

**REGULAR MEETING  
ASHEBORO CITY COUNCIL  
COUNCIL CHAMBER, MUNICIPAL BUILDING  
THURSDAY, FEBRUARY 10, 2011  
7:00 p.m.**

\*\*\*\*\*

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

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

John N. Ogburn, III, City Manager  
Edsel L. Brown, Code Enforcement Officer  
Dumont Bunker, P.E., City Engineer  
Richard L. Cox, Jr., Community Development Department Intern  
Holly H. Doerr, CMC, City Clerk/Senior Legal Assistant  
John L. Evans, Senior Planner  
Casandra M. Fletcher, Marketing Specialist  
Anthony L. Fruitt, Fire Inspector  
R. Wendell Holland, Jr., Zoning Administrator  
Michael E. Jones, Chief Fire Inspector  
Justin T. Luck, Planner  
R. Reynolds Neely, Jr., Community Development Director  
Deborah P. Reaves, Finance Director  
Michael D. Rhoney, Water Resources Director  
Jeffrey C. Sugg, City Attorney  
Sanford A. Vuncannon, Jr., Police Captain

**1. Call to order.**

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

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

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

**3. Appearance and recognition of guests and citizens.**

Mayor Smith welcomed everyone in attendance.

**4. Presentation of the 2010 Central Region Operations and Maintenance Excellence Award to the Asheboro Wastewater Treatment Plant.**

Mr. John Kiviniemi, Chair of the Board of Trustees for the North Carolina American Water Works Association and Water Environment Association, presented the Central Region Operations and Maintenance Excellence Award for 2010 to the city's wastewater treatment plant staff for their diligent work in the operation and maintenance of the wastewater treatment facility.

**5. The annual report from Ms. Bonnie Renfro, President of the Randolph County Economic Development Corporation.**

Ms. Bonnie Renfro, President of the Randolph County Economic Development Corporation, presented the corporation's annual report for 2010. Throughout the year, approximately 564 new jobs were created with a new capital investment of \$206,700,000 by 25 companies. A copy of the annual report presented by Ms. Renfro is on file in the City Clerk's office.

**6. Announcement of a special meeting to be held by the Asheboro City Council on Thursday, February 17, 2011 at 5:30 p.m. in the Council Chamber.**

Mayor Smith announced that a special meeting of the Asheboro City Council will be held on Thursday, February 17, 2011 at 5:30 p.m. in the Council Chamber.

**7. Consent agenda:**

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

- (a) **The minutes of the City Council's regular meeting on January 6, 2011.**
- (b) **The minutes of the City Council's special meeting on January 25, 2011.**
- (c) **The temporary closure of portions of the following public streets for The Human Race on Saturday, March 26, 2011: West Academy Street, South Church Street, West Walker Avenue, Brady Avenue, Macon Street, Britt Avenue, Uwharrie Street, Dixon Avenue, and Sunset Avenue.**
- (d) **The renewal of a Services Agreement with Marlowe and Company, LLC, which is a governmental affairs consulting and lobbying firm.**

[A copy of the approved Services Agreement is on file in the City Clerk's office.]

- (e) **The City of Asheboro Fire Prevention Ordinance.**

02 ORD 2-11

**CITY OF ASHEBORO FIRE PREVENTION ORDINANCE**

**WHEREAS**, the fire prevention regulations enacted by the Asheboro City Council are found in Chapter 95 of the Code of Asheboro; and

**WHEREAS**, in order to enhance the effectiveness and efficiency of the city's efforts to promote the health, safety, and general welfare of the urban community located within the jurisdiction of the municipal corporation, the City of Asheboro created a Community Development Division with responsibility for the administration and enforcement of various land use regulations, specifically including fire prevention; and

**WHEREAS**, in order to fully implement the organizational changes envisioned as part of the creation of the Community Development Division, Chapter 95 of the Code of Asheboro must be updated to reflect the transfer of the Fire Prevention Bureau from the Asheboro Fire Department to the Community Development Division;

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

**Section 1.** Chapter 95 of the Code of Asheboro is hereby rewritten as follows:

**§ 95.01 FIRE PREVENTION BUREAU**

~~The N.C. State Fire Prevention Code shall be enforced by the Fire Marshal's Office, which is hereby established within the Fire Department and which shall be operated under the general supervision of the Chief of the Fire Department.~~

**§ 95.02 FIRE MARSHAL**

~~The Fire Marshal shall be appointed by the City Manager on the basis of examination to determine his qualifications. His appointment shall continue during good behavior and satisfactory service and he shall not be removed from office except for cause after public hearing; provided, that the City Manager may designate the Chief of the Fire Department to serve ex-officio as Fire Marshal.~~

**§ 95.03 FIRE INSPECTORS**

~~The Chief of the Fire Department may detail such members of the Fire Department for duty with the Fire Marshal's Office as inspectors as shall from time to time be necessary. The Chief of the Fire Department shall recommend to the City Manager the employment of technical inspectors, who, when such authorization is made, shall be selected through an examination to determine their fitness for the position.~~

**§ 95.04 FIRE CODE PERMIT FEES**

~~The Fire Marshal may prepare a schedule of reasonable fees for the granting of permits and the making of inspections required by the fire prevention code which, when approved by the City Manager and by the City Council, shall be maintained on file in the office of the Chief of the Bureau of Fire Prevention, and a copy thereof shall be maintained on file in the office of the City Clerk. Payment of the fees set out in such schedule shall be made to the officer designated by the City Manager to collect such fees.~~

**§ 95.05 FLAMMABLE LIQUID STORAGE RESTRICTIONS**

~~(A) — The limits referred to in the fire prevention code in which storage of flammable liquids in outside aboveground tanks is prohibited, are hereby established as follows: All areas within the city with the exception of industrial zones as defined in the zoning ordinance located outside the fire limits; provided, that the provisions of this section shall in no way eliminate the requirement that a special permit be obtained as required by the zoning ordinance.~~

