, on or after April 1, 2012, no new or additional cats that would increase or perpetuate the noncompliance of a household with this Section may be kept or maintained in a household, any cat lawfully kept or maintained as part of a household located within the corporate limits of the City of Asheboro prior to April 1, 2012 may continue to be kept or maintained as part of the same household for the remainder of the cat's life.

§ 91.26 **KEEPING SWINE.**

- (A) Except as provided in division (B) of this section, it shall be unlawful for any person to keep any hogs, pigs, or swine within the city limits.
- (B) A person may have or keep no more than 2 miniature or potbellied pigs per household within the corporate limits of the city if the following conditions are satisfied:
 - (1) The miniature or potbellied pig(s) must be provided with adequate shelter to protect the pig(s) from the elements.
 - (2) Any and all miniature or potbellied pigs kept or maintained in the City of Asheboro must be spayed or neutered.

- (3) The owner of the miniature or potbellied pig(s) shall provide the pig(s) with access to food and clean water. Active measures shall be taken to limit the availability of this food and water to rodents, wild birds, and predators.
- (4) If an outdoor pen or enclosure is utilized, the dimensions of such a pen or enclosure must be no less than 10 feet by 12 feet for 1 pig or no less than 16 feet by 16 feet for 2 pigs.
- (5) No outdoor pen or enclosure, including without limitation fencing, used for sheltering or confining a miniature or potbellied pig is permitted within 30 feet of any property line or public street right-of-way line, and no such outdoor pen or enclosure may be located within 100 feet of a hospital, school, eating establishment, or dwelling other than the dwelling of the owner of the miniature or potbellied pig. These separation requirements are in addition to and not in lieu of the land use regulations prescribed by the Asheboro Zoning Ordinance. No provision in this chapter shall be construed or interpreted in any manner that preempts or impacts the application of the land use regulations found in the Asheboro Zoning Ordinance.
- (6) A pen or enclosure used for sheltering or confining a miniature or potbellied pig shall be kept clean, sanitary, and free from accumulations of animal excrement that cause an objectionable odor. Such a pen or enclosure shall be cleaned at least twice each week. All waste material removed from a pen or enclosure used to shelter the miniature or potbellied pig shall be disposed of in a manner that is lawful, does not attract flies, and prevents any detectable odor at the property or street right-of-way line.
- (7) All food kept for feeding the miniature or potbellied pig(s) shall be kept and stored in rat-free and rat proof containers, compartments, or rooms unless kept in a rat proof building.

§ 91.27 **KEEPING OF DOMESTIC FOWL.**

- (A) Up to 2 chicken hens or other fowl may be kept by a household within the corporate limits of the City of Asheboro so long as the fowl do not, by reason of noise, odor, or attraction of flies, become a nuisance or health hazard.
- (B) Between 3 and 8 chicken hens or other fowl may be kept on any single lot or parcel in the city if the following conditions are satisfied:
 - (1) The fowl shall not be permitted to run at large and must be maintained in a coop or enclosure of suitable construction and size for the number of fowl maintained in the enclosure.
 - (2) The fowl must be provided with adequate shelter for protection from the elements.
 - (3) The owner of the fowl shall provide the animal with access to food and clean water. Active measures shall be taken to limit the availability of this food and water to rodents, wild birds, and predators.
 - (4) No outdoor coop or enclosure used for keeping fowl is permitted within 30 feet of any property line or public street right-of-way line, and no such outdoor coop or enclosure may be located within 100 feet of a hospital, school, eating establishment, or dwelling other than the dwelling of the owner of the fowl. These separation requirements are in addition to and not in lieu of the land use regulations prescribed by the Asheboro Zoning Ordinance. No provision in this chapter shall be construed or interpreted in any manner that preempts or impacts the application of the land use regulations found in the Asheboro Zoning Ordinance.
 - (5) A coop or enclosure used for keeping fowl shall be kept clean, sanitary, and free from accumulations of animal excrement that cause an objectionable odor. Such a pen or enclosure shall be cleaned at least twice each week. All waste material removed from a pen or enclosure used for keeping fowl shall be disposed of in a manner that is lawful, does not attract flies, and prevents any detectable odor at the property or street right-of-way line.
 - (6) All food kept for feeding the fowl shall be kept and stored in rat-free and rat-proof containers, compartments, or rooms unless kept in a rat-proof building.
- (C) Due to the excessive noise created by the following animals, the keeping of roosters and geese is prohibited within the corporate limits of the City of Asheboro.

