

**REGULAR MEETING  
ASHEBORO CITY COUNCIL  
CITY COUNCIL CHAMBER, MUNICIPAL BUILDING  
THURSDAY, JULY 16, 2015  
7:00 p.m.**

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

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

John N. Ogburn, III, City Manager  
Holly H. Doerr, CMC, NCCMC, City Clerk/Paralegal  
Michael L. Leonard, P.E., City Engineer  
Mark T. Lineberry, Police Captain  
Leigh Anna Marbert, Public Information Officer  
Pamela M. Morgan, Office Assistant in Facilities Maintenance  
Trevor L. Nuttall, Community Development Division Director  
Deborah P. Reaves, Finance Director  
Jeffrey C. Sugg, City Attorney  
Felix L. Ward, Special Events Coordinator

**1. Call to order.**

At the request of Mayor Smith, Mr. Cody Parada-Garrido and Mr. Angel Ortiz called the meeting to order, and then Mayor Smith led the discussion. Mr. Parada-Garrido and Mr. Ortiz are two individuals that accompanied the city delegation to Denver, Colorado in order to participate in the All-America City Award competition. Mayor Smith presented each of the following participants with a plaque: Lillyanna Parada-Garrido, Hannah Parada-Garrido, Cody Parada-Garrido, Lalya McClain, Ayana Davis, and Cameron Headon, who was unable to attend.

The city did not receive the All-America City designation but staff plans to submit another application in the future.

**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 say the pledge of allegiance.

**3. Presentation by Ms. Charlene Smith with the North Carolina Housing Finance Agency concerning the continuing availability of assistance from the North Carolina Foreclosure Prevention Fund.**

Ms. Charlene Smith of the North Carolina Housing Finance Agency utilized a visual presentation and gave an overview of certain financial assistance programs that are available from the North Carolina Foreclosure Prevention Fund. No action was taken by the City Council in connection with this presentation. A copy of the visual presentation is on file in the City Clerk's office.

**4. Consent agenda.**

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

- (a) The minutes of the City Council's special meeting on May 28, 2015.**
- (b) The minutes of the City Council's regular meeting on June 4, 2015.**
- (c) The minutes of the City Council's special meeting on June 29, 2015.**

**(d) The findings of fact, conclusions of law, and order entered under Community Development Division File No. SUP-15-03.**

Case No. SUP-15-03  
City Council  
City of Asheboro, North Carolina

IN THE MATTER OF THE APPLICATION BY ALLEN L. CALLICUTT FOR A SPECIAL USE PERMIT  
AUTHORIZING A MANUFACTURED HOME PARK

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

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THIS MATTER was brought before the Asheboro City Council (hereinafter referred to as the "Council") for hearing during a regular meeting of the Council that was held on June 4, 2015. After receiving sworn testimony and considering all of the evidence presented during the quasi-judicial hearing, including without limitation a proposed site plan, the Council, on the basis of competent, material, and substantial evidence, hereby resolves the question of the issuance of the requested Special Use Permit by entering the following:

FINDINGS OF FACT

1. Allen L. Callicutt, who is also a Trustee of the Callicutt Revocable Living Trust Dated 10-18-05, (hereinafter referred to as the "Applicant") has properly submitted an application for a Special Use Permit that, if granted, will authorize a manufactured home park. The manufactured home park itself is already in existence and is known as the Oak Meadows Mobile Home Park. The Applicant is requesting a new Special Use Permit because of his desire to develop an additional lot within the park to lease for a manufactured home.

2. The existing manufactured home park is located at 2075 Cedar Road on a parcel of land titled to Allen L. Callicutt and Janet H. Callicutt, Trustees of the Callicutt Revocable Living Trust Dated 10-18-05. This approximately 13.6-acre parcel of land is more specifically identified by Randolph County Parcel Identification Number 7762495747 and shall be hereinafter referred to as the "Zoning Lot."

3. The Zoning Lot is located in an RA6 (High Density Residential) zoning district. The growth strategy map identifies the area as a primary growth area, and the proposed land development plan map identifies the area as urban residential.

4. A manufactured home park is permitted in an RA6 zoning district by Special Use Permit only. The original Special Use Permit authorizing the development of a manufactured home park was processed under file number SUP-87-02. Another Special Use Permit was processed under file number SUP-91-01 for the purpose of allowing the closure of the Lakeview Road entrance to the manufactured home park.

5. The existing Special Use Permit, which was issued in 1990, authorizes for the Zoning Lot a manufactured home park consisting of 49 spaces.

6. The Applicant's proposal is focused entirely within the existing park and consists of a plan to replace a laundry facility site, which is approximately 7,158 square feet in size, with a lot that can be rented like the surrounding lots within the park for the placement of a manufactured home.

7. A Special Use Permit (hereinafter referred to as a "SUP") is needed before the Applicant can proceed with his proposal because Section 606, Subsection C of the Asheboro Zoning Ordinance (the Asheboro Zoning Ordinance shall be hereinafter referred to as the "AZO") specifies that an "increase in the number of dwelling or lodging units" constitutes a modification of the plans approved by the existing SUP. A modification of the plans approved by an existing SUP, in turn, triggers the need for a new SUP to authorize the proposed revision or modification of the previously approved plans.