~~(B) — The limits referred to in the fire prevention code, in which new bulk plants for flammable or combustible liquids are prohibited, are hereby established as follows: All areas within the city with the exception of industrial zones as defined in the zoning ordinance located outside the fire limits provided, that the provisions of this section shall in no way eliminate the requirement that a special permit be obtained as required by the zoning ordinance.~~

**§ 95.06 LIQUEFIED PETROLEUM GAS STORAGE RESTRICTIONS**

~~The limits referred to in the fire prevention code, in which bulk storage of liquefied petroleum gas is restricted, are hereby established as follows: All areas within the city with the exception of industrial districts as defined in the zoning ordinance and which are located outside the fire limits.~~

**§ 95.07 EXPLOSIVES AND BLASTING AGENT STORAGE RESTRICTIONS**

~~The limits referred to in the fire prevention code, in which storage of explosives and blasting agents is prohibited are hereby established as the corporate limits of the city as such limits may now or hereafter exist.~~

**§ 95.08 BURNING TRASH**

~~No person shall burn or cause to be burned any trash, refuse, shavings, paper, leaves, litter or other material of any kind outside any houses on or in any street, sidewalk, lot or yard; provided, that it shall be permissible to burn if conditions of state pollution control laws can be met.~~

**§ 95.09 ASSISTANCE AT FIRES BY NON-MEMBERS**

~~During the continuance of any fire, the Chief and Assistant Chief of the Fire Department and each of the captains of the Department shall have power to call on any and all persons to assist in extinguishing such fire, or in removing any goods, wares, merchandise or furniture from any building on fire, or in danger, to some place of safety. No person shall fail to obey any such order given for the purpose aforesaid.~~

**§ 95.10 USE OF PERSONNEL AND APPARATUS OUTSIDE CITY RESTRICTED**

~~The Fire Department shall not respond to requests relating to individual residential dwellings located outside the city. The Fire Department is authorized to respond to requests relating to schools, churches, and federal, state or county owned property located outside the city and in "mutual aid" to organized fire departments; provided, that at the time of receipt of such request, city firefighters and fire apparatus can safely be dispatched without endangering the protection of people and property within the city.~~

**§ 95.11 CONTRACTS FOR FIRE PROTECTION**

~~The City Manager is authorized to enter into contracts for the protection of commercial and industrial properties outside of the city that are served by the city water system and are within 500 feet of a hydrant; provided, that such contracts are prepared substantially in the following language:~~

~~NORTH CAROLINA~~

~~— FIRE PROTECTION CONTRACT~~

~~RANDOLPH COUNTY~~

~~This Agreement, made this the \_\_\_\_ day of \_\_\_\_\_, 19\_\_, by and between the City of Asheboro, a municipal corporation of Randolph County, North Carolina, hereinafter called the "city",~~

~~and \_\_\_\_\_ of Randolph County, North Carolina, hereinafter called the "property owner":~~

WITNESSETH:

~~That subject to the terms and conditions hereinafter set forth, the city hereby agrees to make available to the property owner its firefighting equipment and the personnel of its Fire Department in case of fire upon the premises of the property owner described as follows: (insert description of property to which contract relates.)~~

~~The terms and conditions of this agreement are as follows:~~

~~1. This agreement shall continue for a period of one year from date and shall be renewable annually at the option of the property owner upon payment of all charges which may be due the city under this contract. The city reserves the right to terminate this agreement at any time the insurance rates for property within the city become in danger of being adversely affected by the obligations of this contract or by giving written notice to the property owner 30 days prior to any annual renewal date.~~

~~2. The property owner shall pay to the city an annual fee of \$.10 per \$100 of the assessed valuation of the premises to be protected with the minimum fee payable being \$100. In addition to such fees, there shall be a charge of \$250 for each call lasting 1½ hours or less, and a charge of \$100 for each additional hour or fractional part of an hour thereafter. The time of such call shall be measured from the sound of the alarm.~~

~~3. For the privilege of connecting to the A.D.T. System of the Fire Department there shall be a charge of \$50 per year.~~

~~4. The property owner shall pay a charge of \$50 for false alarm calls and shall be responsible for all fire alarm calls made to the premises above described irrespective of who caused the alarm to be sounded.~~

~~5. It is understood and agreed that the primary responsibility of the city is to the taxpayers of the city and the Chief of the Fire Department or his authorized representative shall have the right to dispatch in answer to calls from outside the city limits only such fire fighting equipment and personnel as shall be considered unnecessary for the protection of persons and property inside the city limits. It is further understood and agreed that the Chief of the Fire Department or his authorized representative shall have the right to withdraw equipment and personnel from a fire on the above described premises of the property owner if he deems it necessary for the protection of persons and property within the city.~~

~~IN WITNESS WHEREOF, the parties have executed this instrument in duplicate originals, one to be retained by each of the parties, the day and year first above written.~~

CITY OF ASHEBORO

By: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
City Manager

\_\_\_\_\_  
Property Owner

(City seal to be affixed)

**§ 95.12 RIDING ON FIRE DEPARTMENT APPARATUS**

~~No person other than a bona fide member of the Fire Department shall mount any fire engine, vehicle or apparatus before it leaves the station or while on its way to or from a fire, or at any other time, unless by permission of the driver or officer in command thereof.~~

**§ 95.01 ADOPTION OF THE NORTH CAROLINA FIRE PREVENTION CODE**

(A) Generally. This chapter of the Code of Asheboro shall be referred to as the City of Asheboro Fire Prevention Ordinance. For the purpose of prescribing regulations governing conditions that are hazardous to life and property because of fire and explosion, the North Carolina Fire Code, current edition, adopted by the North Carolina Building Code Council is hereby adopted and made applicable within the territorial jurisdiction of the city as the City of Asheboro Fire Prevention Ordinance. A copy of the North Carolina Fire Code is on file in the office of the Chief Fire Inspector for the City of Asheboro.

