

**REGULAR MEETING  
ASHEBORO CITY COUNCIL  
CITY COUNCIL CHAMBER, ASHEBORO CITY HALL  
THURSDAY, JANUARY 6, 2022  
7:00 PM**

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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 management team members present:

David H. Smith                   ) – Mayor Presiding

Clark R. Bell                    )  
Edward J. Burks                )  
Kelly L. Heath                 )  
William N. McCaskill         ) – Council Members Present  
Walker B. Mofftt               )  
Jane H. Redding                )  
Charles A. Swiers               )

John N. Ogburn, III, City Manager  
Timothy E. Cockman, Deputy Fire Chief  
Holly H. Doerr, CMC, NCCMC, City Clerk  
Jason A. Hanson, Police Major  
P. Douglas Kemp, Human Resources Director  
Michael L. Leonard, PE, City Engineer  
Trevor L. Nuttall, Community Development Director  
Deborah P. Reaves, Finance Director  
Jeffrey C. Sugg, City Attorney  
Tammy M. Williams, CMC, Deputy City Clerk

**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 and meditation, Mayor Smith asked everyone to stand and recite the pledge of allegiance.

**3. Public Comment Period**

Mayor Smith opened the floor for public comments.

Mr. Donny Wright expressed his concerns about the speed of vehicles using Rockcliff Terrace. Currently, the speed limit is 35 miles per hour, and he requested that the speed limit be reduced to 25 miles per hour. This request will be reviewed by city staff.

When no additional speakers asked to be recognized, Mayor Smith closed the public comment period.

**4. Recognition of Ms. Katie L. Snuggs**

Mayor Smith presented a signed resolution, which was previously adopted by the Asheboro City Council during its regular December meeting, honoring Ms. Katie L. Snuggs for her dedicated years of service on the Asheboro City Council. Along with the resolution, Mayor Smith presented an award to Ms. Snuggs from Representative Pat Hurley (NC House 70).

No formal action was taken by the council during this portion of the meeting.

**5. Randolph Health Asset Purchase Agreement**

Attorney Robert L. Wilson, Jr. discussed a request for the city to agree to serve as an express third-party beneficiary under the Asset Purchase Agreement between Randolph Health and American Healthcare Systems, LLC. Based on the consensus of the council members, the legal instrument in question will be reviewed by the city's legal counsel and discussed at the next regular meeting.

**6. Asheboro Fire and Rescue**

Deputy Fire Chief Timothy E. Cockman reported that the Asheboro Fire Department recently earned its heavy rescue certification. In order to earn the certification, fire department personnel completed 6,000 hours of training. The fire department will now be identified as Asheboro Fire and Rescue.

No formal action was taken by the council during this portion of the meeting.

**7. Consent Agenda**

Council Member Burks moved, and Council Member Swiers seconded the motion, to approve/adopt the consent agenda as presented. Council Members Bell, Burks, Heath, McCaskill, Moffitt, Redding, and Swiers voted aye. There were no dissenting votes.

**(a) The City Council Meeting Minutes for December 9, 2021**

The meeting minutes for the city council's regular meeting on December 9, 2021, were approved and have been filed in the city clerk's office. An electronic copy of the approved document has been posted on the city's website.

**(b) The Asheboro ABC Board Meeting Minutes for November 1, 2021**

The council acknowledged the receipt of the Asheboro ABC Board's approved meeting minutes for November 1, 2021. This document has been filed in the city clerk's office and distributed to the city's elected officials.

**(c) Amendment of the Contract to Audit Accounts**

The approved contract amendment modified the due date to reflect an amended due date of January 31, 2022.

A copy of the above-referenced amendment is on file in the city clerk's office.

**(d) General Fund Budget Amendment - Additional Support to the Asheboro Housing Authority**

**01 ORD 1-22**

**ORDINANCE TO AMEND  
THE GENERAL FUND  
FY 2021-2022**

WHEREAS, the City of Asheboro wishes to make a contribution to the Asheboro Housing Authority to support housing activities for senior citizens and low to moderate income households, and

WHEREAS, the City desires to appropriate \$91,000 from fund balance for this purpose, and

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

THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ASHEBORO, NORTH CAROLINA:

Section 1: The following revenues line item is increased:

<u>Line Item</u>	<u>Description</u>	<u>Amount</u>
10-399-0000	Fund Balance Appropriation	91,000

Section 2: The following expense line item is increased:

<u>Line Item</u>	<u>Description</u>	<u>Amount</u>
10-490-3200	Grants	91,000

Adopted this the 6<sup>th</sup> day of January 2022.

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

ATTEST:

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

**(e) General Fund Budget Amendment - Additional Support for the  
Redevelopment of Downtown Asheboro**

**02 ORD 1-22**

**ORDINANCE TO AMEND THE GENERAL FUND  
FY 2021-2022**

WHEREAS, the City of Asheboro continues to look for ways to support the downtown businesses; and;

WHEREAS, the need to fiber / broadband internet has been deemed as essential to support the redevelopment of the downtown area, and;

WHEREAS, the total cost of to extend fiber in the downtown area has increased by \$10K and is now at an estimated total cost of \$329,000, and;

WHEREAS, the City of Asheboro would like to appropriate fund balance from the General Fund for this cost to be transferred to the Economic Development Fund because the project scope covers multiple budget years, and

WHEREAS, the expense in the amount of the original budget of \$319,000 has already been incorporated in the Economic Development Fund and will be updated as needed in a future amendment, and

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

THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ASHEBORO, NORTH CAROLINA:

That the following Revenue line items be increased:

<u>Line Item</u>	<u>Description</u>	<u>Increase</u>
10-399-0000	Fund Balance Appropriation	\$329,000

That the following expense line items be increased:

<u>Line Item</u>	<u>Description</u>	<u>Increase</u>
10-490-7200	Contribution to Economic Development Fund - fiber	\$329,000

Adopted this the 6<sup>th</sup> day of January 2022.

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

ATTEST:

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

**(f) Scheduling of a Legislative Hearing for February 10, 2022**

The council approved a request from the Community Development Division to schedule for February 10, 2022, and to advertise, a legislative hearing on an application seeking to apply conditional zoning to property located at 1558 and 1590 Zoo Parkway (Randolph County Parcel Identification Numbers 7750955455 and 7750955360) by rezoning the property from B2 to B2 (CZ) zoning.

**(g) Resolution Approving Recently Released General Records and Program Records Schedules for Local Government Agencies**

**RESOLUTION NUMBER 01 RES 1-22**

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

**A RESOLUTION APPROVING THE RECENTLY RELEASED  
GENERAL RECORDS AND PROGRAM RECORDS SCHEDULES  
FOR LOCAL GOVERNMENT AGENCIES**

**WHEREAS**, pursuant to Chapters 121 and 132 of the General Statutes of North Carolina, records compiled by the city may only be destroyed with the consent of the North Carolina Department of Natural and Cultural Resources; and

**WHEREAS**, the Government Records Section of the Division of Archives and Records within the North Carolina Department of Natural and Cultural Resources has recently released two records retention schedules that are attached to this Resolution and are labeled as follows: (1) The “General Records Schedule: Local Government Agencies” is identified as EXHIBIT 1 and is hereby incorporated into this instrument by reference as if copied fully herein; and (2) The “Program Records Schedule: Local Government Agencies” is identified as EXHIBIT 2 and is hereby incorporated into this instrument by reference as if copied fully herein; and

**WHEREAS**, these retention schedules are the primary means by which the Department of Natural and Cultural Resources gives its consent for the destruction of records; and

**WHEREAS**, in consultation with the city clerk and city attorney, the city manager has recommended approval of the records retention schedules attached hereto as EXHIBIT 1 and EXHIBIT 2.



manager and approved by resolution of the Asheboro City Council on March 4, 2004, has to be updated on a regular basis; and

**WHEREAS**, the city manager periodically receives recommendations from the human resources director and other members of the city management team to update the Manual by eliminating areas of ambiguity and integrating best practices in the field of municipal administration; and

**WHEREAS**, in response to recommendations received subsequent to March 7, 2020, which was the effective date of the last revision to the Manual, the city manager approved the revision of certain employee policies and procedures in order to help the city workforce successfully navigate the current workplace conditions; and

**WHEREAS**, the revised policies and procedures are specified in EXHIBITS 1, 2, 3, and 4, which are attached to this Resolution and are hereby incorporated into this instrument by references as if copied fully herein; and

**WHEREAS**, the Asheboro City Council has concluded that the city manager's actions to update the Manual as stated herein are supportive of the governing board's goal to create a positive work environment for municipal employees and thereby facilitate excellence in the provision of municipal services to the citizens of Asheboro.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Asheboro that the governing board hereby concurs with the city manager's decision to incorporate, with an effective date of January 10, 2022, the revisions to the City of Asheboro Employee Policies and Procedures Manual that are attached to this Resolution as EXHIBITS 1, 2, 3, and 4; and

**BE IT FURTHER RESOLVED** by the City Council of the City of Asheboro that the governing board hereby delegates to the city manager the authority, to the limited degree such a delegation of authority is needed to successfully implement the revision(s) contained within the attached exhibits, to grant paid leave to city employees as part of a safety program designed to comply with the applicable federal and state statutes and administrative regulations; and

**BE IT FURTHER RESOLVED** by the City Council of the City of Asheboro that all articles, sections, and provisions contained within the Manual that are not clearly and unmistakably referenced by this instrument and the incorporated exhibits are unaffected by this Resolution and remain, without alteration, in full force and effect.

**This Resolution was adopted by the Asheboro City Council in open session during a regular meeting held on the 6<sup>th</sup> day of January, 2022.**

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

**ATTEST:**

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

**EXHIBIT 1**

**ARTICLE I: UNIFIED HUMAN RESOURCES SYSTEM**

**Section 8. Substance Abuse Prevention Policy**

8.01 The following rules represent the City of Asheboro's policy concerning the prevention of substance abuse. These rules will be enforced uniformly for all employees. The purposes of the policy are as follows:

- (A) The establishment and maintenance of a safe and healthy working environment for all employees;

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- (B) Compliance with United States and North Carolina Department of Transportation regulations pertaining to holders of a Commercial Driver's License ("CDL");
  - (C) The establishment and maintenance of a drug-free workplace for the City of Asheboro;
  - (D) The establishment and maintenance of a positive, good government reputation for the City of Asheboro and its employees within the community so as to foster confidence in the ability of the municipal corporation to safely and effectively deliver public services;
  - (E) The reduction and prevention of accidental injuries, absenteeism, tardiness, and other work-related problems that negatively impact the city's employees and the public that it serves; and
  - (F) The creation and facilitation of an opportunity for rehabilitative assistance to be made available for employees who seek such help.
- 8.02 Employees with substance abuse problems are encouraged to seek help from counselors and other medical professionals and, where appropriate, in treatment facilities. Participation in a treatment or rehabilitation program for substance abuse will not be grounds for dismissal provided the employee voluntarily enters such a program prior to identification as a substance abuser by means of the implementation of one of the regulations/testing procedures established by this policy.
- 8.03 For the purpose of interpreting and implementing the substance abuse prevention policy, the following bold and italicized words or terms shall be defined and implemented as specified in this subsection.
- (A) An **alcohol test** means a test for the presence of alcohol in the body. This presence must be determined by the use of a breath alcohol test or other device approved by the United States Department of Transportation. Alcohol testing shall be conducted in compliance with 49 CFR Part 40 (hereinafter referred to as "Part 40"). By way of illustration and not limitation, such compliance shall include strict adherence to Part 40 as to how alcohol testing is conducted, who is authorized to participate in the alcohol testing program, and what employees must do before they may return-to-duty following an alcohol violation.
  - (B) A **drug test** means a test for the presence of drugs listed in the drug testing panel established by the United States Department of Transportation. Drug testing shall be conducted in compliance with Part 40. By way of illustration and not limitation, such compliance shall include strict adherence to Part 40 as to how drug testing is conducted, who is authorized to participate in the drug testing program, and what employees must do before they may return-to-duty following a drug violation.
  - (C) A **negative drug test** means a drug test that does not show the presence of drugs and/or drug metabolite(s) at a level specified to be a positive test.
  - (D) A **positive drug test** means a drug test that does indicate the presence of a drug and/or drug metabolite(s) in the urine or blood at the level specified to be positive by the Substance Abuse and Mental Health Services Administration ("SAMHSA"). All positive test results will be confirmed using a different technology than the first test, such as the Gas Chromatography Mass Spectrometry ("GC-MS") process.
  - (E) A **negative alcohol test** means an alcohol test that indicates a breath alcohol concentration of less than 0.02.
  - (F) A **positive alcohol test** means an alcohol test that indicates a breath alcohol concentration of 0.04 or greater.