8. When the SUP for the existing manufactured home park was granted, certain current day requirements were not in effect. Consequently, the following legal nonconforming situations exist on the Zoning Lot:

- (A) Contrary to Section 629.3 of the AZO, the engineering study ensuring post development runoff of stormwater does not exceed predevelopment conditions and mandating stormwater controls to reduce runoff during a 10-year storm to predevelopment rates is absent;
- (B) Contrary to Section 629.8 of the AZO, the currently required 22 feet of roadway width is not present, instead the privately maintained roadway is 20 feet wide; and
- (C) Contrary to Section 629.21 of the AZO, there is no separate area for recreational vehicle parking.

9. With regard to the width of the roadway, the North Carolina Fire Prevention Code requires, at a minimum, a 20-foot wide all-weather access road to the residences, and this requirement is met by the existing manufactured home park.

10. Section 637.5 of the AZO does allow the issuance of a SUP for a conforming use without requiring the correction of existing legal nonconforming situations such as the ones listed above if the following findings are made:

- (A) The nonconforming situation cannot be corrected without undue hardship or expense; and
- (B) The nonconforming situation is of a minor nature that does not adversely affect the surrounding property, or the general public, to any significant extent.

11. Additionally, Section 803.4 of the AZO permits an increase in the intensity of the use of property upon which a nonconforming situation exists if such changes are related to the degree of activity rather than changes in kind and no violations of other provisions addressing the extension or enlargement of nonconforming situations occur. No evidence was presented during the hearing of this matter to show that any provisions pertaining to the extension or enlargement of nonconforming situations were violated.

12. With the benefit of the above-stated provisions pertaining to legal nonconforming situations and with the conditions suggested by the city's community development division staff, the site plan submitted by the Applicant is in compliance with the prescribed regulations and specifications of the Asheboro Zoning Ordinance. The conditions offered for attachment to a potential SUP are as follows:

- (A) Consistent with Appendix D of the North Carolina Fire Prevention Code (Fire Apparatus Access Roads), the secondary entrance at Lakeview Road shall be accessible by emergency services personnel at all times.
- (B) Privately maintained streets shall be maintained in accordance with the North Carolina Fire Prevention Code.
- (C) Prior to the issuance of a Zoning Compliance Permit for the proposed land use, the owner(s) of the Zoning Lot shall properly execute and deliver to the Zoning Administrator for recordation in the office of the Randolph County Register of Deeds a Memorandum of Land Use Restrictions prepared by the City Attorney for the purpose of placing notice of the conditions attached to this Special Use Permit in the chain of title for the Zoning Lot.

13. The entrance into the development is from Cedar Road. A secondary entrance, which is gated, exists on Lakeview Road.

14. A 100-year floodplain associated with Hasketts Creek is located along the northern boundary of the Zoning Lot, but this floodplain is located away from any development activity.

15. The Applicant offered uncontroverted testimony that the manufactured home park to which he wants to add one leasable lot has been in existence for more than two decades and adjoins another manufactured home park. No evidence was introduced to show that any negative impacts have arisen as a consequence of the existence of the Oak Meadows Mobile Home Park.

16. The Applicant also offered uncontroverted testimony that no unusually hazardous materials are present on the Zoning Lot and that no traffic problems exist in connection with the existing manufactured home park to which he wants to add a single leasable lot.

17. The Applicant testified that he accepted and would comply with the conditions recommended by the community development division staff for attachment to the requested SUP.

18. No testimony was offered in opposition to the Applicant's request.

19. Pursuant to Section 602.1 of the Asheboro Zoning Ordinance, the Council must find that the Applicant has met four (4) general standards before an application for a SUP may be approved. The four standards are as follows:

- (A) That the use will not materially endanger the public health or safety if located where proposed and developed according to the plan as submitted and approved.
- (B) That the use meets all required conditions and specifications.
- (C) That the use will not substantially injure the value of adjoining or abutting property, or that the use is a public necessity.
- (D) That the location and character of the use if developed according to the plan as submitted and approved will be in harmony with the area in which it is to be located and in general conformity with the plan of development of Asheboro and its environs.

Based on the foregoing findings of fact, the Council hereby enters the following:

CONCLUSIONS OF LAW

1. When an applicant has produced competent, material, and substantial evidence tending to establish the existence of the facts and conditions that the Asheboro Zoning Ordinance requires for the issuance of a SUP, prima facie the applicant is entitled to the permit. A denial of the permit has to be based upon findings contra that are supported by competent, substantial, and material evidence appearing in the record.
2. In this case, the Applicant has properly submitted an application for a SUP authorizing a manufactured home park on the Zoning Lot, which is located in an RA6 zoning district. The requested SUP would specifically authorize the replacement within the existing park of a laundry facility site, which is approximately 7,158 square feet in size, with a lot that can be rented in a similar manner to the surrounding lots for the placement of a manufactured home.
3. The Applicant has shown, in compliance with Section 637.5 of the AZO, that the existing legal nonconforming situations cannot be corrected without undue hardship or expense and the said legal nonconforming situations are of a minor nature that do not adversely affect the surrounding property, or the general public, to any significant extent. Accordingly, the Council can and will allow the issuance of a SUP for a conforming use, a manufactured home park, without requiring the correction of the existing legal nonconforming situations that exist upon the Zoning Lot.
4. On the basis of the available evidence, the immediately preceding conclusion about the existing legal nonconforming situations, and the express agreement of the Applicant to accept and comply with the conditions recommended by the Community Development Division staff, the Council has concluded that the Applicant's site plan for the proposed land use is compliant with the applicable requirements of the Asheboro Zoning Ordinance.
5. On the basis of the evidence presented during the hearing of this case, the Council has concluded that the proposed use meets the four (4) general standards for the granting of a SUP. More specifically, one additional lot within a manufactured home park that has lawfully existed without a significant incident coming to the attention of the Council over the course of a minimum of two decades will not materially endanger the public health or safety, the proposed use meets all required conditions and specifications of the AZO, the addition of a single lot for a manufactured home within a manufactured home park will not substantially injure the value of adjoining or abutting property, and the proposed use will be in harmony with the area in which it is to be located and is in general conformity with Asheboro's plan of development.

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

ORDER

A Special Use Permit authorizing the development and operation upon the Zoning Lot of a manufactured home park land use, as defined by the AZO, is hereby issued to the Applicant. This Special Use Permit shall be valid so long as, and only so long as, the Applicant, and his heirs, successors, and assigns, develop and conduct the approved manufactured home park land use (specifically including the planned replacement of a laundry facility site, which is approximately 7,158 square feet in size, with a lot that can be rented for the placement of a manufactured home) in compliance with the site plan approved under file no. SUP-15-03, the provisions of the AZO, and remain in strict compliance with the following conditions:

- (A) Consistent with Appendix D of the North Carolina Fire Prevention Code (Fire Apparatus Access Roads), the secondary entrance at Lakeview Road shall be accessible by emergency services personnel at all times.
- (B) Privately maintained streets shall be maintained in accordance with the North Carolina Fire Prevention Code.
- (C) Prior to the issuance of a Zoning Compliance Permit for the proposed land use, the owner(s) of the Zoning Lot shall properly execute and deliver to the Zoning Administrator for recordation in the office of the Randolph County Register of Deeds a Memorandum of Land Use Restrictions prepared by the City Attorney for the purpose of placing notice of the conditions attached to this Special Use Permit in the chain of title for the Zoning Lot.

The foregoing findings, conclusions, and order were adopted by the Asheboro City Council in open session during a regular meeting held on the 16<sup>th</sup> day of July, 2015.

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

ATTEST:

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

- (e) A resolution appointing Robert E. Morrison to a 3-year term of office on the Asheboro ABC Board.

RESOLUTION NUMBER 22 RES 7-15

CITY COUNCIL OF THE CITY OF ASHEBORO, NORTH CAROLINA

**REAPPOINTMENT OF ROBERT E. MORRISON TO A THREE-YEAR TERM OF OFFICE  
ON THE ASHEBORO ABC BOARD**

**WHEREAS**, the Asheboro ABC Board consists of three (3) members that are appointed by the Asheboro City Council; and

**WHEREAS**, in pertinent part, Section 18B-700(a) of the North Carolina General Statutes provides for the appointment of the local ABC board members to three-year terms of office; and

**WHEREAS**, in August 2015, Asheboro ABC Board Member Robert E. Morrison will complete his initial three-year term of office; and

**WHEREAS**, the Asheboro ABC Board has consistently performed its duties in a very efficient and professional manner; and

**WHEREAS**, the Asheboro City Council believes that it is in the best interest of the Asheboro ABC system and the municipal corporation to reappoint Robert E. Morrison to the Asheboro ABC Board for another three-year term, and Mr. Morrison has agreed to accept this reappointment;

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Asheboro, North Carolina that, effective August 13, 2015, Robert E. Morrison is reappointed to the Asheboro ABC Board for another three-year term of office.

This Resolution was adopted by the Asheboro City Council in open session during a regular meeting held on the 16<sup>th</sup> day of July, 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

- (f) A resolution authorizing the conveyance of surplus ballistic vests to Randolph Community College for training purposes.

RESOLUTION NUMBER 23 RES 7-15

CITY COUNCIL OF THE CITY OF ASHEBORO, NORTH CAROLINA

**CONVEYANCE OF SURPLUS BALLISTIC VESTS TO RANDOLPH COMMUNITY COLLEGE**

**WHEREAS**, the City of Asheboro owns a total of 17 ballistic or bullet-resistant vests (1 of the vests is the American Body Armor brand, 5 of the vests are the Gator Hawk brand, 3 of the vests are the Point Blank brand, 2 of the vests are the Safariland brand, and 6 of the vests are the Second Chance brand), and this group of 17 bullet-resistant vests shall be hereinafter collectively referred to as the "Outdated Vests;" and

**WHEREAS**, due to the age and resultant concerns about the effectiveness of the vests identified above, the Outdated Vests can no longer be issued to the city's police officers; and

**WHEREAS**, the city has received a written request, dated July 7, 2015, from the director of the emergency service training center and the basic law enforcement training program at Randolph Community College requesting the donation of outdated ballistic vests to be used exclusively for training purposes at the community college's training center; and

**WHEREAS**, Section 160A-274 of the North Carolina General Statutes authorizes the city to sell property, with or without consideration, to the community college upon such terms and conditions as the city's governing board deems wise;

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Asheboro, North Carolina that the above-described Outdated Vests are hereby declared to be surplus property, and all of the city's right, title, and interest in the said surplus property is hereby conveyed, at no charge, to Randolph Community College.