(B) Appendices. The following appendices to the North Carolina Fire Code, current edition, are hereby adopted and made applicable within the territorial jurisdiction of the city as part of the City of Asheboro Fire Prevention Ordinance:

- (1) Appendix B – Fire-Flow Requirements for Buildings
- (2) Appendix C – Fire Hydrant Locations and Distribution
- (3) Appendix F – Hazard Ranking
- (4) Appendix H – Test Requirements for Flame-Retardant Chemicals Used on Christmas Trees

(C) Permits. In addition to any and all permits mandated by the North Carolina Fire Code, the following operational permits, which are listed as optional within the North Carolina Fire Code, are hereby mandated within the territorial jurisdiction of the city as part of the City of Asheboro Fire Prevention Ordinance:

- (1) Open Burning
- (2) Open Flames and Torches
- (3) Places of Assembly

(D) Amendments. When adopted and published by the North Carolina Building Code Council, amendments to the provisions of the North Carolina Fire Code that are adopted as part of the City of Asheboro Fire Prevention Ordinance shall be applicable within the territorial jurisdiction of the city on the effective date prescribed for the amendment(s) by the North Carolina Building Code Council.

#### **§ 95.02 BURNING OF LEAVES, BRUSH, AND TRASH**

Except as authorized by this section, the burning of leaves, brush, trash, or any other refuse is prohibited within the corporate limits. The burning of brush for the purpose of clearing a large open area is permitted if, and only if, the proper permit has been issued by the Fire Prevention Bureau in accordance with all applicable laws, specifically including without limitation the air quality laws.

#### **§ 95.03 FIRE PREVENTION BUREAU**

The City of Asheboro Fire Prevention Bureau is hereby established within the city's Community Development Division. The Chief Fire Inspector, under the general supervision of the Community Development Director, shall be the chief administrator of the Fire Prevention Bureau and as such shall supervise the fire inspectors assigned to the Fire Prevention Bureau. In order to gain and retain employment within the Fire Prevention Bureau, the Chief Fire Inspector and the fire inspectors under his or her supervision must satisfy the requirements established by the North Carolina Code Officials Qualification Board for employment as an official engaged in the enforcement of the North Carolina State Building Code.

#### **§ 95.04 COMPLIANCE**

Compliance with the provisions of the City of Asheboro Fire Prevention Ordinance, specifically including the North Carolina Fire Code, shall be enforced by the City of Asheboro Fire Prevention Bureau. Failure to comply with any of the regulations prescribed by this ordinance, specifically including without limitation the adopted regulations found in the North Carolina Fire Code, shall be unlawful. Any and all remedies authorized by law for noncompliance with the Fire Prevention Ordinance and the North Carolina Fire Code, including without limitation the issuance of civil penalty citations, may be exercised for the purpose of obtaining compliance with the applicable laws and regulations.

#### **§ 95.05 PERMIT FEES**

During the municipal corporation's annual budget process, the Chief Fire Inspector, under the general supervision of the Community Development Director, is authorized to submit to the City Manager a schedule of fees for permits issued by personnel in the Fire Prevention Bureau. If the City Manager deems the schedule of permit fees submitted by the Chief Fire Inspector to be reasonable, the Manager may submit the proposed schedule of permit fees to the City Council for review. If a proposed schedule of permit fees is adopted by the City Council, the City Manager shall designate the city official to whom the approved permit fees are to be paid. A copy of the approved schedule of permit fees shall be maintained in the office of the City Clerk and in the office of the Chief Fire Inspector.

#### **§ 95.06 NOTICES OF VIOLATION AND REINSPECTION FEES**

(A) Notices of Violation. When an inspector from the Fire Prevention Bureau discovers a violation of the City of Asheboro Fire Prevention Ordinance, specifically including without limitation the adopted provisions of the North Carolina Fire Code, a notice of violation may be issued to the person(s) and/or legal entity(ies) responsible for the violation(s). Such a notice shall state, at a minimum, the nature of the violation(s), the corrective action(s) that must be taken in order to abate the violation(s), and the date when a reinspection will be conducted. The date of a reinspection shall be no less than ten (10) business days and no more than thirty (30) business days from the date of service of the notice of violation on the offender by means of personal service or certified mail, return receipt requested. During this reinspection, if a violation has not been corrected, the person(s) and/or legal entity(ies) responsible for the violation(s) may be issued a final notice of violation. A final notice of violation shall state, at a minimum, the nature of the continuing violation(s), the corrective action(s) that must be taken in order to abate the violation(s), and the date when another reinspection will be conducted. The date of a reinspection that is scheduled subsequent to the issuance of a final notice of violation shall be no less than ten (10) business days and

no more than thirty (30) business days from the date of service of the final notice of violation by means of personal service or certified mail, return receipt requested. After the issuance of a final notice of violation, the inspectors within the Fire Prevention Bureau shall continue to conduct reinspections at a frequency of not less than ten (10) business days and no more than thirty (30) business days between inspections until all violations are corrected.

(B) *Reinspection Fees.* In order to recover the costs associated with reinspections necessitated by the failure to correct a violation, a fee of thirty-five dollars (\$35.00) per reinspection shall be assessed to each offender for the second reinspection and each subsequent reinspection that is conducted by inspectors in the Fire Prevention Bureau during the course of an on-going enforcement action.