§ 91.28 **KEEPING OF HORSES, MULES, DONKEYS, COWS, AND GOATS REGULATED.**

It shall be unlawful for any person who owns, operates, or maintains a stable or enclosure in the city, in which horses, mules, donkeys, cows, or goats are kept, to keep such stable in an unclean or unsanitary condition. The person who owns, operates, or maintains such a stable or enclosure shall be responsible for providing for use within the stable or enclosure a bin or pit which shall be watertight and so arranged that it is fly-proof, or, alternatively, shall provide a watertight barrel with a close-fitting lid. Manure accumulating in such stable shall be placed in the bin, pit, or barrel each day and shall be removed from the premises of the owner at least every 5 days. Effective fly control methods such as the use of approved insecticide shall be practiced during the fly-breeding period from April 15 to November 1 of each year. All food kept for feeding the livestock shall be kept and stored in rat-free and rat-proof containers, compartments, or rooms unless kept in a rat-proof building.

§ 91.29 **LOCATION OF STABLES; TETHERING OF HORSES, MULES, DONKEYS, COWS, OR GOATS.**

No person shall locate or maintain upon any lot within the city any horse, mule, donkey, cow, or goat stable nearer than 150 feet to any hospital, school, eating establishment, or dwelling; nor shall any person tether or permit to graze or stand any horse, mule, donkey, cow, or goat within 50 feet of any such place.

§ 91.30 **ANIMALS PROHIBITED AT RANDOLPH ARTS GUILD'S ANNUAL FALL FESTIVAL.**

- (A) It is unlawful for any person to possess any animal(s) within the public areas of the city that are actively utilized for the Randolph Arts Guild's Annual Fall Festival, and it is also unlawful for any person with an animal within the public areas of the city that are actively utilized for the Randolph Arts Guild's Annual Fall Festival to fail to obey the command of a law enforcement officer or an animal control officer to remove such an animal from the area in which animals are prohibited by this section. Furthermore, except as provided by this section, it shall be unlawful for any person to actively encourage or facilitate the entry or continued presence of any animal(s) within the public areas of the city that are actively utilized for the Randolph Arts Guild's Annual Fall Festival.
- (B) Notwithstanding any other provision to the contrary, the prohibition of animals by this section is not applicable to the following animals:
 - (1) Any assistance animal that is trained and/or may be used to assist a person with a disability, specifically including without limitation a "handicapped person" as defined in G.S. 168-1. The term "assistance animal" is not limited to a dog and includes any animal trained to assist a person with a disability.
 - (2) Any law enforcement/public safety agency animal that is trained and may be used to assist a law enforcement/public safety officer in the performance of the officer's official duties.
- (C) The "public areas of the city that are actively utilized for the Randolph Arts Guild's Annual Fall Festival" are the streets, sidewalks, and public vehicular areas that fall within the perimeter demarcated by the closure, upon order of the city council, of Fayetteville Street from Salisbury Street to Kivett Street; North Street at Salisbury Street; Sunset Avenue at Church Street; Worth Street, Scarboro Street, East Academy Street, and Cranford Street at Cox Street; and West Academy Street at the entrance to the city parking lot.
- (D) The prohibition of animals from public areas of the city that are actively utilized for the Randolph Arts Guild's Annual Fall Festival is only in effect during those times when the Fall Festival is scheduled to be in actual operation.
- (E) The City Manager shall cause notices of the prohibition of animals from public areas of the city that are actively utilized for the Randolph Arts Guild's Annual Fall Festival to be prominently posted at the location of the street closures listed in division (C) above.