- (G) The term **refusal to submit** means an occurrence when an employee does any one of the following:
    - (1) Fails to provide an adequate amount of urine for a drug test without a valid medical explanation after he/she has received notice of the test;
    - (2) Fails to provide an adequate amount of breath for an alcohol test without a valid medical explanation after he/she has received notice of the test; or
    - (3) Engages in conduct that clearly indicates he/she is failing to follow through with the testing process or engages in conduct that interferes with the ability to obtain an adequate specimen.
  
  - (H) With the exception of fire department employees who operate emergency equipment and are therefore exempt from the CDL requirement, the term **employees required to have a CDL** means employees who perform one or more of the following functions:
    - (1) Drivers of commercial motor vehicles with a gross vehicle weight rating of 26,001 pounds or more;
    - (2) Drivers of commercial motor vehicles with a gross combination weight rating of 26,001 pounds or more, including a towed vehicle with a gross vehicle weight rating of 10,000 pounds or more;
    - (3) Drivers of motor vehicles designed to transport 16 or more passengers, including the driver; and
    - (4) Drivers of motor vehicles of any size transporting hazardous materials in amounts that require placarding.
  
  - (I) Based on definitions utilized by the United States Department of Transportation, and with the explicit notation that the following definition is not meant to serve as an exhaustive or exclusive listing of safety-sensitive functions because other job activities/requirements may also be considered safety-sensitive, the term **safety-sensitive function** shall be deemed to include the following activities:
    - (1) Driving a commercial motor vehicle;
    - (2) Inspecting, servicing, or conditioning any commercial motor vehicle;
    - (3) All time at a city facility or other public property waiting to operate a commercial motor vehicle;
    - (4) Performing all or other functions in or upon any commercial motor vehicle except resting in a sleeper berth;
    - (5) Loading or unloading a commercial motor vehicle, supervising or assisting in the loading or unloading of a commercial motor vehicle, attending a commercial motor vehicle being loaded or unloaded, or remaining in readiness to operate the commercial motor vehicle;
    - (6) All time spent performing the driver requirements associated with an accident involving a commercial motor vehicle; and
    - (7) Repairing, obtaining assistance, or remaining in attendance with a disabled commercial motor vehicle.
- 8.04 The substance abuse prevention policy is applicable to all of the types/categories of city employees listed in this subsection.
- (A) All full-time, part-time, temporary, and seasonal employees.
  - (B) All employees required as part of their job duties to obtain and maintain a CDL.
  - (C) All applicants for employment with the City of Asheboro.
- 8.05 Under the city's substance abuse prevention policy, the drug and alcohol testing practices described in this subsection will be implemented in a manner that conforms to all applicable federal and state laws and administrative regulations.



(A) Pre-Employment Testing

Drug testing shall be conducted prior to employment. This testing must be conducted on external applicants as well as current employees transferring into jobs that require a CDL. The test results must indicate a negative drug test in order to enter into employment with the city or to transfer to a job that requires a CDL.

(B) Post-Accident Testing

A drug test and/or an alcohol test may be used by the city as a tool, in appropriate circumstances, to evaluate the root causes of incidents that result in work-related injuries or illnesses requiring medical treatment other than first aid for city employees or others. When evaluating whether to utilize post-accident testing of one or more employees, the central inquiry will be whether a reasonable basis exists to believe that drug or alcohol use by one or more employees could have contributed to the injury or illness. The highest ranking supervisor of the employee(s) involved in an incident that results in injury or illness, in consultation with the city's safety manager or any other designee of the human resources director, must evaluate the totality of the evidence, including whether the hazardousness of the work being performed creates a heightened concern as to whether drug or alcohol use was involved, and decide whether a reasonable basis exists to order drug and/or alcohol testing because of the potential role these substances could have played in the work-related illness or injury. If a reasonable basis is found to exist for testing one or more employees, then the drug and/or alcohol test(s) indicated by the facts surrounding the work-related injury or illness shall be conducted as soon as practicable.

(C) Post-Accident Testing for Employees Required to Have a CDL

For employees required to have a CDL, post-accident testing for drugs and alcohol must be conducted on any surviving driver who was performing safety-sensitive functions with respect to the vehicle if:

- (1) The accident involved a fatality; or
- (2) The driver received a citation under state or local law for a moving traffic violation arising from the accident and either the vehicle is towed from the scene or someone is medically evacuated from the scene.

Testing for drugs and alcohol in employees required to have a CDL is to occur, if at all practicable, within 2 hours of the accident. If the employee is unable to be tested within 2 hours, the reasons for the delay must be documented. If an alcohol test required by this division of subsection 8.05 is not administered within 8 hours of the accident, attempts to conduct the alcohol test shall cease and the reason for the inability to conduct the test shall be documented. If a drug test required by this division of subsection 8.05 is not administered within 32 hours of the accident, attempts to conduct the drug test shall cease and the reason for the inability to conduct the drug test shall be documented.

(D) Random Testing

This type of testing must be conducted on a random, unannounced basis throughout the year on all employees required to have a CDL. Random testing for drugs and alcohol in all employees required to have a CDL shall be conducted in a manner and at a rate that is fully compliant with all of the applicable federal and state laws and administrative regulations.

(E) For Cause Testing

This type of testing can occur in two types of situations that are described as follows:

- (1) This testing, whether the testing consists of a drug test and/or an alcohol test will depend on the facts of each case, is required of any employee who has been arrested or has had his/her driver's license suspended for any alcohol or drug related charge prior to the employee's return to work. Such an employee must notify his/her supervisor prior to returning to work after the said arrest and/or suspension has occurred. An employee's failure to report this information to a supervisor in a timely manner serves as a stand-alone basis for dismissing the employee from his/her position of employment with the city.
- (2) In appropriate circumstances and in consultation with the human resources department, specifically including the safety manager or any other official designated by the human resources director, a supervisor may order "for cause" testing of an employee as a tool to determine why actions are occurring that have the potential to be injurious to the employee himself or herself, other city employees, or third parties. The final decision as to whether "for cause" testing is to be ordered will be based on a case-by-case evaluation of the totality of the evidence to determine whether observations of the employee and his/her actions during the relevant time period lead to a reasonable suspicion that impairment due to drug and/or alcohol use is creating the potential for injury. An additional factor to be weighed as part of the decision making process is whether the degree of hazardousness of the work being performed and the potential for harmful consequences heightens the city's interest in quickly determining whether drug or alcohol use is impairing the ability of an employee to safely perform his/her duties. If the responsible city officials conclude that a reasonable suspicion exists to believe that alcohol or drug use by one or more employees is creating an unsafe situation, then the drug and/or alcohol test indicated by the observable facts shall be conducted as soon as practicable.

(F) Return-to-Duty Testing

In cases where an employee is seeking to return to work after a positive drug test and/or a positive alcohol test, return-to-duty testing focused on the same type of testing that previously produced a positive test result must be successfully completed by the employee before approval can be granted for the employee to return to work. More specifically, an employee who has had a positive drug test and/or a positive alcohol test will not be allowed to return to work until he or she has been evaluated by a substance abuse professional and has tested negative on the designated return-to-duty test.

(G) Follow-Up Testing

After an employee has successfully completed the above-described return-to-duty testing, the employee will be subject to follow-up testing during the 12-calendar month time period immediately following the date of the employee's return to duty. During the said 12-month time period, a minimum of 6 follow-up tests will be administered without advance notice of the date and time when testing will occur. Due to regulatory concerns pertaining to measuring impairment at a relevant point in time, a follow-up drug test may be administered any time the employee is at work, but a follow-up alcohol test will only be administered immediately before, during, or immediately after the performance of a safety-sensitive function. The type of test to be administered will depend on which type of positive test result necessitated the return-to-duty testing and the subsequent follow-up testing. No sentence or clause within this division of subsection 8.05 shall be construed or interpreted in any manner that precludes the administration of a drug or alcohol test that would otherwise be authorized by a separate division of subsection 8.05.

- 8.06 The following list of prohibitions, inclusive of the corresponding consequences for acting in contravention of the stated prohibitions, is hereby adopted as a component of the city's substance abuse prevention policy.
- (A) No employee shall report for duty or remain on duty while having alcohol and/or drug concentrations in his or her system in amounts that would constitute a positive test for either substance. An employee who produces a confirmed positive test result will be removed from duty without regular pay; provided, however, such an employee may use accrued leave time while relieved of his or her duties so long as such leave is used in a manner that is compliant with all other sections of the City of Asheboro Employee Policies and Procedures Manual. The employee must immediately schedule an evaluation with a substance abuse professional and must cooperate with any and all recommendations made by the substance abuse professional. Refusal to cooperate with the substance abuse professional will subject the employee to dismissal from his or her employment with the city. The employee must have a negative test result before he or she will be allowed to return to duty.
  - (B) The City of Asheboro expressly prohibits the possession, use, sale, distribution, dispensation, manufacture, purchase, or storage of controlled substances (i.e. illegal drugs) and related paraphernalia as well as alcoholic beverages by city employees while at the workplace or while performing work duties. By way of illustration and not limitation, no employee shall be on-duty while in the possession of one or more alcoholic beverages and/or controlled substances. Any action taken in violation of this prohibition will subject the offending employee to dismissal from his or her employment with the city. Notwithstanding the foregoing prohibition, the following actions by city employees will not be deemed to be a violation of a workplace rule:
    - (1) The possession and use of medication(s) in strict compliance with prescriptions and instructions, include work limitations, issued by a properly licensed health care provider;
    - (2) The inadvertent discovery and subsequent securing of abandoned controlled substances and associated paraphernalia as well as alcoholic beverages during the course of performing an employee's job duties so long as such abandoned items are immediately surrendered to a law enforcement officer or destroyed in a manner consistent with instructions received from the Asheboro Police Department; and
    - (3) The interaction of sworn law enforcement officers with controlled substances and paraphernalia as well as alcoholic beverages so long as such interaction is conducted in furtherance of assigned job duties and is conducted in a manner that is compliant with all applicable laws, ordinances, administrative regulations, and agency policies and procedures.
  - (C) No employee who is required to take a post-accident alcohol test shall use alcohol until the earlier of either of the following events: 8 hours following the accident, or until he or she fully completes the required post-accident alcohol test. A violation of this requirement will subject the non-compliant employee to dismissal from his or her employment with the city.
  - (D) A refusal by an employee to submit to and fully cooperate with an alcohol test and/or drug test required by this policy shall be deemed to be a direct and intentional act of insubordination that will result in the termination of the non-compliant employee's employment with the city.
  - (E) Except when the use is pursuant to the instructions of a properly licensed health care professional who has informed the employee that the prescribed use of the controlled substance will not adversely affect the employee's ability to safely perform assigned work duties, employees are prohibited from reporting for duty or remaining on duty while the employee is subject to the effects of any controlled substance.