#### **§ 95.07 REMEDIES AND PENALTIES**

(A) *Citations.* After a final notice of violation has been issued and a reinspection reveals that a violation has not been corrected, the person(s) or legal entity(ies) responsible for the violation(s) may be issued a civil penalty citation for each offense. On and after the date of the reinspection conducted subsequent to the service of the final notice of violation, the offender will be guilty of an additional and separate offense for each day that a violation continues uncorrected, and each offender that receives a civil penalty citation is subject to a cumulative penalty for each and every offense. A single civil penalty citation issued on the date of a reinspection may assess the sum of the civil penalties incurred by the violator for each day that a violation went uncorrected during the time period specified in the civil penalty citation. If the recipient of a civil penalty citation fails to pay the specified penalty within ten (10) business days of the date of service of the civil penalty citation by means of personal service or by means of certified mail, return receipt requested, the city may initiate a civil action in the nature of debt in order to recover the civil penalties assessed against the offender. The amount of the civil penalty per offense shall be calculated as follows:

- (1) *Non-Life Safety.* The civil penalty for each non-life safety offense that is uncorrected as of the date of the post final notice of violation reinspection shall be fifty dollars (\$50.00) per offense on and after the date of service of a civil penalty citation by means of personal service or certified mail, return receipt requested. This penalty of fifty dollars (\$50.00) per offense shall continue to accrue until the earlier of either the date upon which the offender notifies the Fire Prevention Bureau of the correction of the violation or the calendar day immediately preceding the date of the first reinspection conducted after the issuance of a civil penalty citation. If the violation that triggered the first civil penalty citation has not been corrected as of the date of this reinspection, the civil penalty for each continuing non-life safety offense shall be one hundred dollars (\$100.00) per offense from the date of service on the offender of a civil penalty citation reflecting the enhanced penalty by means of personal service or certified mail, return receipt requested, to the date on which the Fire Prevention Bureau is notified of the correction of the violation.
- (2) *Life Safety Other Than Occupancy Violations and Blocked Exits.* Except for occupancy violations and blocked exits, the civil penalty for each life safety offense that is uncorrected as of the date of the post final notice of violation reinspection shall be one hundred fifty dollars (\$150.00) per offense on and after the date of service of a civil penalty citation by means of personal service or certified mail, return receipt requested. This penalty of one hundred fifty dollars (\$150.00) per offense shall continue to accrue until the earlier of either the date upon which the offender notifies the Fire Prevention Bureau of the correction of the violation or the calendar day immediately preceding the date of the first reinspection conducted after the issuance of a civil penalty citation. If the violation that triggered the first civil penalty citation has not been corrected as of the date of this reinspection, the civil penalty for each continuing life safety offense shall be three hundred dollars (\$300.00) per offense from the date of service on the offender of a civil penalty citation reflecting the enhanced penalty by means of personal service or certified mail, return receipt requested, to the date on which the Fire Prevention Bureau is notified of the correction of the violation.
- (3) *Life Safety – Occupancy Violations.* If an inspector discovers overcrowding during more than one (1) inspection during a rolling 12-month period, the offender who grants admission to any person beyond the approved capacity of a building or portion thereof shall be subject to the immediate assessment of civil penalties. The person or entity receiving such a civil penalty citation shall be subject to the continuing immediate assessment of civil penalties for overcrowding until a 12-month time period has passed without any violations pertaining to overcrowding. The amount of the civil penalty for overcrowding shall be one hundred dollars (\$100.00) per person in excess of the posted occupancy. No civil penalty shall be assessed pursuant to this subsection unless the offender has been previously served with a written warning for overcrowding within the relevant 12-month period by means of personal service or by means of certified mail, return receipt requested. None of the provisions found within this section shall be construed or deemed to prevent an inspector in the Fire Prevention Bureau from immediately exercising any authority that he or she may possess under the applicable laws to summarily abate overcrowding.
- (4) *Life Safety – Locked, Blocked, or Obstructed Exits.* If an inspector discovers locked, blocked, or obstructed exits during more than one (1) inspection during a rolling 12-month period, the offender shall be subject to the immediate assessment of civil penalties. The person or entity receiving such a civil penalty citation shall be subject to the continuing immediate assessment of civil penalties for locked, blocked, or obstructed exits until a 12-month time period has passed

without any violations pertaining to exits. The amount of the civil penalty for life safety violations pertaining to exits shall be five hundred dollars (\$500.00) per locked, blocked, or obstructed exit. No civil penalty shall be assessed pursuant to this section unless the offender has been previously served with a written warning for locking, blocking, or obstructing an exit within the relevant 12-month period by means of personal service or by means of certified mail, return receipt requested. None of the provisions found within this section shall be construed or deemed to prevent an inspector in the Fire Prevention Bureau from immediately exercising any authority that he or she may possess under the applicable laws to summarily correct a locked, blocked, or obstructed exit.

(B) Any person who violates the provisions of the City of Asheboro Fire Prevention Ordinance, including without limitation the adopted provisions of the North Carolina Fire Code, is guilty of a misdemeanor as provided by Section 14-4 of the North Carolina General Statutes and shall be fined not more than five hundred dollars (\$500.00).

(C) *Equitable Remedy.* The City of Asheboro Fire Prevention Ordinance, including without limitation the adopted provisions of the North Carolina Fire Code, may be enforced by an appropriate equitable remedy issuing from a court of competent jurisdiction.

(D) *Availability of Combination of Remedies.* The City of Asheboro Fire Prevention Ordinance, including without limitation the adopted provisions of the North Carolina Fire Code, may be enforced by any one, all, or a combination of the remedies authorized and prescribed herein. No provision within the Fire Prevention Ordinance shall be construed to impair or limit the ability of a fire inspector to take any otherwise lawful enforcement or abatement action available to the inspector for the purpose of abating a situation or condition that poses an imminent threat to life and safety.

(E) *Responsible Parties.* The owner, tenant, and occupant of any building or land or part thereof and any architect, builder, contractor, agent, or any other person who participates or acts in concert, assists, directs, creates, or maintains any condition in violation of the City of Asheboro Fire Prevention Ordinance, including without limitation the adopted provisions of the North Carolina Fire Code, may be held responsible for such violation(s) and are subject to the penalties and remedies herein provided.