§ 91.31 **EXCEPTIONS.**

- (A) This chapter shall not apply to the lawful taking of animals under the jurisdiction and regulation of the North Carolina Wildlife Resources Commission; lawful activities of agencies conducting or sponsoring biomedical research or training; lawful activities of any law enforcement canine team in the performance of their duties; or the lawful destruction of any animal for the purpose of protecting domestic animals or humans.
- (B) Veterinary clinics and retail pet stores are not subject to the supplemental animal control regulations prescribed in §§ 91.24 through 91.28 of this chapter. The inapplicability of the supplemental regulations found in this chapter to these businesses does not impair or impact to any degree the applicability to these businesses of any other provision within this chapter or any other federal, state, or local law, ordinance, or regulation, including by way of illustration and not limitation the county animal control ordinance and the Asheboro Zoning Ordinance.

§ 91.32 **REMEDIES AND PENALTIES.**

- (A) The animal control unit must have ample authority to impose preventive measures, seize, and impound animals. Escalating fees and other sanctions authorized within this section are measures that have been adopted to protect the citizens of Asheboro and to declare that the ownership of animals entails publicly related responsibilities. When there is a violation of this chapter, the chief may take one or more of the courses of action set forth in this section. The chief may cause a complaint to be filed or any action to be brought on behalf of the city. Any such action shall be cumulative and shall not be deemed to be a bar to or a waiver of the right to institute any other civil or criminal proceeding for a violation of this chapter.
- (B) Any person who violates the provisions of this chapter is guilty of a misdemeanor as provided by G.S. § 14-4 and shall be fined not more than \$500. Payment of a fine imposed in a criminal proceeding initiated pursuant to this chapter does not relieve a person of his or her liability for fees imposed by this chapter or any other law or ordinance, specifically including without limitation fees imposed by the county animal control ordinance as a consequence of the impoundment of an animal at the animal shelter.
- (C) Pursuant to and consistent with G.S. 160A-175, enforcement of the provisions found in this chapter may include any appropriate equitable remedy, injunction, or order of abatement issuing from a court of competent jurisdiction.
- (D) In addition to or in lieu of any criminal penalties and other sanctions provided in this chapter and any other applicable law, ordinance, or regulation, a violation of the provisions found in this chapter may also subject the offender to the civil penalties hereinafter set forth:

- (1) An animal control officer may issue to the owner or possessor of any animal, or any other violator of this chapter, a written warning or a civil penalty citation giving notice of the alleged violation(s). Written warnings or civil penalty citations so issued may be served on the person charged with a violation by means of personal delivery by the animal control officer or mailed by certified or registered mail, return receipt requested, to the last known address of the person charged;
- (2) Civil penalties shall be paid in full to the Asheboro Police Department within 15 business days of the receipt of the civil penalty citation that gives notice of the penalty that is due and payable. The civil penalty is in addition to any other costs or fees imposed by this chapter or any other law or ordinance, specifically including without limitation fees imposed by the county animal control ordinance as a consequence of the impoundment of an animal at the animal shelter;
- (3) In the event that the owner or possessor of an animal or other violator of this chapter does not pay the applicable civil penalty within the prescribed time period, a civil action may be commenced to recover the penalty and costs associated with the collection of the penalty. The chief, or the chief's designee, is expressly authorized to initiate and prosecute small claims actions in District Court to collect civil penalties and fees owed to the city as a consequence of violation(s) of this chapter. The chief may call on the city attorney for assistance as needed. In lieu of pursuing a civil action to collect the civil penalty, a criminal summons may be issued against the violator for violating this chapter, and, upon conviction, the violator shall be punished in accordance with state law for the misdemeanor offense of violating this chapter; and
- (4) In order to encourage responsible conduct, an owner shall be subject to escalating penalties for each violation of this chapter by the owner, regardless of whether the animal is the same animal, a different animal, or various animals belonging to the same owner. Each violation of this Chapter within a rolling 12-month period shall subject the owner to the following escalating civil penalties:

<u>Offense</u>	<u>Civil Penalty Amount</u>
<u>1st</u>	<u>\$35.00</u>
<u>2nd</u>	<u>\$50.00</u>
<u>3rd</u>	<u>\$100.00</u>
<u>4th and Subsequent Offenses</u>	<u>\$150.00</u>

- (E) Each violation of a specific provision of this chapter is considered a separate offense for purposes of this section.
- (F) Each day that a specific violation occurs is considered a separate offense for purposes of this section.