This Resolution was adopted by the Asheboro City Council in open session during a regular meeting that was held on the 16<sup>th</sup> day of July, 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

- (g) **A resolution authorizing the destruction of surplus personal property that has no marketable value and/or poses a potential threat to the public health or safety.**

**RESOLUTION NUMBER** 24 RES 7-15

**CITY COUNCIL OF THE CITY OF ASHEBORO, NORTH CAROLINA**

**DESTRUCTION OF SURPLUS PERSONAL PROPERTY WITH NO LEGAL VALUE OR THAT POSES A POTENTIAL THREAT TO THE PUBLIC HEALTH OR SAFETY**

**WHEREAS**, during the course of performing their duties, officers of the Asheboro Police Department occasionally come into possession of items of personal property for which either the identity of the owner(s) cannot be determined or the owner(s) for various reasons fail to retrieve the found property; and

**WHEREAS**, after property remains unclaimed for a period of time, the police department publishes legal notice of the availability for retrieval of these items in accordance with Chapter 15, Article 2 of the North Carolina General Statutes; and

**WHEREAS**, after the most recent publication in *The Courier-Tribune* of a notice of unclaimed property, which occurred on March 20, 2015, the unclaimed items were, to the extent possible, either donated to a qualifying charitable organization or sold in accordance with the said Chapter 15, Article 2 of the North Carolina General Statutes; and

**WHEREAS**, some unclaimed items could not be sold because of (a) concerns about violating intellectual property laws, (b) concerns about the potential use of some of the unclaimed items to commit crimes such as identity theft, and (c) concerns about certain items posing a potential health threat to a user or consumer of the unclaimed property; and

**WHEREAS**, the above-referenced unclaimed items that could not be properly donated or sold (the said unclaimed items will be hereinafter referred to as "Unclaimed Found Property") are more specifically described in the attached EXHIBIT 1 which is hereby incorporated into this Resolution by reference as if copied fully herein; and

**WHEREAS**, within the city's community development division, the planning and zoning department has identified certain information systems related items of personal property that are outdated and are no longer used by city personnel; and

**WHEREAS**, the outdated items referenced in the immediately preceding paragraph (these items will be hereinafter referred to as the "Obsolete Information Systems Property") are more specifically described in the attached EXHIBIT 2 which is hereby incorporated into this Resolution by reference as if copied fully herein; and



4. **Article 300:**

- Amendments are proposed concerning front yard averaging.

5. **Article 300A:**

- Updates reflecting statewide legislation concerning design standards for single and two family dwellings.
- Requirements for mechanical equipment screening.
- Vehicle towing operations/storage yards.
- Front yard landscaping requirements.
- Staff review of development within U.S. Highway 220 Overlay
- General clerical changes

6. **Article 400:**

- Account for site constraints in determining required driveway widths.

In order to give the Council Members adequate time to review the amendment package, Mr. Nuttall recommended that this agenda item be continued to the Council's regular August meeting. Upon motion by Mr. Bell and seconded by Mr. Burks, Council voted unanimously to continue the item until the Council's regular August meeting.

A copy of the visual presentation utilized by Mr. Nuttall is on file in the City Clerk's office along with a copy of the actual proposed text amendments.

**(b) Zoning Case RZ-15-06: A legislative zoning hearing on the application filed by the City of Asheboro to rezone property located on the west side of Gold Hill Road and the north side of East Allred Street from CU-RA6 (Conditional Use High-Density Residential) to R10 (Medium-Density Residential).**

Mayor Smith opened the public hearing on the following request.

The requested rezoning pertains to approximately 23.2 acres of land owned by McDowell Timber Company. Randolph County Parcel Identification Numbers 7762658808, 7762752727, and 7762740259 more specifically identify the property.

Mr. Nuttall utilized a visual presentation and highlighted a request by the City of Asheboro to rezone the above-described property from Conditional Use High Density Residential (CU-RA6) to R10 (Medium-Density Residential). The Community Development Division staff received an inquiry about surveying activity on the above-referenced property and determined that conditional use permits authorized in 2001 under file number CUP-01-26 and in 2002 under file number CUP-03-12 were never activated or utilized, making them null and void. Rezoning the property back to a general use district would allow a viable use of the property. The property was previously zoned R10, which is consistent with the neighborhood residential designation of the Land Development Plan.