(F) *Appeals.* In accordance with Section 160A-434 of the North Carolina General Statutes, an appeal from any order or decision of an inspector in the City of Asheboro Fire Prevention Bureau pertaining to the North Carolina State Building Code, which includes the North Carolina Fire Code, shall be taken within a period of ten (10) days after the issuance of the contested order or decision to the Commissioner of Insurance or his designee or other official specified in Section 143-139 of the North Carolina General Statutes.

(G) *Exception.* Notwithstanding any other provision in this section, the city will not initiate a civil action in the nature of debt against the State of North Carolina or any of its political subdivisions in order to recover assessed civil penalties. No other remedy authorized by this section for a violation of the Asheboro Fire Prevention Ordinance is impaired or limited by this exception.

#### **§ 95.08 SEVERABILITY**

If any section, subsection, sentence, clause, or phrase is, for any reason, held to be invalid, such decision shall not affect the validity of the remaining portions of the City of Asheboro Fire Prevention Ordinance.

**Section 2.** All ordinances and clauses of ordinances in conflict with this ordinance are hereby repealed.

**Section 3.** This ordinance shall take effect and be in force from and after March 1, 2011.

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

This ordinance was adopted by the Asheboro City Council in open session during a regular meeting held on February 10, 2011.

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

ATTEST:

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

- (f) **An ordinance setting July 14, 2011 as the date of the Council's regular meeting in July 2011.**

03 ORD 2-11

**AN ORDINANCE SETTING JULY 14, 2011, AS THE DATE OF THE ASHEBORO CITY COUNCIL'S REGULAR MEETING IN JULY 2011**

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

**WHEREAS**, the Thursday after the first Monday in July 2011 is July 7, 2011, which is in the middle of a week that citizens and elected officials traditionally use for vacations associated with the observance of the July the 4<sup>th</sup> holiday; and

**WHEREAS**, in an effort to lessen the possibility of other events and obligations negatively impacting attendance at the regular council meeting, the members of the Asheboro City Council have agreed to reschedule the regular meeting in July 2011 from July 7, 2011, to July 14, 2011;

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

**Section 1.** The regular meeting of the Asheboro City Council in July 2011 shall be held in the Council Chamber of the Asheboro Municipal Building at 7:00 p.m. on the 14<sup>th</sup> day of July, 2011.

**Section 2.** All ordinances and clauses of ordinances in conflict with this ordinance are hereby repealed to the extent that such ordinances conflict with the intent of the Asheboro City Council to hold its regular meeting in July 2011 on July 14, 2011.

**Section 3.** This ordinance shall become effective upon adoption and shall sunset on July 15, 2011.

**Section 4.** With the exception of scheduling the Asheboro City Council's July 2011 regular meeting for July 14, 2011, the current provisions of Section 31.04 of the Code of Asheboro remain in full force and effect.

This ordinance was adopted in open session during a regular meeting of the Asheboro City Council that was conducted on February 10, 2011.

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

ATTEST:

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

**OLD BUSINESS:**

8. **Recreational Vehicle Resort, which includes an agricultural tourism facility, proposed for the Phyllis E. Thomas property at 2513 Old Cedar Falls Road:**

- (a) **SUB-11-01: Variance from Article XII, Section IV, B (Improvements) of the subdivision ordinance as well as sketch design review.**

Mr. Neely presented the sketch design for the proposed Reserves at the Vineyards. Mr. Brian Thomas requested the approval of a sketch design plat for a subdivision (Reserves at the Vineyards) to be located at 2513 Old Cedar Falls Road. The proposed subdivision contains approximately 106.13 acres of land, consisting of approximately 106 lots. The subdivided lots within the proposed development have an average lot size of 3,205 square feet.

As part of the sketch design review process, the Applicant requested a variance from the Subdivision Ordinance. Specifically, a variance was sought from Section IV. B.1 of Article XII (Recreational Vehicle Resorts).

Article XII. B.1 of the Asheboro Subdivision Ordinance provides as follows:

All improvements required in this ordinance shall apply to Recreational Vehicle Resorts regardless of private ownership of streets and utilities, except:

Private streets shall be designed and built according to the latest revision of the NC DOT Subdivision Roads Minimum Construction Standards Manual. Curb and gutter is not a requirement for private streets within RV Resorts. Public streets shall be designed and built according to the standards in Article IX of this ordinance.

The above-referenced NC DOT manual does not have a standard for a one-way street. The listed street width is 22 feet.

The Applicant has proposed, for a portion of the subdivision, one-way streets with a width of 16 feet. The variance request is limited to the issue of allowing these 16-foot wide one-way streets.

The Planning Board recommended to the Council that the requested variance be approved. Additionally, the Planning Department staff and the Planning Board recommended approval of the sketch design plat.

Upon motion by Mr. Moffitt and seconded by Dr. Fountain, Council voted unanimously to follow the Planning Board's recommendation and granted the requested variance from the subdivision ordinance.

Upon motion by Dr. Fountain and seconded by Mr. Burks, Council accepted the recommendation of the Planning Board and approved the sketch design plat for Reserves at the Vineyard.

(The aforementioned sketch design plat is on file in the City Clerk's office.)

**(b) SUP-11-01: Special Use Permit for a Recreational Vehicle Resort.**

Mayor Smith reopened the public hearing that was originally opened during the Council's regular meeting on January 6, 2011.

Mr. Neely, who was sworn in during the public hearing on January 6, 2011, presented the staff's analysis of the Applicant's request including the submitted site plan. The Applicant, Mr. Brian Thomas, requested a Special Use Permit for a Recreational Vehicle Resort that includes an agricultural tourism facility.

On behalf of the Applicant, Mr. Jon Megerian, Esq., and Mr. Jim Wright, a certified real estate appraiser, were sworn in and addressed the four standard tests. Mr. Hiram Marziano, P.E. and Mr. Wayne Thomas, who is the brother of the Applicant, were also sworn in to address any questions.