- (G) In addition to the above-listed remedies, domestic animals may be seized and impounded when found at large or as otherwise provided in this chapter. Furthermore, if conditions pose an immediate threat to the health or safety of the animal or the public, the animal control unit is authorized to seize and impound an animal. When an animal is seized, the following steps, at a minimum, must be taken:
- (1) The animal control unit, or some other person designated by the chief, shall enter into a seized animal registry maintained by the police department a description of the animal that includes at least the breed, color, and sex of such animal and whether the animal was impounded or processed in some other manner; and
 - (2) Upon seizing an animal, a notice of seizure shall be left with the owner or affixed to the premises. If an animal is not from a particular premises but has an identification tag, the animal control officer shall cause a prompt and reasonable effort to be made to locate and notify the animal's owner.
- (H) Notwithstanding any other provision of this chapter, an animal that cannot be reasonably seized, retrieved, humanely trapped, or tranquilized may be humanely destroyed in the field upon the authorization of the chief; provided, however, an animal attacking a human being or pet may be summarily destroyed if, in the opinion of animal control, such destruction is necessary for the protection of life or property or for the public health and safety.
- (I) Nothing in this chapter shall be construed to prevent law enforcement officers of any kind from enforcing any of the provisions of this chapter or from exercising their authority as law enforcement officers.
- (J) Nothing in this chapter shall prevent a private citizen from bringing an action to abate a nuisance or from bringing an action for damage, loss, or injury to the private citizen or his or her property resulting from an animal being a nuisance.

§ 91.33 APPEALS.

- (A) Any person, owner, or possessor affected by an action taken by the animal control unit may request a review of such action by filing a request for appeal with the city manager. The only exceptions to this right of appeal to the city manager are attempts to appeal an action taken by the animal control unit in compliance with a court order or to appeal an action that is pending in the criminal courts. Any appeal pertaining to a criminal case or an order from a judicial official must be addressed in accordance with laws and rules applicable to the court with jurisdiction to consider the matter for which judicial review is sought.
- (B) Unless otherwise provided by law, a request for appeal must be made in writing and filed with the city manager, with a copy to the chief, within 10 business days of the action or decision complained of and must state with particularity the grounds for the appeal. An appeal hearing shall be scheduled and conducted by the city manager as soon as is practicable. Written notice of the date, time, and location of such a hearing will be mailed to the last known address of the person who filed the appeal.
- (C) After conducting the hearing and considering the available evidence, the city manager may reverse or affirm, in whole or in part, the action taken by the animal control unit. The city manager may also modify the action(s) taken by the animal control officer. The city manager's decision is final, and there shall be no appeal from the decision of the city manager to the city council. The manager shall render a decision within 5 business days of the conclusion of the hearing. The decision shall be mailed to the person requesting the appeal and to the chief.
- (D) If the manager's decision is against the person requesting the appeal, the animal control unit shall implement the action(s) upheld by the manager.
- (E) If the decision is against the animal control unit, efforts to implement the action(s) under appeal shall immediately cease.
- (F) A decision rendered by the manager applies only to the particular action(s) appealed, and such a decision does not preclude the animal control unit from taking enforcement action in response to a subsequent violation of the same provision or any other provision of this chapter.

ORDINANCE SECTION 2. All ordinances and clauses of ordinances in conflict with this Ordinance are hereby repealed.

ORDINANCE SECTION 3. This Ordinance shall take effect and be in force from and after February 1, 2015.

ORDINANCE SECTION 4. No action or proceeding of any nature (whether civil or criminal, administrative, or otherwise) pending at the effective date of this Ordinance shall be abated or otherwise affected by the adoption of this Ordinance.

ORDINANCE SECTION 5. If any section, sentence, clause, phrase, or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed to be a separate, distinct, and independent provision, and such a holding shall not affect the validity of the remaining portions thereof.

This Ordinance was adopted by the Asheboro City Council in open session during a regular meeting held on the 8th day of January, 2015.

/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

14. Upcoming events that were announced by Mayor Smith:

- Chamber of Commerce Annual Meeting on Friday, January 16, 2015 at 6:30 p.m. at Pinewood Country Club.
- Senior Adult Center Ribbon Cutting on January 9, 2015 at 2:00 p.m.
- Annual Martin Luther King, Jr. Breakfast at 8:00 a.m.

There being no further business, the meeting was adjourned at 9:37 p.m.

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

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