The staff report noted the following:

1. The property is located inside the city limits and city services are available.
2. Gold Hill Road and East Allred Street are state-maintained minor thoroughfares.
3. As previously noted, the property was rezoned in 2001 and 2002. Conditional use permits were also issued for two Residential Planned Unit Developments. Both permits are now null and void because neither permit was initiated within 180 days of issuance.
4. Since the property is currently zoned CU-RA6 (Conditional Use High Density Residential), development activity requires a new conditional use permit.
5. The Land Development Plan designated a small portion of this property (along its southern boundary) as urban residential in anticipation of a potential Village Center around the intersection of East Allred Street and Gold Hill Road. The majority of the property is designated as neighborhood residential.
6. A portion of the property is designated within the "Secondary Growth" area by the 2000 Land Development Plan growth strategy map. At the time the map was adopted, that portion of the property was outside of the city limits but was later annexed in 2001.
7. The western and southern portions of the property are located within the flood hazard area.

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

“The R10 Medium-Density Residential designation was the zoning in place prior to the property’s zoning designation being changed in 2001 and 2002. This designation is consistent with the Land Development Plan’s ‘neighborhood residential’ proposed land use designation on the majority of the property and consistent with surrounding land uses. Staff proposes this zoning district will also allow viable by-right uses of the property that were envisioned with the previous R10 classification without unnecessarily invoking the conditional use permitting process.”

Mr. Stephen Vaughn of Ridgewood Circle raised questions regarding buffering requirements for the property and was concerned that a mobile home park may be developed on the property. Mr. Nuttall provided information about the city’s land use regulations in response to these questions.

There being no further comments from the public, Mayor Smith transitioned to the deliberative phase of the hearing.

Upon motion by Mr. Moffitt and seconded by Ms. Carter, Council voted unanimously to adopt, with a combined motion, 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 R10 designation is in the public interest by allowing a reasonable use of the property and ensuring consistency with the Land Development Plan.

A copy of the visual presentation utilized by Mr. Nuttall is on file in the City Clerk’s office.

**(c) Presentation of Draft Land Use Plan Update Maps.**

Mr. Nuttall presented, for Council’s review, the first draft of the updated Land Use Plan 2020 Maps. Council’s final consideration of the maps will take place during September. No action was taken on this item by the City Council during the July meeting.

**[Agenda Item 5(c) was discussed after the business listed under Agenda Item 7 due to the need for Mr. Nuttall to speak with an individual outside of the Council Chamber.]**

**6. 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.

**7. City Manager updates:**

**(a) A review of proposed amendments to Chapter 93 (Civil Emergencies) of the Code of Asheboro.**

Mr. Ogburn presented, for Council’s review, the following proposed amendments to Chapter 93 (Civil Emergencies) of the Code of Asheboro.

**ORDINANCE NUMBER \_\_\_\_\_**

**CITY COUNCIL OF THE CITY OF ASHEBORO, NORTH CAROLINA**

**UPDATE OF THE EMERGENCY MANAGEMENT PROVISIONS IN CHAPTER 93 OF THE CODE OF ASHEBORO**

**WHEREAS**, Chapter 93 (Civil Emergencies) of the Code of Asheboro contains the emergency management ordinance previously adopted by the Asheboro City Council; and

**WHEREAS**, the Asheboro City Council has concluded that Chapter 93 should be amended to better align the emergency management ordinance provisions codified in this Chapter with the emergency management provisions currently found in the North Carolina General Statutes;

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

**SECTION 1.** Chapter 93 (Civil Emergencies) of the Code of Asheboro is hereby rewritten to

provide as follows:

#### **~~§ 93.01 WHEN STATE OF EMERGENCY DEEMED TO EXIST~~**

~~For the purposes of this chapter, a state of emergency shall be deemed to exist whenever, during times of great public crises, disaster, rioting, catastrophe, or similar public civil emergencies, for any reason, municipal public safety authorities are unable to maintain public order or afford adequate protection for lives or property.~~

#### **~~§ 93.02 DECLARATION OF EMERGENCY; RESTRICTIONS~~**

- ~~(A) In the event of an existing or threatened state of emergency endangering the lives, safety, health and welfare of the people within the city or threatening damage to or destruction of property, the Mayor is hereby empowered to issue a public proclamation declaring to all persons the existence of such a state of emergency, and, in order to more effectively protect the lives and property of people within the city, to place in effect any or all of the restrictions authorized by this chapter.~~
- ~~(B) The Mayor is hereby authorized and empowered to limit by such proclamation the application of all or any part of such restrictions to any area specifically designated or described within the city and to specific hours of the day or night; and to exempt from all or any part of such restrictions law enforcement officers, firemen and other public employees, doctors, nurses, employees of hospitals and other medical facilities; on-duty military personnel whether state or federal; on-duty employees of public utilities, public transportation companies, and newspapers, magazine, radio broadcasting and television broadcasting corporations operated for profit; and such other classes of persons as may be essential to the preservation of public order and immediately necessary to serve the safety, health and welfare needs of the people within the city.~~

#### **~~§ 93.03 SPECIFIC RESTRICTIONS AUTHORIZED~~**

~~During the existence of a proclaimed state of emergency, the Mayor may impose by proclamation any or all of the following restrictions:~~