- (F) A second occurrence of a positive drug test and/or alcohol test will result in the dismissal of an individual from his or her employment with the city.
  - (G) An employee who has a confirmed breath alcohol test result of 0.02 – 0.039 will not be allowed to continue to perform any safety-sensitive functions. In furtherance of this prohibition, such an employee will be relieved of his or her job duties for 24 hours subsequent to the confirmed test result. During this 24-hour period, the employee will not be paid by the city; provided, however, the employee may use accrued leave time while relieved of his or her duties so long as such leave is used in a manner that is compliant with all other sections of the City of Asheboro Employee Policies and Procedures Manual. The occurrence of this confirmed breath alcohol test result will be documented, and the employee will be counseled about the importance of reporting to work without the presence of alcohol in his or her system. Such an employee will be subject to a return-to-duty alcohol test prior to returning to a job position that requires the performance of a safety-sensitive function.
  - (H) No applicant will be offered employment if a confirmed positive pre-employment drug test result is produced.
- 8.07 This subsection lists supplemental provisions/requirements that are hereby incorporated into the city's substance abuse prevention policy.
- (A) The Omnibus Transportation Employee Testing Act of 1991 (final rules implemented February 15, 1994) requires, in part, that any commercial motor vehicle operator who is subject to the CDL requirements in the State of North Carolina shall be tested for alcohol and controlled substances.
  - (B) Compliance with the Department of Health and Human Services mandatory guidelines for controlled substances testing shall be maintained by only using a laboratory certified by the Substance Abuse and Mental Health Services Administration.
  - (C) Federally mandated alcohol testing must be conducted by a Breath Alcohol Technician ("BAT") trained to a level of proficiency that is demonstrated by successful completion of a generally recognized and accepted course of instruction. Alcohol testing shall be conducted using an Evidential Breath Testing ("EBT") device.
  - (D) Consistent with the federal Drug-Free Workplace Act, if an employee is convicted of a violation of a criminal drug statute and the violation occurred while the employee was at work, the employee must notify his or her department head of the conviction within 5 days after the conviction. An employee's failure to comply with this requirement will subject the employee to dismissal from his or her employment with the city.
  - (E) All drug test results shall be reviewed and interpreted by a Medical Review Officer ("MRO"). The MRO must be a licensed physician with specific training in substance abuse. If the laboratory reports a positive test result, the MRO or the MRO's designee will contact the employee, typically by telephone, and discuss the results with the employee. The MRO will then attempt to determine if there is a verifiable medical explanation for the employee to have the detected drug in his or her system. If there is none, the test result is to be reported as positive. If there is a verifiable medical explanation for the use of the drug, the result is to be reported as negative.
  - (F) In situations where the laboratory reports a negative dilute drug test result, the three immediately following procedures shall be applicable.
    - (1) If the test was performed in order to comply with United States Department of Transportation ("DOT") regulations, and the MRO directs that a second collection take place under direct observation (i.e., because the creatinine concentration of the specimen was equal to or

greater than 2 mg/dL, but less than or equal to 5 mg/dL), then immediate compliance with the instructions shall occur. Failure of the employee or applicant to submit for this recollection is classified by the DOT as a refusal to test.

(2) If the test was not performed in order to comply with a DOT regulatory program, and the MRO directs that a second collection take place (i.e., because the creatinine concentration of the specimen was equal to or greater than 2 mg/dL, but less than or equal to 5 mg/dL), then immediate compliance with the instructions shall occur. Direct observation is not to be utilized in this circumstance. Failure of the employee or applicant to submit for this recollection shall be deemed to be a refusal to test.

(3) Otherwise, if the creatinine concentration of the negative dilute specimen was greater than 5 mg/dL, then the city will accept the negative test result for the employee or applicant as is.

(F) (G) An employee who does not pass a drug and/or alcohol test and is terminated, or an applicant who does not pass the pre-employment drug test, will not be considered for re-employment for a 2-year period following the date of the failed test and then will be considered only when he or she provides documentation suitable to management that he or she has successfully completed an alcohol and/or drug rehabilitation program and passes a pre-employment drug and/or alcohol test.

(G) (H) On January 6, 2020, the United States Department of Transportation's Federal Motor Carrier Safety Administration Drug and Alcohol Clearinghouse (the "Clearinghouse") became operational. As an employer regulated by the Federal Motor Carrier Safety Administration, the city is a registered user of the Clearinghouse with certain reporting obligations. CDL holders and applicants for jobs requiring a CDL are hereby notified that the following information will be reported to the Clearinghouse:

- (1) A verified positive, adulterated, or substituted drug test result;
- (2) An alcohol confirmation test with a concentration of 0.04 or higher;
- (3) A refusal to submit to a drug or alcohol test;
- (4) An employer's report of actual knowledge, as defined in 49 CFR § 382.107;
- (5) On-duty alcohol use pursuant to 49 CFR § 382.205;
- (6) Pre-duty alcohol use pursuant to 49 CFR § 382.207;
- (7) Alcohol use following an accident pursuant to 49 CFR § 382.209;
- (8) Drug use pursuant to 49 CFR § 382.213;
- (9) A substance abuse professional's report of successful completion of the return-to-duty process;
- (10) A negative return-to-duty test; and
- (11) An employer's report of completion of follow-up testing.

(H) (I) Any questions regarding this policy should be directed to the Human Resources Director at (336) 629-2037.

## EXHIBIT 2

### ARTICLE V: BENEFITS

#### Section 6. Special Separation Allowance for Law Enforcement Officers

In accordance with N.C. Gen. Stat. § 143-166.42, all eligible sworn law enforcement officers employed by the City of Asheboro shall receive, beginning on the last day of the month in

which he/she retires on a basic service retirement, an annual separation allowance. The retiring officer's initial eligibility for the special separation allowance and the formula to be used in calculating the amount of the allowance shall be determined by city staff members in the finance and human resources departments in strict compliance with the statutory provisions found in N.C. Gen. Stat. § 143-166.41(a)(b) applicable statutes and administrative regulations, specifically including without limitation the above-cited statutory provision.

Payment to a retired officer under the provisions of this section shall cease at the first of:

- 1) The death of the officer;
- 2) The last day of the month in which the officer attains 62 years of age; or
- 3) The first day of reemployment by a local government employer in any capacity; provided, however, that a local government employer may employ retired officers in a public safety position in a capacity not requiring participation in the Local Governmental Employees' Retirement System, and doing so shall not cause payment to cease to those officers under the provisions of this section.

If a retired officer's receipt of the special separation allowance is terminated because of the individual's reemployment with a local government employer in a position or capacity that triggers a cessation of payments under the provisions of the immediately preceding subsection, payment of the special separation allowance cannot be resumed at a later date.

The cessation of the above-described payments to a retired officer shall be governed by the provisions listed below.

- (1) Subject to the following subsection (2), payment to a retired officer under the provisions of this section shall cease at the first of the following occurrences:
  - (a) The death of the officer;
  - (b) The last day of the month in which the officer attains 62 years of age; or
  - (c) The first day of reemployment by a local government employer in any capacity.
- (2) Notwithstanding any other provision contained within this section, payments to a retired officer shall not cease when a unit of local government employs a retired officer for any of the following:
  - (a) In a public safety position in a capacity not requiring participation in the Local Governmental Employees' Retirement System; or
  - (b) In service to a county board of elections on an election day in a capacity that complies with G.S. 128-21(19) and does not result in cessation or suspension of the retiree's benefit from the Local Governmental Employees' Retirement System.
- (3) If a retired officer's receipt of the special separation allowance is terminated because of the individual's reemployment with a local government employer, payment of the special separation allowance cannot be resumed at a later date.

### EXHIBIT 3

#### **ARTICLE VI: GENERAL WORKPLACE POLICIES / CONDITIONS OF EMPLOYMENT**

##### **Section 7. Work-Related Injuries and Accidents Policy**

The City of Asheboro places the highest priority on creating and maintaining a safe work environment. The establishment of a consistently safe workplace is essential to the city's operations and to the city's commitment to comply with all applicable laws pertaining to safety in the workplace. In furtherance of the commitment to create a safe work environment, employees are expected to assist the city in maintaining safe working conditions. The provisions found in this section apply to all employees while at work or engaged in work-related activities.

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Employees are expected to follow common-sense safety practices and to correct or report any unsafe condition to their supervisors. Similarly, as soon as one or more employees realizes that a work-related accident, injury, or illness has occurred, any employee with knowledge of the incident is required to report the occurrence to their supervisors as quickly as is practicable. The detailed reporting procedures and safety policies for varying subject areas with which employees are required to comply are stated in the City of Asheboro Safety Policy Manual (the "Safety Manual").

On the basis of a delegation of authority from the Asheboro City Council, the City Manager will utilize the Safety Manual to implement the city's commitment to creating and maintaining a safe work environment. The implementation of a safe work environment will include the use of the Safety Manual to conform the city's policies, procedures, and practices to the standards (or rules) adopted by the North Carolina Division of Occupational Safety and Health (hereinafter the "NC OSH"). By way of illustrating and not limiting the delegation of authority granted to the City Manager in the interest of creating and maintaining a safe work environment, the policies contained within the Safety Manual may include allowances for the use of paid leave not otherwise established in the city's employee policies and procedures manual so long as the paid leave allowance authorized within the Safety Manual is limited to the amount of leave strictly necessary for compliance with the standards adopted by NC OSH.

The Safety Manual shall be available for review by employees upon request. Any difficulty encountered by an employee in accessing the Safety Manual shall be reported immediately to the employee's supervisor. With respect to any safety related concern, an employee is authorized to communicate with the Safety Coordinator Manager, Human Resources Director, and/or City Manager without fear of facing disciplinary action for violating the "chain of command."

Employees are expected to report to work during each scheduled workday able to safely and competently perform their job duties. If employees are unable to safely or competently perform their job duties for any reason, they are required to inform their supervisors without any unnecessary delay. Additionally, employees who observe or experience unsafe working conditions have the right, and are required, to report the unsafe working condition(s) to their supervisors as quickly as possible.

All work-related accidents, injuries, and illnesses, even those that may not initially be deemed to be serious, must be reported as soon as is practicable to supervisors. Employees who experience a work-related accident, injury, or illness are to use their best efforts to complete the appropriate forms and to cooperate to the best of their ability with the city's efforts to comply with the applicable recording, reporting, and investigation obligations.

The city can only become a safer and healthier place for everyone to work by gaining full knowledge of every workplace accident, injury, or illness. Employees' notification to the city of unsafe work conditions or of workplace injuries or illnesses is essential.