Mr. William Dula, a neighboring property owner, was sworn in and posed questions in regards to the time line for the construction of certain proposed amenities including, but not limited to, a banquet hall and an agricultural tourism facility. Additionally, Mr. Dula was concerned that long term residents would be living at the resort.

Ms. Jenny Smith, a neighboring property owner, posed certain questions regarding the proposed accessory residences. Additionally, Ms. Smith was concerned with the possibility of long term residents living at the resort.

Ms. Rosy Goldstein, a neighboring property owner, presented comments and concerns regarding clear cutting along the proposed site for the agricultural tourism facility. Ms. Goldstein prefers that the trees remain along her property. Ms. Goldstein also had concerns regarding the increase of traffic along Old Cedar Falls Road.

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

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

The formal findings of fact, conclusions of law, and order for this Special Use Permit will be entered by the Council in regular session on March 10, 2011. This order will reflect specific conditions imposed upon this permit as a consequence of the testimony presented during the public hearing.

**NEW BUSINESS:**

**9. Community Development Items:**

**(a) Consideration of designating as a Randolph County Historic Landmark the exterior of the 1938 City of Asheboro Municipal Building.**

Mayor Smith opened the public hearing on the following request.

Mr. Luck presented and recommended adoption, by reference, of an ordinance designating the exterior of the 1938 City of Asheboro Municipal Building as a local historic landmark in Asheboro, North Carolina. As part of his presentation, Mr. Luck included the resolution adopted by the Randolph County Historic Landmark Preservation Commission on January 26, 2011, to recommend the designation of the said exterior as a Local Historic Landmark.

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

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

**Ordinance Number** 04 ORD 2-11  
**Ordinance Designating the Exterior of the 1938 City of Asheboro Municipal Building, Which is Owned by the City of Asheboro, as a Local Historic Landmark in Asheboro, North Carolina**

**WHEREAS**, Chapter 160A, Article 19, Part 3C of the North Carolina General Statutes provides for the designation of local historic landmarks; and

**WHEREAS**, the City of Asheboro designated the Randolph County Historic Landmark Preservation Commission as a joint historic preservation commission on August 4, 2008, having the authority to exercise, within the planning jurisdiction of the City of Asheboro, all powers and duties given it by the Randolph County Historic Landmark Preservation Ordinance; and

**WHEREAS**, the Asheboro City Council has taken into full consideration all statements and information contained in the Landmark Designation Application for the 1938 City of Asheboro Municipal Building as submitted by the City of Asheboro and the Randolph County Historic Landmark Preservation Commission; and

**WHEREAS**, the North Carolina Department of Cultural Resources, State Historic Preservation Office, has been given the opportunity to review the application; and

**WHEREAS**, the Randolph County Historic Landmark Preservation Commission and the Asheboro City Council have held the required public hearings and published legal notices with mailings to adjoining property owners; and

**WHEREAS**, the Randolph County Historic Landmark Preservation Commission has adopted a unanimous resolution requesting the City of Asheboro to designate the exterior of the 1938 City of Asheboro Municipal Building as a local historic landmark; and

**WHEREAS**, the Asheboro City Council finds that the 1938 City of Asheboro Municipal Building meets the following specific criteria outlined in the adopting Ordinance establishing the Commission: (1) Critical Part of the City's Heritage by having value as an example of the cultural, economic, historic, and social heritage of Randolph County; (2) Exemplification of an architectural type distinguished by overall quality of design, detail, materials, and craftsmanship; (3) The location of the 1938 City of Asheboro Municipal Building provides a unique and distinctive structure representing an established and familiar visual presence in the City of Asheboro; and

**WHEREAS**, this property is more specifically described as follows:

That portion of the City of Asheboro property, upon which is located the 1938 City of Asheboro Municipal Building, at 146 North Church Street, PIN#'s 7751735132 and 7751736109, Asheboro North Carolina.

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

- 1: The property known as the exterior of the 1938 City of Asheboro Municipal Building, located at 146 North Church Street, within the planning jurisdiction of the City of Asheboro, North Carolina, is hereby designated as a Local Historic Landmark pursuant to Chapter 160A, Article 19, Part 3C, of the North Carolina General Statutes, and by inter-local agreement approved August 4, 2008, between the City of Asheboro and the County of Randolph.
- 2: That the exterior of the 1938 City of Asheboro Municipal Building may be materially altered, restored, remodeled, or demolished only following the issuance of a Certificate of

Appropriateness from the Historic Landmark Preservation Commission.

- 3: That nothing in this Ordinance shall be construed to prevent the ordinary maintenance or repair of any architectural feature in or on said property that does not involve a change of design, material or outer appearance thereof, after obtaining the necessary permits and official approval for said stated repair. Nothing herein shall prevent the construction, alteration, restoration, demolition, or removal of such feature when a building inspector or similar authorized official certifies to the Historic Landmark Preservation Commission that such action is required for the public safety because of an unsafe condition.
- 4: That a suitable sign may be posted indicating the designation as a Local Historic Landmark and containing appropriate information.
- 5: That the City of Asheboro, owner of the Historic Municipal Building, hereby accepts notice as required by the applicable law of this action, and directs that copies of this Ordinance be filed and indexed in the office of the Asheboro City Clerk, the Randolph County Register of Deeds, the Randolph County Tax Department, and both the City and County Planning and Inspections Departments as required by applicable law.

Upon the motion of Councilmember Carter, and a second by Councilmember Baker, the foregoing Ordinance was passed upon its first reading by a vote of 7 to 0.

This Ordinance shall be in full force and effect from and after the date of its passage.

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**CITY OF ASHEBORO  
NORTH CAROLINA**

**BY:** s/ David H. Smith  
David H. Smith, Mayor

Date of Adoption: February 10, 2011

**ATTEST:** s/ Holly H. Doerr  
Holly H. Doerr, CMC, City Clerk

**(b) Text Amendments to the zoning ordinance (Community Development Division Case No. RZ-11-01).** An application filed by the City of Asheboro to amend Articles 200, 300, 300A and 1100 of the Asheboro Zoning Ordinance.