- ~~(A) Prohibit or regulate the possession off one's own premises of explosives, firearms, ammunition or dangerous weapons of any kind, and prohibit the purchase, sale, transfer or other disposition thereof;~~
- ~~(B) Prohibit or regulate the buying or selling of beer, wine, or intoxicating beverages of any kind, and their possession or consumption off one's own premises;~~
- ~~(C) Prohibit or regulate any demonstration, parade, march, vigil or participation therein from taking place on any of the public ways or upon any public property;~~
- ~~(D) Prohibit or regulate the sale or use of gasoline, kerosene, naphtha or any other explosive or flammable fluids or substances;~~
- ~~(E) Prohibit or regulate travel upon any public street or upon any other public property, except by those in search of medical assistance, food or other commodity or service necessary to sustain the well-being of themselves or their families or some member thereof;~~
- ~~(F) Prohibit or regulate the participation in or carrying on of any business activity, and prohibit or regulate the keeping open of places of business, places of entertainment, and other place of public assembly.~~
- ~~(G) Establish hours during which a curfew shall be in effect.~~

#### **~~§ 93.04 EXTENSION, ALTERATION, AND RESCISSION OF PROCLAMATION~~**

~~Any proclamation of emergency promulgated pursuant to this chapter may be extended, altered or rescinded in any particular during the continued or threatened existence of a state of emergency by the issuance of a subsequent proclamation.~~

#### **~~§ 93.05 COMPLIANCE WITH RESTRICTIONS REQUIRED~~**

~~During the existence of a proclaimed state of emergency, it shall be unlawful for any person to violate any provision of any restriction imposed by any proclamation authorized by this chapter.~~

#### **~~§ 93.06 AUTHORITY TO REQUEST STATE POLICE AND MILITARY FORCES~~**

~~If, in the sound discretion of the Mayor, it shall appear that the emergency is, or that the threatened emergency is likely to be, of such proportions that the means available to the city to maintain law and order within the police jurisdiction of the city are insufficient for such purpose, the Mayor shall, promptly and by the most expeditious means of communication, inform the Governor of the situation and request that the necessary police or military forces of the state be provided promptly; and if, during an actual state of~~

~~emergency the Mayor shall find that the civil courts within the police jurisdiction of the city are unable to perform their lawful duties and that, by reason of widespread lawlessness, writs and other process cannot be served or executed, the Mayor shall inform the Governor of his findings and may recommend to him that a state of martial law be proclaimed within the police jurisdiction of the city.~~

#### **§ 93.07 END OF EMERGENCY PERIOD**

~~The Mayor shall proclaim the end of such state of emergency or all or any part of the restrictions imposed as soon as circumstances warrant or when directed to do so by the City Council.~~

#### **§ 93.08 ABSENCE OR DISABILITY OF MAYOR**

~~If the Mayor is absent or unable for any reason, temporarily to perform his duties, then during such absence or inability, the Mayor Pro Tem is hereby empowered to exercise all the powers granted the Mayor by this chapter.~~

#### **§ 93.01 EMERGENCY RESTRICTIONS AUTHORIZED**

(A) The following definitions shall apply in this Chapter:

- (1) Emergency -- An occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or man-made accidental, military, paramilitary, weather-related, or riot-related cause;
- (2) Emergency Area -- The geographical area covered by a state of emergency; and
- (3) State of Emergency -- A finding and declaration by the City Council of the City of Asheboro or the Mayor of the City of Asheboro acting under the authority of G.S. 166A-19.22 that an emergency exists.

(B) In the event of an emergency, the mayor is hereby authorized and empowered, pursuant to G.S. 166A-19.22, to issue a state of emergency declaration that declares to all persons the existence of a state of emergency and, in order to more effectively protect the lives and property of people within the city, to place in effect any or all of the restrictions hereinafter authorized.

(C) The mayor is hereby authorized and empowered to limit with the state of emergency declaration the application of all or any part of such restrictions to an emergency area specifically designated or described within the city and to specific hours of the day or night and to exempt from all or any part of such restrictions, while acting in the line of and within the scope of their respective duties, law enforcement officers, firefighters, rescue squad members, and public employees; doctors, nurses, and employees of hospitals and other medical facilities; on-duty military personnel, whether state or federal; on-duty employees of public utilities and public transportation companies; and such other classes of persons as may be essential to the preservation of public order and immediately necessary to serve the safety, health, and welfare needs of people within the city.

#### **§ 93.02 STATE OF EMERGENCY DECLARATION MAY IMPOSE PROHIBITIONS AND RESTRICTIONS**

(A) Pursuant to G.S. 166A-19.31, the mayor is hereby authorized to impose, by means of the issuance of a state of emergency declaration, the prohibitions and restrictions specified in Sections 93.03 through 93.08 of this Chapter. The mayor may impose as many of those specified prohibitions and restrictions as he/she finds necessary, due to the emergency, to maintain an acceptable level of public order and services and to protect lives, safety, and property.