**Employees are hereby assured that they will not be penalized in any way for reporting unsafe working conditions or for reporting work-related injuries or illnesses. All employees have the right to report unsafe working conditions or to report a work-related injury or illness.**

All employees have the right to address any questions about this policy to the Safety Coordinator Manager, Human Resources Director, and/or the City Manager.

**EXHIBIT 4**

**ARTICLE VIII: DISCIPLINARY ACTIONS**

**Section 7. Administrative Guidelines**

**Unsatisfactory Performance of Duties**

This category covers all types of performance-related inadequacies. This policy does not require that the progressive warnings address the same type of unsatisfactory performance, but it does require that all warnings be related to job performance. Unsatisfactory performance of duties may include, but is not limited to:

- 1) Inefficiency or incompetence in performing duties;
- 2) Negligence in performance of duties;
- 3) Physical or mental incapability for performing duties;
- 4) Careless or improper use of city property;
- 5) Failure to maintain satisfactory and harmonious working relationships with fellow employees and the public;
- 6) Habitual pattern of failure to report for duty at the assigned time and place;
- 7) Absence without approved leave;
- 8) Habitual and improper use of sick leave privileges;
- 9) Failure to obtain or maintain current license or certificate required as a condition for performing the job; and
- 10) Failure to wear and use appropriate safety equipment or otherwise to abide by safety rules and policies.

**Improper Personal Conduct**

An employee who engages in a single act of improper personal conduct is subject to dismissal from employment with the City of Asheboro regardless of whether the employee has previously received a warning of any kind during his or her career with the city. The following list is illustrative, and is not an exhaustive or exclusive list, of the types of improper personal conduct that will lead to the termination of an individual's employment with the city:

- 1) Conduct unbecoming a city employee;
- 2) Conviction of a felony;
- 3) Committed a criminal act;
- 4) Misusing city funds;
- 5) Falsifying information provided to the municipal corporation in order to secure one or more job assignments or position(s);
- 6) Engaging in any action that would in any way seriously disrupt or disturb the normal operations of the municipal corporation;
- 7) Willful acts that would endanger the lives or property of others;
- 8) Willfully damaging city property;



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- 9) Possessing unauthorized weapons, alcoholic beverages, or illegal substances while on the job;
- 10) Threats, pressure, or physical actions against others, specifically including without limitation uninvited and repeated contact, whether by means of communication devices or by means of physical visits to the grounds or home of the targeted individual, for the purpose of harassing an individual or forcing unwelcomed dialogue/discussion that is not subject to free speech protections afforded by the Constitutions of the United States and the State of North Carolina;
- 11) Insubordination;
- 12) Accepting gifts for “favors” or “influence;”
- 13) Without proper authorization, disseminating or otherwise releasing in any manner information that is lawfully maintained by the city as confidential information;
- 14) Unauthorized possession of the city’s or another employee’s property;
- 15) Leaving the work area repeatedly for excessively long periods without proper authorization;
- 16) Violation of the city’s policies prohibiting sexual harassment, unlawful discrimination, workplace violence, and/or substance abuse;
- 17) Providing or maintaining false or improper records/documents;
- 18) Sleeping during work time;
- 19) Gambling during work time; and
- 20) Providing an untruthful statement or statements during an administrative investigation conducted by the city and/or otherwise attempting to impede the ability of the city to conduct an accurate and complete administrative investigation.

### **Written Warning**

During the period after written warnings have been issued for unsatisfactory performance of duties, management may choose to counsel with the employee concerning his/her employment status before a decision to demote or dismiss is made. Such counseling should involve a candid discussion about the actions that an employee must take in order to correct the unsatisfactory performance. As a part of this counseling, management may request the employee to take up to one (1) day's leave with pay to consider whether or not the employee wishes to continue his/her employment with the city. It should be stressed to the employee that a decision to continue employment with the city will require a commitment to improve performance, and that a lack of improvement will lead to dismissal. Management is expected to use its discretion to determine when this procedure would benefit the employee and the city.

### **Suspension**

Investigatory or disciplinary suspension may be used by management in appropriate circumstances. The following general guidelines shall be utilized when deciding whether to place an employee on suspension:

- 1) If the infraction or behavior is extremely serious or injurious to the city, fellow employees, or the public, a supervisor may suspend an employee without warning. However, before any further formal disciplinary action such as demotion or dismissal is taken against an employee, the employee’s division director/department head must consult with the human resources department.
- 2) An employee who has been suspended for either investigatory or disciplinary reasons may be placed on compulsory leave without pay.

- 3) Investigatory suspension with or without pay may be appropriate:
  - (a) To provide time to investigate, establish facts, and reach a decision concerning an employee's status in those cases where it is determined the employee should not continue to work pending a decision; and
  - (b) When management elects to use investigatory suspension in order to avoid undue disruption of work or to protect the safety of persons or property.
- 4) Investigatory suspension without pay shall not exceed thirty (30) calendar days.
- 5) Investigatory suspension with pay will be at the request of the division director/department head and must be authorized by the city manager.
- 6) An employee who has been suspended with or without pay must be furnished a letter with the specific reasons for his/her suspension and notice of right to appeal. A copy of the letter shall be forwarded to the human resources department in advance.
- 7) Suspension with or without pay must be fully documented.

### Review of Documentation

- 1) ~~An employee who objects to material in his or her personnel jacket may place in the file a statement relating to the material the employee considers to be inaccurate or misleading. The employee may seek the removal of such material by filing a grievance and following the grievance procedures specified in this manual.~~
- 2) ~~Probationary employees who have been subject to disciplinary action for improper personal conduct, and are ineligible for access to the city's appeal procedures for regular employees, may submit to the human resources director a written request for an informal name-clearing proceeding that will be conducted by the human resources director. The human resources director must receive such a written request within thirty (30) business days of the date of receipt by the probationary employee of the problem-causing documentation. In his or her request, the probationary employee must state the basis for his or her belief that the submitted documentation should be amended, supplemented, or removed.~~
  - (a) ~~During the informal hearing of this matter, the human resources director shall review all pertinent written reports and may request additional information and documentation. Also, the human resources director may receive new evidence, written or oral, from the division director/department head and employee so long as the evidence is relevant to whether the problem-causing documentation should be removed, amended, or supplemented. In deciding the question presented by the probationary employee, the human resources director may reject the probationary employee's contention or agree to amend, supplement, or remove the documentation previously placed in the employee's personnel jacket.~~
  - (b) ~~If an individual is dissatisfied with the decision rendered by the human resources director, the individual may appeal the human resources director's decision by submitting a written request to the city manager for an informal hearing before the city manager. Such a request must be received by the city manager within fifteen (15) business days of the date on which the individual received the human resource director's written decision.~~
  - (c) ~~The city manager shall review the entirety of the information previously reviewed by the human resources director during his or her consideration of the matter. Additionally, the city manager may receive new evidence, written or oral, from the division director/department head and employee so long as the evidence is relevant to whether the problem-causing documentation should be removed, amended, or supplemented. When ruling on the appeal, the city manager may confirm or modify the decision of the human resources director. The decision rendered by the city manager shall be final. The city manager~~

shall furnish written notice to the employee, the division director/department head, and the human resources director of his final ruling.

- (d) This name-clearing opportunity is for the limited and sole purpose of providing an employee who has no other grievance or appeal rights with an opportunity to properly request the removal or mitigation of allegedly damaging information previously placed in a personnel jacket. The name-clearing process shall not afford probationary employees access to the city's appeal process specified in this Article or to the city's grievance procedure that is specified in this manual. During the name-clearing process, the previously suspended, demoted, or dismissed probationary employee does not have the right to appeal his or her suspension, demotion, or dismissal from employment and is expressly prohibited from raising such an appeal.

An employee who objects to material in his or her personnel jacket may place in the file a statement relating to the material the employee considers to be inaccurate or misleading. The employee may seek the removal of such material by filing a grievance and following the grievance procedures specified in this manual.

### **Section 8. Name-Clearing Hearing**

- (A) If an employee is demoted or separated from employment with the city, and the employee contends that, in relation to such a personnel action, false stigmatizing statements about the employee have been or may be made public, then the employee may request a name-clearing hearing under the conditions set forth below. The purpose of the hearing is to afford the employee an opportunity to clear his or her name by responding to the statements. These name-clearing hearing procedures will not serve as an appeal of any disciplinary action or to gain reinstatement to city employment.
- (B) Non-probationary employees who are disciplined or dismissed from their employment with the city will continue to have appeal rights as established elsewhere in this employee policies and procedures manual.
- (C) A name-clearing hearing will be offered whenever the following three conditions are met:
- (1) An employee is demoted or separated from employment;
  - (2) The employee contends that stigmatizing statements have been placed in his or her personnel file, or otherwise could be made public, and the alleged statements involve the employee's deliberate fraud, or dishonesty, or imply the existence of serious character defects such as dishonesty or immorality; and
  - (3) The employee asserts the statements are untrue.
- (D) A name-clearing hearing is not required every time an employee is demoted or separated from employment. Such a hearing is required only when a statement relating to the demotion or separation from employment stigmatizes the employee's reputation, and the employee asserts that the statement in question is false. A statement is "stigmatizing" if it involves allegations of dishonesty, immorality, or other conduct that may damage the employee's reputation among associates and impair his or her ability to obtain employment. Examples of stigmatizing statements include falsifying records, misappropriating city property or funds, mental instability, statements that the employee is untruthful, untrustworthy, or unethical as well as statements that the employee has committed a crime or other immoral act.
- (E) When an employee is demoted or separated from employment with the city, and the circumstances surrounding the personnel action potentially fall within the scope of this section, departmental managers initiating the personnel action must notify the employee in writing of the opportunity to request the scheduling of a name-clearing hearing by the human resources director.
- (F) A request for a name-clearing hearing must be filed in writing with the human resources department within three business days from the effective date of the

personnel action that gave rise to the request. The request will not stay the demotion or separation from employment. An employee's failure to request a name-clearing hearing in accordance with the timeline stated herein shall be considered a waiver of the employee's rights under this specific policy. When the written request for a name-clearing hearing is submitted to the human resources department, the employee must identify within the written request the following issues:

- (1) The statements that the employee contends are false and stigmatizing to his or her reputation; and
  - (2) The manner in which the false statements were made public or are likely to be made public.
- (G) City personnel will arrange for the name-clearing hearing to be recorded, and one copy of the recording will be made available at no cost to the employee.
- (H) The requested name-clearing hearing shall be held at a location, date, and time scheduled by the human resources director or his designee. The city manager shall designate, for each hearing, the individual who will serve as the hearing officer. Upon the receipt of the employee's timely request for a name-clearing hearing, the human resources director, or his designee, shall schedule the hearing for a date that falls within thirty calendar days of the date upon which the written request was received by the human resources department. The employee requesting the hearing shall be given notice of the location, date, and time of the scheduled hearing no less than three calendar days in advance of the date set for the name-clearing hearing.
- (I) The employee who requested the name-clearing hearing may invite anyone to the hearing, which is held for the purpose of allowing the employee an opportunity to clear his or her name publicly. The employee will be allowed to present testimony, documents, and/or witnesses to support the employee's allegation(s) that the stigmatizing statements in question are false. The employee may be represented by counsel. However, the name-clearing hearing is not a forum where city employees or members of the audience are cross-examined or asked to provide evidence, unless they want to provide evidence at the request of the employee in an attempt to help the employee present his or her name-clearing hearing case. The hearing will not consist of or result in the formulation of any conclusions or the reevaluation or nullification of any particular employment recommendation or action.
- (J) Once the name-clearing hearing has concluded, an audio recording of the hearing will be placed in the employee's personnel jacket maintained in the human resources department along with the following statement completed and signed by the human resources director:

It is hereby certified that on \_\_\_\_\_, a name-clearing hearing was held at the request of \_\_\_\_\_. This file contains a record of the proceedings of the hearing with \_\_\_\_\_ serving as the hearing officer.