Mr. Neely presented an overview of the Planning Department staff's proposed amendments to the Asheboro Zoning Ordinance. In essence, these text amendments are proposed to address site design and performance standards in the B2 (General Commercial) and TH (Tourism and Hospitality) districts. The proposed update to performance requirements relates to architectural, landscaping, and other site considerations.

The Planning Department's staff report describes the proposed amendments as follows:

These amendments reflect part of the overall plan to craft development regulations to each individual districts (sic), so that there is not only a desired character between the broader classifications of land use (i.e. residential, commercial, industrial), but an identifiable and context appropriate character among zoning districts within the same land use classification (i.e. commercial districts serving motoring public, an immediate neighborhood, or tourists each have their own unique character even though they are all commercial districts).

Mr. Luck and Mr. Cox summarized the purpose and benefits of the proposed text amendments.

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

The Planning Department staff and the Planning Board recommended approval of the proposed amendments in that “the proposed amendments will improve development standards and the organization of the Zoning Ordinance. Staff believes the proposed amendments are in the public interest in promoting a reasonable use of property.”

After discussion and upon motion by Mr. Baker and seconded by Mr. Burks, Council voted unanimously to continue the public hearing to the Council’s regular March meeting in order to give planning department staff more time to solicit input from the public in general and land development stakeholders in particular.

**10. Public comment period.**

Mr. Randhir Singh Gullzar with Shake night club on East Dixie Drive presented a report obtained from 911 Communications Center about noise complaints at his club. He presented this documentation and discussed the actions that he had taken in response to noise complaints that had been made to the council members by adjoining property owners during an earlier council meeting.

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

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

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

**05 RES 2-11**

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

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

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

**WHEREAS**, since the date of the last amendment of the manual on September 10, 2009, the human resources director and/or the personnel committee have recommended to the city manager that certain improvements be made to Articles I (General Conditions), VI (Benefits), VII (Leaves of Absence), XI (Disciplinary Actions), and XII (Grievance); and

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

**WHEREAS**, these amendments, which are attached to this resolution as EXHIBITS 1, 2, 3, 4, and 5, are hereby incorporated into this resolution by reference as if copied fully herein; and

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

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

This resolution was adopted by the Asheboro City Council in open session during a regular meeting held on the 10<sup>th</sup> day of February, 2011.

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

ATTEST:

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

**EXHIBIT 1**

**ARTICLE I. GENERAL PROVISIONS**

**Section 1. Administration**

The City Manager shall have the final responsibility for the administration of personnel policies and procedures. In addition, each supervisor and manager of the city has an affirmative duty to enforce the personnel policies and procedures.

**Section 2. Human Resources Department**

The Human Resources Department shall be under the direct supervision of the Human Resources Director. The office shall have as its primary responsibility the maintenance of all personnel records, recruiting, screening, and assisting division/department heads with hiring new employees and advising employees of all policies, benefits, and procedures.

**Section 3. Personnel Committee**

The purpose of the Personnel Committee will be to provide a representative body through which city employees, management and non-management alike, will be able to express their opinions as they relate to policies, benefits, and procedures.

Incumbents holding the following city positions shall serve as standing members of the committee: City Manager, Human Resources Director, Accounting Specialist, and Personnel Specialist. The Human Resources Director shall serve as Chairperson of the committee and will only vote on matters presented to the committee in the case of a tie.

In addition to the standing members of the committee, the Chairperson shall initially appoint ten (10) employees to serve on the committee. Ultimately, these persons shall serve staggered two (2) year terms. The Chairperson shall strive to maintain proportional representation of management and non-management employees on the committee at all times. The two (2) year term of service for each member of the committee shall commence on April 1st of the calendar year when the member is appointed. With the exception of the first five (5) members of the Personnel Committee to be appointed by the Chairperson, a member's term shall not expire until two (2) years later at midnight on March 31st. The first (5) employees appointed by the Chairperson to serve on the committee shall serve a term of one (1) calendar year that commences on April 1, 2002, and expires at midnight on March 31, 2003. The next group of five (5) appointees shall serve a full two (2) year term that commences on April 1, 2002, and expires at midnight on March 31, 2004. Prior to the expiration of terms of the first five (5) employees appointed by the committee, five (5) new members shall be appointed by the Chairperson and confirmed by a majority of the existing committee members whose terms do not expire until midnight on March 31. The same procedure shall be followed every year subsequent to 2003 in order to replace the five (5) members whose term of office expires at midnight on March 31st of a given year. A currently serving member of the committee shall be eligible for reappointment to another term of service. However, other than standing members of the committee, no member shall serve in excess of four (4) consecutive years on the committee. In the case of a member of the committee that is terminating his or her employment with the City or resigning from the committee prior to the expiration of his or her term, the Chairperson, subject to confirmation by a majority of the existing members of the committee, shall appoint an employee to serve the remainder of the unexpired term.

**Section 4. Departmental Supplementary Policies**

Any and all municipal policies that are not contained herein and that impact the uniform personnel system administered by the City of Asheboro shall be subordinate to the policies found in this manual. In the event of a conflict, the policies found in the City of Asheboro Personnel Policies and Procedures Manual shall control.

Divisions/Departments may develop additional policies and procedures to meet their unique personnel requirements. Additional policies must be approved by the Human Resources Director and/or City

Manager and in the event such policies conflict with the policies established herein, such additional policies and procedures shall be void.

#### **Section 5. Employment at Will**

The policies and procedures set forth in this manual do not entitle any **employee person** to be **employed** or remain employed by the City of Asheboro. Employees of the City of Asheboro are subject to the employment at will doctrine.