(B) The state of emergency declaration shall be in writing. The city manager or designees of the city manager shall take reasonable steps to give notice as broadly as possible of the terms of the declaration to those affected by it as soon as is practicable. Copies of the declaration shall be posted on the front doors or entrances of city hall, the police department headquarters station, the fire department headquarters station, and at the city public works facility. The efforts of city employees to provide public notice of the declaration shall include sending, as soon as is practicable, reports of the substance of the declaration to the mass communications media that serve the city. A minimum of one duplicate original of the declaration shall be furnished to the city clerk's office at the earliest opportunity, and the city clerk will, upon request, furnish certified copies of the declaration as soon as is practicable.

#### **§ 93.03 EVACUATION**

The mayor may direct and compel the voluntary or mandatory evacuation of all or part of the population of the city from any stricken or threatened area within the emergency area; to prescribe routes, modes of transportation, and destinations in connection with evacuation; and to control ingress and egress of an emergency area, the movement of persons in public areas within the emergency area, and the occupancy of premises therein. Details of the evacuation may be set forth or amended in a subsequent declaration which shall be well publicized.

**§ 93.04 CURFEW**

- (A) The state of emergency declaration may impose a curfew prohibiting in certain areas and during certain periods the appearance in public of anyone who is not part of an exempted class. The declaration shall specify the geographical area and the period during each 24-hour day to which the curfew applies. The mayor may exempt from some or all of the curfew restrictions classes of people whose exemption the mayor finds necessary for the preservation of the public health, safety, and welfare. The state of emergency declaration shall state the exempted classes and the restrictions from which each is exempted.
- (B) Unless otherwise specified in the state of emergency declaration, the curfew shall apply during the specified period each day until the mayor by declaration removes the curfew.

**§ 93.05 RESTRICTIONS ON THE POSSESSION, CONSUMPTION, OR TRANSFER OF ALCOHOLIC BEVERAGES**

The state of emergency declaration may prohibit, other than on one's own premises, the possession or consumption of any alcoholic beverage, including beer, wine, or spirituous liquor, and may prohibit the transfer, transportation, sale, or purchase of any alcoholic beverage within the emergency area. The prohibition, if imposed, may apply to the transfer of alcoholic beverages by employees of alcoholic beverage control stores or by anyone else within the emergency area.

**§ 93.06 RESTRICTION ON THE POSSESSION, TRANSPORTATION, AND TRANSFER OF DANGEROUS WEAPONS AND SUBSTANCES**

- (A) The state of emergency declaration may prohibit, with regard to a location within the emergency area and off one's own premises, the possession, transportation, sale, or purchase of any dangerous weapon or substance. The mayor may exempt from some or all of the restrictions classes of people whose possession, transportation, or transfer of certain dangerous weapons or substances is necessary to the preservation of the public's health, safety, or welfare. The declaration shall state the exempted classes and the restrictions from which each is exempted.
- (B) For the purpose of this Chapter and any state of emergency declaration promulgated pursuant to this Chapter, the term "dangerous weapon or substance" means:
- (1) Any item that falls within the scope of the definition for dangerous weapon or substance found in G.S. 14-288.1(2);
  - (2) Any other instrument or substance that is capable of being used to inflict serious bodily injury or destruction of property when the circumstances indicate that there is some probability that such instrument or substance will be so used; and
  - (3) Any part or ingredient in any instrument or substance included above when the circumstances indicate a probability that such a part of ingredient will be so used.
- (C) Notwithstanding any other provisions found herein, this Chapter does not authorize prohibitions or restrictions on lawfully possessed firearms or ammunition. As used in this Chapter, the term "firearm" means a handgun, shotgun, or rifle which expels a projectile by action of an explosion.

**§ 93.07 RESTRICTION ON ACCESS TO AREAS**

- (A) The state of emergency declaration may prohibit obtaining access or attempting to obtain access to any area designated in the manner described in this Section in violation of any order, clearly posted notice, or barricade indicating that access is denied or restricted.
- (B) Areas to which access is denied or restricted shall be designated by the chief of police or the chief's designees when directed in the declaration by the mayor to do so. When acting under this authority, the chief of police and the chief's designees may restrict or deny access to any area, street, highway, or location within the emergency area if that restriction or denial of access or use is reasonably necessary to promote efforts being made to overcome the emergency or to prevent further aggravation of the emergency.

**§ 93.08 ACTIVITIES PROHIBITED OR RESTRICTED**

The following activities or conditions may be prohibited or restricted within the emergency area:

- (A) Movements of people in public places;
- (B) The operation of offices, business establishments, and other places to or from which people may travel or at which they may congregate; and
- (C) Other activities or conditions the control of which may be reasonably necessary to maintain order and protect lives and property within the emergency area. To this end, the mayor, by means of the

state of emergency declaration, may take actions other than those prohibitions or restrictions explicitly listed and authorized in this Section when such other actions are reasonably necessary to maintain order and protect lives and property.

**§ 93.09 EFFECT OF EMERGENCY ON SERVICES**

During the time period when the state of emergency declaration is in effect, and dependent upon the nature of the conditions at any given time, law enforcement, fire, rescue, and any other emergency services may not be provided.