Date: \_\_\_\_\_

Human Resources Director

## 9. Community Development Items

- (a) Case No. RZ 21-15: A legislative hearing on the question of text amendments to the city's zoning and subdivision ordinances in response to Senate Bill 300/SL 2021-138.**

Mayor Smith opened the legislative hearing on the application filed by city staff to amend the zoning and subdivision ordinances in compliance with Senate Bill 300/SL 2021-138, which removed the criminal sanctions for most violations of local land use regulations. The following text amendments were proposed for Section 2.05(D) and Section 901.1 of the City of Asheboro Zoning Ordinance:

**(D) Penalties and Remedies for Violations**

~~(1) Violations of the provisions of the Ordinance or failure to comply with any of its requirements shall constitute a misdemeanor, punishable as provided in General Statutes 160A-175~~

~~(2)~~<sup>(1)</sup> Any act constituting a violation of the provisions of this Ordinance or a failure to comply with any of its requirements shall also subject the offender to a civil penalty of up to five hundred (\$500) dollars for each day the violation continued unabated. The amount of the civil penalty will be based on the following criteria:

- (a) Whether the violator has been notified of similar violations in the past;
- (b) The potential profit to the violator in continuing the violation;
- (c) The degree and duration of noncompliance; and
- (d) The City's cost to investigate and pursue abatement of the violation.

If the offender fails to pay this penalty within ten days after being cited for a violation, the penalty may be recovered by the City in a civil action in the nature of a debt. A civil penalty may not be appealed to the Board of Adjustment if the offender was sent a final notice of violation in accordance with Section 2.05(C)(2) and did not take an appeal to the Board of Adjustment within the prescribed time. The Enforcement Officer has the discretion to waive the penalty if the violator worked to correct the violation in good faith.

~~(3)~~<sup>(2)</sup> This section may also be enforced by any appropriate equitable action.

~~(4)~~<sup>(3)</sup> Each day that any violation continues after notification by the administrator that such violation exists shall be considered a separate offense for purposes of the penalties and remedies specified in this section.

~~(5)~~<sup>(4)</sup> Any permit, certificate, or other authorization for property on which there is an uncorrected violation may be withheld, or may be conditioned on the correction of the violation and/or payment of a civil penalty.

~~(6)~~<sup>(5)</sup> Any one, all, or any combination of the foregoing penalties and remedies may be used to enforce this Ordinance.

**901 STATUTORY AUTHORIZATION, FINDINGS OF FACT, PURPOSE AND OBJECTIVES.**

901.1 STATUTORY AUTHORIZATION.

~~The Legislature of the State of North Carolina has in Part 6, Article 21 of Chapter 143; Chapter 160D; and Article 8 of Chapter 160A of the North Carolina General Statutes, delegated to local governmental units the responsibility to adopt regulations designed to promote the public health, safety, and general welfare.~~

As a North Carolina municipal corporation, the City of Asheboro is authorized to adopt regulations designed to promote the public health, safety, and general welfare. Article 21, Part 6 in Chapter 143 of the General Statutes of North Carolina specifically authorizes the city to adopt ordinances to regulate uses in flood hazard areas and grant permits for the use of flood hazard areas.

With regard to the City of Asheboro Subdivision Ordinance, the following amendments were proposed for Article IV (Legal Provisions), Section IV (Penalties for Violation) of the subdivision ordinance:

*After the effective date of this Ordinance, any person who, being the owner or agent of the owner of any land located within the territorial jurisdiction of this Ordinance, thereafter subdivides his land in violation of this Ordinance or transfers or sells land by reference to, exhibition of, or any other uses of a plat showing a subdivision of the land before the plat has been properly approved under the terms of this Ordinance and recorded in the office of the Randolph County Register of Deeds, shall be subject to civil penalties, court injunction, or other equitable legal remedies ~~guilty of a misdemeanor~~. The description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring land shall not exempt the transaction from this penalty. The City of Asheboro through its attorney or other official designated by the City Council, may enjoin illegal*

*subdivision, transfer or sale of land, and the Court shall, upon appropriate findings, issue an injunction or other equitable legal remedy ~~and order~~ requiring the offending party to comply with the Subdivision Ordinance. Further, violators of this Ordinance shall be subject, upon conviction, to fine and/or imprisonment as provided by G. S. 14-4.*

Community Development Director Trevor Nuttall utilized a slide show to discuss the following points about the text amendment application.

1. The text amendments were proposed in order to ensure compliance with recent state legislation that included provisions for the decriminalization of most offenses defined by local ordinances adopted pursuant to Chapter 160D (Local Planning and Development Regulation) of the North Carolina General Statutes.
2. Non-criminal enforcement actions, including civil penalties, court injunctions, and other equitable remedies, are still available as remedies for ordinance violations.
3. The state legislation necessitating the proposed text amendments does not affect enforcement authority for unsafe buildings. Similarly, enforcement mechanisms for violations occurring within watershed or regulated flood hazard areas are unimpaired because those provisions are authorized by state statutes beyond the scope of Chapter 160D of the North Carolina General Statutes.

Additionally, Mr. Nuttall noted that LDP (Land Development Plan) Goal/Policy 2.1.1 supports the application. Goal/Policy 2.1.1 provides as follows: "The Zoning Ordinance will periodically be reviewed to ensure that the specific regulations for each Zoning District are aligned with the desired character and focus of each district.

No LDP Goals/Policies were identified as unsupportive of the proposed text amendments.

In light of the legal duty to comply with state law and the above-stated comments, the City of Asheboro Planning Board adopted the planning staff analysis that found the proposed text amendments to be reasonable, in the public interest, and consistent with the adopted comprehensive plans.

When no one else asked to be recognized to speak, Mayor Smith transitioned to the deliberative phase of the public hearing.

The council members first addressed the issue of the text amendments proposed for the zoning ordinance. Council Member Bell moved, and Council Member Burks seconded the motion, to adopt the following consistency statement and to approve the zoning ordinance text amendments with the following two-part motion:

1. The proposed text amendments are consistent with the adopted comprehensive plan that encourages regular updates of the zoning ordinance. No part of the adopted plan can be reasonably construed as contravening compliance with the legislation adopted by the North Carolina General Assembly.

Considering these factors, the above-stated zoning ordinance text amendments are consistent with the adopted comprehensive plan. Furthermore, the proposed text amendments are reasonable and in the public interest in that they bring the City of Asheboro Zoning Ordinance into compliance with the controlling state law provisions.

2. In light of the above-stated analysis, the zoning ordinance text amendments proposed in the application submitted by city staff are approved without modification.

Council Members Bell, Burks, Heath, McCaskill, Moffitt, Redding, and Swiers voted aye. There were no dissenting votes.

The council members then turned their attention to the proposed subdivision ordinance text amendments. Due to the fact that the same analysis applicable to the zoning ordinance was equally applicable to the subdivision ordinance, Council Member Bell moved, and Council Member Burks seconded the motion, to adopt the following consistency statement and to approve the subdivision ordinance text amendments with the following two-part motion:

1. No part of the adopted comprehensive plan can be reasonably construed as contravening compliance with legislation adopted by the North Carolina General Assembly. Good government practices encourage regular updates of ordinances used to regulate land development in a community.

Considering these factors, the above-stated subdivision ordinance text amendments are consistent with the adopted comprehensive plan. Furthermore, the proposed text amendments are reasonable and in the public interest in that they bring the City of Asheboro Subdivision Ordinance into compliance with the controlling state law provisions.

2. In light of the above-stated analysis, the subdivision ordinance text amendments proposed in the application submitted by city staff are approved without modification.

Council Members Bell, Burks, Heath, McCaskill, Moffitt, Redding, and Swiers voted aye. There were no dissenting votes.

- (b) Case No. RZ-21-16: A legislative hearing on a zoning map amendment application seeking to place property into an R10 (CZ) zoning district in order to allow the development of a manufactured/mobile home park land use.**

Mayor Smith opened the legislative hearing on the application by Vuncannon-Frazier, LLC, by and through Mr. Cory Vuncannon, (the "Applicant") to rezone approximately 44.17 acres of undeveloped land (the "Zoning Lot") located southeast of 801 Hub Morris Road. The Zoning Lot is identified by Randolph County Parcel Identification Number 7763544550.

The Zoning Lot is currently zoned R10 (Medium-Density Residential) and R40 (Low-Density Residential). The requested map amendment would place the Zoning Lot in an R10 (CZ) zoning district, which is a medium-density residential conditional zoning district.

Community Development Director Trevor Nuttall utilized a slide show to present the planning staff analysis of the application. This analysis included the following information.

1. The Zoning Lot is outside the city limits. Connection to city utilities will require annexation of the property in accordance with city policies.
2. Hub Morris Road is a state-maintained major thoroughfare. The North Carolina Department of Transportation ("NCDOT") is requesting a traffic study as part of the driveway permitting process
3. The Applicant is proposing a conditional zoning R10 district to allow development of a manufactured home park with 188 lots. The proposed development is adjacent to North Meadows manufactured home park which contains 207 lots. The proposed manufactured home park would be accessed from Hub Morris Road and via roadway connections to the adjoining manufactured home park. This development proposes a lesser front yard setback than North Meadows.

4. The conditional zoning process allows an applicant to propose a project-specific zoning district that establishes permitted uses, development conditions, and site development requirements. The project-specific zoning district is allowed to diverge from the zoning ordinance's predetermined land use requirements.
5. This conditional zoning process is a different review process than the quasi-judicial special use permit process that North Meadows underwent. The North Meadows property is not included in this application; it will retain its current special use permit and must continue to abide by the conditions of that permit.
6. Proposed landscaping yards and buffers/screens are included along Hub Morris Road and the southern property boundary. The plans indicate the use of a mixture of plantings and fencing.
7. The overall density of the proposed development is approximately 4.26 units per acre. The overall density of the adjoining manufactured home park is approximately 3.83 units per acre.
8. The zoning ordinance states that the R10 Residential District is "intended to provide regulations which will produce a moderate intensity of residential uses, usually single family or two family in character and served by central water supply and sewage disposal systems, plus the necessary governmental and other support facilities to service such urban intensity living."
9. A small portion of the property (less than 1/10<sup>th</sup> acre) is within a floodplain.

Mr. Nuttall noted that, when evaluating a rezoning application, careful consideration must be given to each goal and policy as outlined in the Land Development Plan. The following items list the analysis of the Zoning Lot in the context of the adopted comprehensive plan.

**Proposed Land Use Map Designation:** Neighborhood Residential

**Small Area Plan:** Northeast

**Growth Strategy Map Designation:** Long-Range Growth

**LDP Goals/Policies Supporting the Request:**

**Checklist Item 1:** Complies with LDP proposed land use map.

**Checklist Item 3:** The property on which the rezoning district is proposed fits the description of the zoning ordinance.

**Checklist Item 12:** Location is outside of watershed area.

**LDP Goals/Policies Not Supporting the Request:**

**Checklist Item 5:** Does not comply with Growth Strategy Map.

**Checklist Items 13-14:** 13.) The property is located within Special Hazard Flood Area. 14.) Rezoning is located on steep slopes greater than 20%.

The City of Asheboro Planning Board considered the zoning map amendment application and recommended placement of the Zoning Lot in the requested R10 (CZ) zoning district. In making this recommendation, the planning board concurred with the planning staff's analysis, which provided as follows:

The property's present R10 Medium-Density Residential zoning district would allow a sizeable major residential subdivision to be developed on



the property without public participation. While this request to place the property in a conditional zoning district does afford the property owner the ability to develop more home sites, and sites specifically for manufactured homes, it also enables the public to offer input on the proposal that can be considered by all parties.

While the project's density is greater than what would be expected from a residential subdivision or manufactured home park in the R10 district relying on a special use permit, the Applicant is providing interconnectivity between developments which is advocated for by the Land Development Plan and is important for traffic distribution and service provision.

However, the Applicant's reliance on the existing North Meadows development for on-site management and recreational amenities could be problematic should this property be operated independent of North Meadows in the future. It is also unclear that stormwater quantity management will adequately ensure adjoining properties are not adversely affected by the development. The site plan does, however, reference water quality best-management practices to address stormwater impacts on water quality.

As part of its analysis, the city planning staff also offered suggested conditions believed to be necessary to ensure Land Development Plan consistency and general conformity with city codes. City staff recommended approval of the request with the attachment of the following conditions.

- (A) The use approved shall be a manufactured/mobile home park.
- (B) All parties involved in this request, including the owner, successors, heirs, and assigns, must agree to the conditions and approved site plan.
- (C) If the district is approved, full construction/civil drawings shall be submitted to the city for review prior to construction.
- (D) Prior to issuance of the first zoning compliance permit for a home or structure, the new roadway connecting to Hub Morris Road and the roadway between Lot 1 and Lot 188 connecting with the North Meadows development shall be constructed and accessible.
- (E) Prior to the issuance of zoning compliance permits for Lots 19-28, the roadway north of lot 28 and connecting with the North Meadows development shall be constructed and accessible.
- (F) Prior to the issuance of zoning compliance permits for Lots 118-146, the roadway between Lots 154 and 155 shall be constructed and accessible across the stream and the roadway crossing the stream east of Lots 27 and 28 and west of Lots 132 and 133 shall be constructed and accessible.
- (G) The roadways connecting the Zoning Lot to North Meadows shall remain available for cross access in perpetuity.
- (H) Adequate turnaround for emergency and public services shall be provided at all times if construction is phased.
- (I) Street lights shall be installed and maintained by the property owner prior to the issuance of a zoning compliance permit in accordance with city policy for residential street lighting.
- (J) Installation and maintenance of street signs shall be the responsibility of the property owner. Street names must be approved by Randolph County for E-911 compliance.

- (K) As identified on the site plan, accessory structures shall be permitted without being considered a modification of the conditional zoning district. No carport shall be located in such a manner that impedes visibility from oncoming traffic.
- (L) Each dwelling shall have a visible lot number and/or address to facilitate rapid response in an emergency.
- (M) All homes shall be skirted.
- (N) No parking shall be permitted on the internal roadways.
- (O) Prior to the issuance of a zoning compliance permit for the proposed land use, the applicant shall submit documentation of the following:
  - (1) North Carolina Department of Environmental Quality permitting approval;
  - (2) North Carolina Department of Transportation permitting approval;
  - (3) An engineering study of storm water that complies with Section 5.05(15)(3) showing that post-development runoff will not exceed predevelopment runoff or mitigation measures detailed in the cited section are included within the proposed plans;
  - (4) Details ensuring the functional equivalent of full-time on or off-site property management; and
  - (5) Details ensuring residents have continued use of the recreational amenities and recreational vehicle storage within the North Meadows community.
- (P) Prior to the issuance of a zoning compliance permit, plans concerning water, including provisions for fire hydrants and sanitary sewage that complies with city policies, shall be submitted. Surveying of any required city easements shall be the responsibility of the property owner.
- (Q) 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 conditional zoning in the chain of title for the Zoning Lot.

[A copy of the slide show utilized by Mr. Nuttall is on file in the city clerk's office.]

At the conclusion of the community development director's presentation, Mayor Smith opened the floor for participation by other parties who wished to be heard on the question of the requested zoning map amendment. Mr. Robert Wilhoit, Esq., Mr. Darren Allen, Esq., Mr. H.R. Gallimore, and Mr. Hiram Marziano spoke, on behalf of the Applicant, in support of the rezoning application.

There was opposition to the rezoning application in its initial form. Mr. James Murray presented a letter/petition from residents along Hub Morris Road, and Ms. Martha Bonkemeyer presented additional comments and questions.

On behalf of the Applicant, Mr. Wilhoit expressed the Applicant's agreement with the conditions recommended by city staff for attachment to the requested rezoning.

After all interested parties had been heard, Mayor Smith transitioned the hearing to the deliberative phase. During its deliberations, the council members came to the conclusion that the new roadway connecting to Hub Morris Road should be restricted to access for emergency response purposes only. The Applicant was asked about and agreed to this proposed modification to the staff recommended conditions.

With the above-stated modification, the city council concurred with the staff and planning board analysis. Council Member Moffitt moved, and Council Member Bell

seconded the motion, to adopt the plan consistency statement printed below and to approve the requested rezoning with the following two-part motion:

1. The application complies with the Land Development Plan proposed land use map. Furthermore, the property for which the zoning district is proposed fits the description of the Asheboro Zoning Ordinance. The Zoning Lot's existing R10 Medium-Density Residential zoning district would allow a sizeable major residential subdivision to be developed on the property without public participation. While this request to place the property in a conditional zoning district does afford the property owner the ability to develop more home sites that are specifically for manufactured homes, the conditional zoning application has also enabled the public to offer input on the proposal that can be considered and acted upon by all parties.

The Applicant is providing interconnectivity between the proposed development and the existing North Meadows community. Such interconnectivity is advocated for by the Land Development Plan and is important for traffic distribution and service provision.

The site plan submitted for approval as part of the conditional zoning process references water quality best-management practices to address stormwater impacts on water quality.

Based on the above-stated factors, the council has concluded that (a) the proposed zoning map amendment is consistent with the city's adopted comprehensive plan, and (b) the zoning map amendment application is reasonable and in the public interest.

2. In light of the above-stated analysis, and subject to the attachment of the modified conditions printed below, the zoning map amendment application to place the Zoning Lot in an R10 (CZ) zoning district and allow the manufactured/mobile home park shown on the submitted site plan is approved as consistent with the adopted plan.

Council Members Bell, Burks, Heath, McCaskill, Moffitt, Redding, and Swiers voted aye. There were no dissenting votes.

The final conditions attached to the approved conditional zoning application are as follows:

- (A) The use approved shall be a manufactured/mobile home park.
- (B) All parties involved in this request, including the owner, successors, heirs, and assigns, must agree to the conditions and approved site plan.
- (C) If the district is approved, full construction/civil drawings shall be submitted to the city for review prior to construction.
- (D) Prior to issuance of the first zoning compliance permit for a home or structure, the new roadway connecting to Hub Morris Road and the roadway between Lot 1 and Lot 188 connecting with the North Meadows development shall be constructed and accessible; provided, however, the new roadway connecting to Hub Morris Road shall be accessed for emergency response purposes only.
- (E) Prior to the issuance of zoning compliance permits for Lots 19-28, the roadway north of lot 28 and connecting with the North Meadows development shall be constructed and accessible.
- (F) Prior to the issuance of zoning compliance permits for Lots 118-146, the roadway between Lots 154 and 155 shall be constructed and accessible across the stream and the roadway crossing the stream east of Lots 27 and 28 and west of Lots 132 and 133 shall be constructed and accessible.

- (G) The roadways connecting the Zoning Lot to North Meadows shall remain available for cross access in perpetuity.
- (H) Adequate turnaround for emergency and public services shall be provided at all times if construction is phased.
- (I) Street lights shall be installed and maintained by the property owner prior to the issuance of a zoning compliance permit in accordance with city policy for residential street lighting.
- (J) Installation and maintenance of street signs shall be the responsibility of the property owner. Street names must be approved by Randolph County for E-911 compliance.
- (K) As identified on the site plan, accessory structures shall be permitted without being considered a modification of the conditional zoning district. No carport shall be located in such a manner that impedes visibility from oncoming traffic.
- (L) Each dwelling shall have a visible lot number and/or address to facilitate rapid response in an emergency.
- (M) All homes shall be skirted.
- (N) No parking shall be permitted on the internal roadways.
- (O) Prior to the issuance of a zoning compliance permit for the proposed land use, the applicant shall submit documentation of the following:
  - (1) North Carolina Department of Environmental Quality permitting approval;
  - (2) North Carolina Department of Transportation permitting approval;
  - (3) An engineering study of storm water that complies with Section 5.05(15)(3) showing that post-development runoff will not exceed predevelopment runoff or mitigation measures detailed in the cited section are included within the proposed plans;
  - (4) Details ensuring the functional equivalent of full-time on or off-site property management; and
  - (5) Details ensuring residents have continued use of the recreational amenities and recreational vehicle storage within the North Meadows community.
- (P) Prior to the issuance of a zoning compliance permit, plans concerning water, including provisions for fire hydrants and sanitary sewage that complies with city policies, shall be submitted. Surveying of any required city easements shall be the responsibility of the property owner.
- (Q) 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 conditional zoning in the chain of title for the Zoning Lot.

**(c) Easements Related to the Church Street Loft Apartments**

Community Development Director Trevor Nuttall presented and recommended approval of the easement agreement printed herein below. The approval of this legal instrument will advance the city's downtown redevelopment efforts by aiding the development of the Church Street Loft Apartments.

Council Member Bell moved, and Council Member Burks seconded the motion, to approve the following easement agreement and authorize the mayor to execute the legal instrument on behalf of the municipal corporation. Council Members Bell, Burks, Heath, McCaskill, Moffitt, Redding, and Swiers voted aye. There were no dissenting votes.

**ACCESS AND PARKING EASEMENT, TRASH EASEMENT AND TEMPORARY CONSTRUCTION EASEMENT AGREEMENT**

This **ACCESS AND PARKING EASEMENT, TRASH EASEMENT AND TEMPORARY CONSTRUCTION EASEMENT AGREEMENT** (this "**Agreement**") is made effective as of the \_\_\_\_ day of January, 2022, by and between the **CITY OF ASHEBORO**, a North Carolina municipal corporation and body corporate and politic ("**Grantor**") and **CHURCH STREET LOFT APARTMENTS, LLC**, a North Carolina limited liability company ("**Grantee**"). Grantor and Grantee are collectively referred to as "**Parties**" and individually, a "**Party**".

**RECITALS:**

**WHEREAS**, Grantor is the owner of those certain lots or parcels of land described more particularly in **Exhibit A** attached hereto and incorporated herein (the "**Grantor Property**").

**WHEREAS**, Grantee is the owner of that certain lot or parcel of land described more particularly in **Exhibit B** attached hereto and incorporated herein (the "**Grantee Property**").

**WHEREAS**, the Grantee has requested, and Grantor has agreed to grant a non-exclusive access, parking and trash easement over, under, and across a portion of the Grantor Property, as described herein.