**§ 93.10 REMOVAL OF PROHIBITIONS AND RESTRICTIONS**

The mayor shall by declaration terminate the entire state of emergency declaration or remove any of the prohibitions or restrictions when the emergency no longer requires them or when directed to do so by the Asheboro City Council.

**§ 93.11 SUPERSEDING AND AMENDING DECLARATIONS**

The mayor, in his/her discretion, may invoke the restrictions authorized by this Chapter in separate declarations and may amend any declaration by means of a superseding declaration in accordance with the procedures set forth in Section 93.02.

**§ 93.12 TERMINATION OF DECLARATION**

Any state of emergency declaration issued under this Chapter shall expire five days after its last imposition unless sooner terminated in writing under the same procedures set forth in Section 93.02 for declarations.

**§ 93.13 EXERCISE OF POWERS IN ABSENCE OR DISABILITY OF MAYOR**

In case of the absence or disability of the mayor, the mayor pro tempore, or such other person as may be designated by the Asheboro City Council, shall have and exercise all of the powers herein given to the mayor.

**§ 93.14 PENALTY FOR VIOLATION**

Pursuant to G.S. 14-288.20A, any person violating any prohibition or restriction imposed by a state of emergency declaration authorized by this Chapter shall be guilty of a Class 2 misdemeanor.

**§ 93.15 TERRITORIAL APPLICABILITY**

This Chapter applies throughout all areas over which the Asheboro City Council has jurisdiction to enact general police-power ordinances. A state of emergency declaration issued pursuant to this Chapter may declare that the emergency area includes all or part of the governing board's jurisdiction. Unless a state of emergency declaration specifies otherwise, the emergency area will be deemed to include the entire jurisdiction.

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

**SECTION 3.** This Ordinance shall be in full force and effect upon and after the date of its adoption.

This Ordinance was adopted by the Asheboro City Council in open session during a regular meeting of the governing board that was held on the 6<sup>th</sup> day of August, 2015.

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

ATTEST:

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

Final review and consideration of the above ordinance will be on the agenda for the regular August Council meeting. No action was taken by the City Council during the meeting in July 2015.

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

**(b) A status report on the proposed sale of surplus real property at 133 West Wainman Avenue.**

After giving a brief overview of the proposed sale of surplus real property located at 133 West Wainman Avenue, Mr. Ogburn presented and recommended adoption, by reference, of a resolution accepting the final qualifying offer for the surplus real property formerly used as the location for the Asheboro Senior Center.

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

**RESOLUTION NUMBER** \_\_\_\_\_ **25 RES 7-15**

**CITY COUNCIL OF THE CITY OF ASHEBORO, NORTH CAROLINA**

**RESOLUTION ACCEPTING THE FINAL QUALIFYING OFFER FOR THE SURPLUS REAL PROPERTY FORMERLY USED AS THE LOCATION FOR THE ASHEBORO SENIOR CENTER**

**WHEREAS**, the City of Asheboro (hereinafter referred to as the "City") owns certain real property that is located at 133 West Wainman Avenue, is identified by Randolph County Parcel Identification Number 7751717380, and is more specifically described by a North Carolina Non-Warranty Deed recorded in the office of the Randolph County Register of Deeds in Book of Record 2428, Page 1110; and

**WHEREAS**, the above-described property, which was formerly utilized by the Randolph County Senior Adults Association, Inc. for the Asheboro Senior Center, is no longer needed by the City; consequently, the property described in the immediately preceding paragraph will be hereinafter referred to as the "Surplus Property;" and

**WHEREAS**, G.S. 160A-269 permits the City to sell property by upset bid, after the receipt of an offer for the property; and

**WHEREAS**, the City initially received an offer from Schwarz & Schwarz, LLC, a North Carolina limited liability company, to purchase the Surplus Property at a price of \$75,000.00; and

**WHEREAS**, with the adoption of Resolution Number 14 RES 5-15 on May 21, 2015, the City Council authorized the sale of the Surplus Property by means of the negotiated offer, advertisement, and upset bid procedure established in G.S. 160A-269; and

**WHEREAS**, the upset bid sale procedure for the Surplus Property has now been completed, and the final qualifying offer was a bid of \$95,000.00 submitted by Mr. Lee Davidson; and

**WHEREAS**, the city manager has reported the results of the upset bid sale procedure to the City Council with a recommendation to accept the said final qualifying offer, and the City Council concurs with this recommendation;

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Asheboro, North Carolina that the final qualifying offer of \$95,000.00 from Lee Davidson is hereby accepted in accordance with and subject to the terms of sale stated in Resolution Number 14 RES 5-15 and the subsequent sale notices published in accordance with G.S. 160A-269; and

**BE IT FURTHER RESOLVED** that the Mayor, City Clerk, and any other appropriate and necessary official of the City are authorized to execute the instruments necessary to convey the Surplus Property to Lee Davidson in accordance with the terms of sale established by the City.

This Resolution was adopted by the Asheboro City Council in open session during a regular meeting of the governing board that was held on the 16<sup>th</sup> day of July, 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

**8. Upcoming Events (originally labeled as items not on the agenda).**