**NOW, THEREFORE**, in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, the Grantor gives, grants, and conveys to the Grantee the easements described below.

**1. ACCESS AND PARKING EASEMENT.** Grantor, for itself and every future owner of the Grantor Property, grants and conveys to Grantee, and its agents, tenants, employees, contractors, subcontractors, licensees, invitees, successors, and/or assigns for the benefit of the Grantee Property, a permanent and perpetual non-exclusive parking easement over and across the area on the Grantor Property that is shown and labeled as "Proposed Parking Easement 5,708 Sq. Ft." on the plat of survey recorded in Plat Book \_\_\_\_\_, Page \_\_\_\_\_, Randolph County Registry (hereinafter referred to as the "**Parking Easement Area**"). The Grantor is granting and conveying the non-exclusive parking easement to the Grantee for the purpose of providing parking within the Parking Easement Area and is also conveying a permanent and perpetual non-exclusive access easement across the drive lanes within the parking lot located on the Grantor Property, as such drive lanes may be relocated from time to time (the "**Access Easement Area**") for purposes of providing ingress, egress, and regress over and within the Access Easement Area for pedestrian and vehicular traffic.

**2. TRASH EASEMENT.** Grantor, for itself and every future owner of the Grantor Property, grants and conveys to Grantee, and its agents, tenants, employees, contractors, subcontractors, licensees, invitees, successors and/or assigns for the benefit of the Grantee Property, a permanent and perpetual non-exclusive easement for the use, service of and access to and from the trash facility to be constructed by Grantor, at Grantor's expense, on that portion of the Grantor Property identified as "Proposed Dumpster Easement 1,054

Sq. Ft.” on the plat of survey recorded in Plat Book \_\_\_\_\_, Page \_\_\_\_\_, Randolph County Registry (hereinafter referred to as the “**Trash Easement Area**”). Grantor shall bill Grantee for the right to use the trash facility within the Trash Easement Area commencing on the later of (i) the completion of the multifamily apartment complex to be located on the Grantee Property, and (ii) completion of the construction of the trash facility by Grantor, at the rate prescribed by the Code of Asheboro for the requested solid waste collection services.

**3. TEMPORARY CONSTRUCTION EASEMENT.** Grantor, for itself and every future owner of the Grantor Property, grants and conveys to Grantee, and its agents, tenants, employees, contractors, subcontractors, licensees, invitees, successors and/or assigns for the benefit of the Grantee Property, a temporary construction easement over and upon the Parking Easement Area in order to permit Grantee to perform certain construction work within the Parking Easement Area. The temporary construction easement granted to grantee by this Section 3 shall expire on December 31, 2023. At the end of the construction work to be performed in connection with this temporary construction easement, Grantee shall restore the Parking Easement Area to a condition equivalent to or better than the condition of such property prior to the commencement of such easement work. The Grantee shall be responsible for all costs of the construction work within the Parking Easement Area contemplated herein.

**4. MAINTENANCE OF EASEMENT AREA.** The Grantor, and its successors and assigns, shall be responsible for maintaining the Parking Easement Area, the Access Easement Area and the Trash Easement Area except as otherwise specifically provided herein; provided, however, Grantor shall not be responsible for repairing any damage that is caused by the willful or negligent misconduct of Grantee or its agents, lessees, sublessees, employees, contractors, subcontractors, licensees, invitees, successors and/or assigns and Grantee shall be responsible for any such maintenance and repair.

**5. BINDING EFFECT; ASSIGNMENT AND SUBLETTING; USE.** This Agreement shall be binding upon and inure to the benefit of the Parties and their legal representatives, successors, and assigns. The rights and interests of the Parties pursuant to this Agreement shall automatically transfer to any sublease or assignment of the respective Party’s interests, including any subsequent sublessee or assignee thereto, without the other Party’s prior written consent. This Agreement shall run with title to the Grantor Property and the Grantee Property and shall burden and benefit the respective estates as provided herein. The Grantor covenants with the Grantee that it is seized of the Grantor Property in fee simple and has the right to convey the easements contained herein, and that the Grantor will forever warrant and defend the title to the easements granted herein against the lawful claims of all persons whomsoever.

**6. INDEMNIFICATION.** The Grantee hereby agrees to indemnify, defend, save and hold harmless the Grantor, and its city council members, employees, successors and assigns from and against all liabilities, judgments, demands, causes of action, claims, losses, damages, costs, and expenses of whatever nature (i) arising from any negligent act or omission of the Grantee or its contractors, tenants, licensees, invitees, agents, servants or employees related to their use of the easements granted herein, or (ii) arising from any accident, injury, or damage whatsoever caused to any person, or to the property of any person, or from any violation of applicable law, resulting from any act or neglect of the Grantee or its contractors, tenants, licensees, invitees, agents, servants or employees related to their use of the easements granted herein. This indemnity and hold harmless provision shall include indemnity against all costs, expenses, and liabilities, including reasonable attorneys' fees, incurred in or in connection with any such claim or proceeding brought thereon, and the defense thereof, and this indemnity shall survive expiration or earlier termination of this Agreement. Notwithstanding the foregoing, the aforementioned indemnity shall not apply to the extent that any liabilities, judgments, demands, causes of action, claims, losses, damages, costs, and expenses arise from or are caused by the negligence or willful misconduct of any party who is seeking indemnification.

**7. NOTICE.** All notices, demands, and requests which may or are required to be given shall be in writing and shall be sent by United States certified mail or registered mail, return receipt requested, postage prepaid or overnight courier, receipt confirmed by recipient, as provided in this Section 7. Such notice shall be deemed given on the date such notice is

received or refused. The notice address may only be changed upon the recordation of a separately filed document with notice:

**Addressed to Grantor:**

City of Asheboro  
Post Office Box 1106  
Asheboro, NC 27204-1106  
Attn: City Manager

**Addressed to Grantee:**

Church Street Loft Apartments, LLC  
c/o Landmark Asset Services, Inc.  
406 E. Fourth Street  
Winston-Salem, NC 27101  
Attn: President

With a copy to:

Blanco Tackabery & Matamoros, P.A.  
404 W. Marshall Street  
Winston-Salem, NC 27101  
Attention: Deborah L. McKenney

And with a copy to:

Red Stone Equity Manager, LLC  
c/o Red Stone Equity Partners, LLC  
1100 Superior Avenue, Suite 1640  
Cleveland, OH 44114  
Attention: General Counsel

**8. OWNERSHIP.** The Grantor covenants to and with the Grantee, its successors and assigns, that the Grantor is the owner of the Grantor Property, and that the Grantor Property is free from any and all liens and encumbrances, and that it will and its successors and assigns shall forever warrant and defend the title to said Grantor Property and the easements granted hereby unto the Grantee, its successors and assigns, against the lawful claims of all persons whomsoever.

**9. HEADINGS.** The headings of the paragraphs contained herein are intended for reference purposes only and shall not be used to interpret the agreements contained herein or the rights granted hereby.

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

**11. AMENDMENTS.** This Agreement may be modified, amended, or it may be abrogated or rescinded, in whole or in part, from time to time only when evidenced by a written document executed by Grantor and Grantee, or their successors and assigns.

**12. GOVERNING LAW.** This Agreement shall be construed under and governed by the laws of the State of North Carolina.

**13. ENTIRE AGREEMENT.** This Agreement together with all exhibits attached hereto contains the entire agreement between the parties, and there are no other terms, conditions, promises, undertakings, statements or representations, either written or oral or express or implied, concerning the matters addressed in this Agreement.

**IN WITNESS WHEREOF,** Grantor has signed this instrument the day and year first above written.

**GRANTOR:**  
CITY OF ASHEBORO

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ATTEST:**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_ City Clerk

STATE OF NORTH CAROLINA

COUNTY OF \_\_\_\_\_

I, the undersigned Notary Public of \_\_\_\_\_ County, North Carolina, do hereby certify that \_\_\_\_\_, who is personally known to me, voluntarily appeared before me this day and acknowledged that he/she is \_\_\_\_\_ City Clerk for the City of Asheboro, a North Carolina municipal corporation, and that, by authority duly given, the \_\_\_\_\_ of the City of Asheboro voluntarily executed the foregoing instrument on behalf of the City for the purposes therein expressed, \_\_\_\_\_ sealed the instrument with the municipal seal, and he/she attested the instrument in their official capacity as \_\_\_\_\_ City Clerk.

Witness my hand and notarial seal, this the \_\_\_\_\_ day of January, 2022.

My Commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

[Affix Notary Seal/Stamp]

**IN WITNESS WHEREOF**, Grantee has signed this instrument the day and year first above written.

**GRANTEE:**

CHURCH STREET LOFT APARTMENTS, LLC

By: Church Street Lofts MM, LLC, Managing Member

By: Landmark Asset Services, Inc., Managing Member

By: \_\_\_\_\_  
Samuel J. Sari, Vice President

STATE OF NORTH CAROLINA

COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, a Notary Public for \_\_\_\_\_ County and State aforesaid, do hereby certify that Samuel J. Sari, Vice President of Landmark Asset Services, Inc., Managing Member of Church Street Lofts MM, LLC, Managing Member of Church Street Loft Apartments, LLC being personally known to me or proven by satisfactory evidence, personally appeared before me this day, and acknowledged the voluntary due execution of the foregoing instrument on behalf of the limited liability company for the purposes stated therein.



WITNESS my hand and notarial seal, this \_\_\_\_\_ day of January, 2022.

My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

[Affix Notary Seal/Stamp]

**EXHIBIT A**

ALL those certain tracts or parcels of land lying and being in Asheboro Township, City of Asheboro, Randolph County, and being more particularly described as follows:

BEGINNING at J.M. Trogdon's northwest corner on east side of Church Street in Town of Asheboro running thence South 86 degrees East on Trogdon's line 187 feet to Trogdon's corner; thence about South 60 feet from and parallel to Southern Railway right-of-way 109 feet to Trogdon's Southeast corner; thence on Baptist Church line nearly East 60 feet to the Southern Railway right-of-way; thence with Southern Railway right-of-way about North 204 feet to a stake; thence North 86 degrees West 200 feet to a stake on East side of Church Street; thence along Church Street 94 feet to the BEGINNING, containing 25,000 square feet, more or less.

TOGETHER WITH:

BEGINNING at a stake, the northwest corner of the Baptist Church lot on the east side of Church Street in the Town of Asheboro, North Carolina, running thence South 86 degrees East on the Baptist Church line 206 feet to a stake in said line 60 feet from Southern Railway right-of-way; thence in a northern direction 60 feet from and parallel with Southern Railway right-of-way about 109 feet to a stake; thence North 86 degrees West 106 feet from and parallel to the Church lot about 190 feet to a stone on the east side of Church Street; thence South 5 degrees West along east side of Church Street 106 feet to the BEGINNING, containing about 20,000 square feet, more or less.

**10. Annexation Petition – Parcel of Land at 1417 East Salisbury Street**

**(a) Investigation of the Annexation Petition**

After City Engineer Michael Leonard, PE presented an annexation petition from Crystal and Charles Coldiron, who own the property at 1417 E. Salisbury Street, Council Member Bell moved, and Council Member Swiers seconded the motion, to adopt by reference the following resolution directing the city clerk to investigate the sufficiency of the annexation petition. Council Members Bell, Burks, Heath, McCaskill, Moffitt, Redding, and Swiers voted aye. There were no dissenting votes.

**RESOLUTION NUMBER 03 RES 1-22**

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

**RESOLUTION DIRECTING THE CITY CLERK TO INVESTIGATE THE SUFFICIENCY OF THE ANNEXATION PETITION SUBMITTED BY CRYSTAL AND CHARLES COLDIRON**

**WHEREAS**, Crystal P. McClelland Coldiron and her husband, Charles Coldiron, (the "Petitioners") have submitted a petition requesting the annexation into Asheboro of a parcel of land (Randolph County Parcel Identification Number 7761523176) they own at 1417 E. Salisbury Street, Asheboro, North Carolina 27203; and

**WHEREAS**, the Petitioners' land at 1417 E. Salisbury Street is contiguous to Asheboro's primary city limits; and

**WHEREAS**, Section 160A-31 of the General Statutes of North Carolina provides that the sufficiency of the petition shall be investigated by the city clerk before further annexation proceedings may take place; and

**WHEREAS**, the Asheboro City Council has decided to proceed with the statutorily prescribed voluntary annexation process.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Asheboro that the city clerk is hereby directed to investigate the sufficiency of the above-described annexation petition and to certify to the council the results of her investigation.

**This Resolution was adopted by the Asheboro City Council in open session during a regular meeting held on January 6, 2022.**

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

**ATTEST:**

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

In anticipation of the council's above-stated action, the city clerk prepared the following certification in advance of the council meeting and submitted this certificate for the council's review.

**CERTIFICATE OF SUFFICIENCY**  
**(Annexation Petition Submitted by Crystal and Charles Coldiron)**

**TO:** The City Council of the City of Asheboro, North Carolina

I, Holly H. Doerr, am the City Clerk for the City of Asheboro. I hereby certify that, with the assistance of staff members in various city departments, I have investigated the annexation petition submitted by Crystal P. McClelland Coldiron and her husband, Charles Coldiron (the "Petitioners"). I further certify that the following paragraphs accurately state the information obtained during the course of my investigation of the annexation petition.

The Petitioners have requested the annexation into Asheboro of a parcel of land (Randolph County Parcel Identification Number 7761523176) they own at 1417 E. Salisbury Street, Asheboro, North Carolina 27203 (the "Annexation Tract"). This land is contiguous to the primary corporate limits of the City of Asheboro.

On the basis of my investigation, I have concluded that all of the owners of the real property lying in the Annexation Tract have signed the prescribed petition. The petition appears to be sufficient to satisfy the provisions of Section 160A-31 of the General Statutes of North Carolina.

**IN WITNESS WHEREOF**, I have hereunto set my hand and affixed the seal of the City of Asheboro in order to make this certification effective as of January 6, 2022.

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

**(b) Resolution Setting the Date for a Public Hearing**

In light of the preceding council action and the submittal of the city clerk's certification document, Mr. Leonard then recommended adoption of a resolution setting the date for a public hearing on the question of the requested annexation. Council Member Bell moved, and Council Member Swiers seconded the motion, to adopt the following resolution by reference. Council Members Bell, Burks, Heath, McCaskill, Moffitt, Redding, and Swiers voted aye. There were no dissenting votes.

**RESOLUTION NUMBER** \_\_\_\_\_ **04 RES 1-22** \_\_\_\_\_

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

**RESOLUTION SETTING THE DATE FOR A PUBLIC HEARING ON THE QUESTION OF THE REQUESTED ANNEXATION OF LAND OWNED BY CRYSTAL AND CHARLES COLDIRON**

**WHEREAS**, Crystal P. McClelland Coldiron and her husband, Charles Coldiron, (the "Petitioners") have properly submitted a petition requesting the annexation into Asheboro of a parcel of land (Randolph County Parcel Identification Number 7761523176) they own at 1417 E. Salisbury Street, Asheboro, North Carolina 27203; and

**WHEREAS**, pursuant to a previously adopted resolution, the city clerk has investigated the sufficiency of the annexation petition; and

**WHEREAS**, the city clerk has certified the sufficiency of the petition for proceeding with setting the date for a public hearing on the question of the requested annexation pursuant to Section 160A-31 of the General Statutes of North Carolina.

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

**Section 1.** A public hearing on the question of annexing the territory described in Section 2 of this Resolution will be held in the council chamber on the second floor of Asheboro City Hall at 146 North Church Street, Asheboro, North Carolina 27203 during a regular meeting of the Asheboro City Council that will begin at 7:00 p.m. on February 10, 2022.

**Section 2.** The territory proposed for annexation is described by metes and bounds as follows:

*Asheboro Township, Randolph County, North Carolina:*

*BEGINNING on the existing Asheboro primary city limits line at a 5/8-inch existing iron rod down 6 inches in the ground in the northern margin of the 60-foot public right-of-way for East Salisbury Street (North Carolina Secondary Road 2237) at the southeast corner of the Crystal P. McClelland Coldiron and Charles Coldiron property described in the Office of the Register of Deeds for Randolph County, North Carolina (the "Randolph County Registry") in Deed Book 1633 at Page 1074 (the real property described in Deed Book 1633, Page 1074, Randolph County Registry (this property is shown as Lots 4A, 5A, 6A, 7A, 8A, 9A, and portions of Lots 10A and 11A on a plat of survey recorded in Plat Book 4, Page 16, Randolph County Registry) is the tract of land for which Crystal P. McClelland Coldiron and Charles Coldiron have requested annexation into the City of Asheboro, and this tract or parcel of land will be hereinafter referred to as the "Annexation Tract"), the described beginning point is located by means of the North Carolina Coordinate System at the coordinates of North 712,124.13 Ground US Survey Feet and East 1,765,530.57 Ground US Survey Feet (NAD 83 (2011)); thence, from the beginning point, following the northern margin of the public right-of-way for East Salisbury Street along the existing Asheboro primary city limits line North 85 degrees 46 minutes 49 seconds West 149.51 feet to an existing axle at the southeast corner of the Charles Morris Ridley property described in Deed Book 2748, Page 2762, Randolph County Registry and shown in Plat Book 170, Page 46, Randolph County Registry; thence departing from the northern margin of the public right-of-way for East Salisbury Street and following the existing*



**(b) Contract Award – Installation of a New Playing Surface**

City Engineer Michael Leonard, PE recommended that the council award a contract to FieldTurf, USA for the installation of a new playing surface at McCrary Ballpark. The proposed contract in the amount of \$1,440,475.00 encompasses synthetic turf replacement for the infield and outfield.

This contract was procured by means of a national competitive bidding group purchasing program known as the Keystone Purchasing Network.

On the basis of the recommendation from city staff, Council Member Bell moved, and Council Member Heath seconded the motion, to award the contract to FieldTurf, USA for the above-stated amount. Council Members Bell, Burks, Heath, McCaskill, Moffitt, Redding, and Swiers voted aye. There were no dissenting votes.

A copy of the approved proposal is on file in the city clerk's office.

**12. Budget Items – McCrary Ballpark Capital Improvements Project**

**(a) General Fund Budget Ordinance Amendment**

Finance Director Deborah Reaves recommended the adoption, by reference, of the following ordinance to amend the general fund. In response to this recommendation, Council Member Bell moved, and Council Member Burks seconded the motion, to adopt the ordinance presented by Ms. Reaves. Council Members Bell, Burks, Heath, McCaskill, Moffitt, Redding, and Swiers voted aye. There were no dissenting votes.

**03 ORD 1-22**

**ORDINANCE TO AMEND  
THE GENERAL FUND  
FY 2021-2022**

WHEREAS, the City of Asheboro McCrary Baseball Park Improvements fund was established September 2021, and

WHEREAS, the City of Asheboro has received \$1.1 M in citizen contributions toward the installation of a new playing field surface at the ball park, and

WHEREAS, the contract for services from FieldTurf USA, Inc., an approved vendor of the Keystone Purchasing Network, of which the City of Asheboro is a member, is for \$1,440,475.00, and

WHEREAS, the City desires to appropriate \$341,000 in Fund balance to be transferred to the McCrary Baseball Park Improvements Fund to make up the difference between citizen contributions and the cost of the new field playing surface, and

WHEREAS, based on CPL Architecture Engineering plans, the construction of a retaining wall is needed before proceeding with other planned improvements at the McCrary Baseball Park and the lowest responsive bid to construct the retaining wall is for \$455,600, and

WHEREAS, the City of Asheboro wishes to appropriate General Fund balance in the amount of \$455,600 for the retaining wall, and

WHEREAS, the City desires to allocate funding and appropriate for the expense in the McCrary Baseball Park Improvements Fund, and

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

THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ASHEBORO, NORTH CAROLINA:

Section 1: The following revenues line item is increased:

<u>Line Item</u>	<u>Description</u>	<u>Amount</u>
10-399-0000	Fund Balance Appropriation- Field surface	341,000
10-399-0000	Fund Balance Appropriation- Retaining wall	456,000
		<hr/> \$797,000

Section 2: The following expense line item is increased:

<u>Line Item</u>	<u>Description</u>	<u>Amount</u>
10-620-6500	Contribution to McCrary Baseball Park Improvements Fd	\$797,000

Adopted this the 6<sup>th</sup> day of January 2022.

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

ATTEST:

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

**(b) Ordinance Amending the McCrary Baseball Park Improvements Fund**

Finance Director Deborah Reaves recommended the adoption, by reference, of an ordinance to amend the following McCrary Baseball Park Improvements Fund. In response to this recommendation, Council Member Bell moved, and Council Member Burks seconded the motion, to adopt the ordinance presented by Ms. Reaves. Council Members Bell, Burks, Heath, McCaskill, Moffitt, Redding, and Swiers voted aye. There were no dissenting votes.

**04 ORD 1-22**

**ORDINANCE TO AMEND  
THE MCCRARY BASEBALL PARK IMPROVEMENTS FUND  
FY 2021-2022**

WHEREAS, the City of Asheboro McCrary Baseball Park Improvements fund was established September 2021, and

WHEREAS, the City of Asheboro has received \$1.1 M in citizen contributions toward the installation of a new playing field surface, and

WHEREAS, the contract for services from FieldTurf USA, Inc., an approved vendor of the Keystone Purchasing Network of which the City of Asheboro is a member, is for \$1,440,475.00, and

WHEREAS, the City of Asheboro wishes to appropriate General Fund balance in the amount of \$341,000 for the difference between the citizen contributions and the contract expense, and

WHEREAS, based on CPL Architecture Engineering plans, the construction of a retaining wall is needed before proceeding with other planned improvements at the McCrary Baseball Park and the lowest responsive bid to construct the retaining wall is for \$455,600, and



No formal action was requested of the city council during this portion of the meeting, and none was taken.

A copy of the report presented by the city engineer is on file in the city clerk's office.

**14. Discussion of the following items**

**(a) The Updating of Council Photos**

Mayor Smith announced that the photos of the city council members will be updated soon. City staff will update the council once more information is available.

**(b) Ethics training for the most recently elected/re-elected city officials.**

City Manager Ogburn reminded the newly elected and re-elected officials of city staff's availability to help with the procurement of the ethics training course mandated by state law.

**15. Upcoming events and items not on the agenda**

Mayor Smith led a brief discussion of upcoming events within the city government and the community in general.

No formal action was requested of the city council during this portion of the meeting, and none was taken.

**There being no further business, the meeting was adjourned at 9:43 pm.**

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**Holly H. Doerr, CMC, NCCMC, City Clerk**

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**David H. Smith, Mayor**