### **EXHIBIT 2**

#### **ARTICLE VI. BENEFITS**

##### **Section 1. Purpose**

The city recognizes the need to provide certain fringe benefits to city employees in order to recruit and maintain qualified personnel and as an incentive for seeking employment with the city.

##### **Section 2. Eligibility**

All full-time employees of the city and others as specifically provided herein shall be eligible for employee's benefits as provided for in this Article.

##### **Section 3. Group Health and Hospitalization Insurance**

All full-time employees and elected officials will be provided group hospitalization and life insurance at no cost. This group insurance shall be made available to employees' dependents on a participating basis. Eligibility for Group Health and Hospitalization Insurance will be effective the first day of the month following one full month of employment or the taking of office.

Other insurance programs which will serve the needs of the employees of the city may be offered through payroll deductions.

Information concerning the cost and benefits of the insurance program shall be available to all employees through the Human Resources Department. Booklets explaining the program will be available to all employees.

##### **Section 4. Group Health and Hospitalization Insurance for Retiring Employees**

Employees who retire under the North Carolina Local Government Employee Retirement System may be entitled to a continuation of Group Health and Hospitalization Insurance at the City's expense under the following circumstances:

1. 30 years of service with the North Carolina Local Government **al** Employees' Retirement System and 15 years continuous service with the City of Asheboro.
2. Any other qualification for retirement with the North Carolina Local Government **al** Employees' Retirement System and 20 years of service with the City of Asheboro.
3. An employee who qualifies for disability retirement with the North Carolina Local Government **al** Employees' Retirement System.

The city will provide this coverage for the Retiree only until the retiree reaches age 65. If at any time prior to age 65, a covered retiree and/or covered dependent becomes eligible for Medicare, he/she must change his/her medical coverage to the Medicare Supplement Plan if coverage is to continue with the City of Asheboro. If applicable the dependent(s) shall be offered coverage under the COBRA plan.

Retirees not qualifying for health insurance coverage paid for by the City of Asheboro may elect to continue this coverage for themselves and their dependents at their own expense, until the retiree reaches age 65. If at any time prior to age 65, a covered retiree and/or dependent becomes eligible for Medicare, he/she must change his/her medical coverage to the Medicare Supplement Plan if coverage is to continue with the City of Asheboro.

All individuals retiring prior to the effective date of this policy (May 6, 1999) shall not be affected by these guidelines. Benefits bestowed upon those individuals will remain in effect as stated in the Personnel Policy which was in effect at the time of their retirement.

Other group benefits may be available to retiring employees at their expense under provisions provided by the group benefits package.

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

Each full-time employee shall be required to join the Local Governmental Employees' Retirement System as a condition of employment upon completion of 6 months employment.

## **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).

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.

## **Section 7. Group Life Insurance**

The City will provide group life insurance for each full-time employee and elected officials based on positions. Employee may elect to insure other members of their family under this plan at their expense.

## **Section 8. Worker's Compensation**

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

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

- (1) Employees may utilize accrued compensatory time and accrued paid leave during the 7-day waiting period prescribed by the North Carolina Workers' Compensation Act. If an employee elects to use accrued compensatory time or accrued paid leave during the 7-day waiting period, all of the available accrued compensatory time shall be used prior to the utilization of any accrued paid leave time. With the commencement of weekly benefits in accordance with the North Carolina Workers' Compensation Act, neither compensatory time nor accrued paid leave time may be used by an employee to supplement the statutorily prescribed weekly benefits. An employee will not be required to reimburse the city for payments made by the city during the 7-day waiting period.
- (2) On the eighth day of the authorized absence, the employee will automatically be placed on Workers' Compensation leave. Once the statutorily prescribed weekly benefits and Workers' Compensation leave have begun, qualified employees will be placed on FMLA leave. The FMLA leave and Workers' Compensation leave shall run concurrently with each other.
- (3) Timesheets must reflect Workers' **Compensation leave** on the days in which leave is taken.
- (4) Employees will not be required to use accrued compensatory time or accrued paid leave when appointments have been properly made during scheduled work hours as part of the process to resolve a claim filed under the North Carolina Workers' Compensation Act. This use of regular work hours shall be limited in duration to the reasonable period of time needed to satisfy the purpose of the scheduled appointment, including travel time. Employees should try to schedule appointments at a time most convenient for their work unit. The employee is expected to return to work after the appointment has been concluded, unless the authorized health care provider has restricted the employee from doing so.
- (5) **The city encourages early return to work for employees who suffer work related injuries or illnesses. If the healthcare provider determines that the injured employee cannot return to their job without restrictions, a modified work assignment or reassignment to a different job will be considered. In all cases, division/department heads are expected to consult with the Human Resources Director and to work with employees to identify modified duty opportunities, with the primary focus being the return of the employee to their regular job. Employees who return to a modified duty assignment must perform the work within the restrictions indicated by the**

healthcare provider. Failure to report to a modified duty assignment may result in disciplinary action. Employees are responsible for providing their division/department head with written notice of any change in restrictions by the healthcare provider. The modified duty assignment will end when the employee reaches maximum medical improvement.

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

In compliance with Section 160A-164.1 of the North Carolina General Statutes, the provisions of Article VI. Benefits, Section 8. Workers' Compensation of the City of Asheboro Personnel Policies and Procedures Manual shall be deemed to be applicable in all respects to city employees that are absent from work due to an adverse medical reaction resulting from the employee receiving in employment vaccination against smallpox incident to the Administration of Smallpox Countermeasures by Health Professionals, section 304 of the Homeland Security Act, Pub. L. No. 107-296 (Nov. 25, 2002) (to be codified at 42 U.S.C. sec. 233(p)).

### **Section 9. Years of Service**

Each regular full-time employee shall earn a 1 step increase in salary upon completing 5 years of service, 10 years of service, 15 years of service, 20 years and 25 years of service with the City of Asheboro. These increases shall be effective upon each employee's anniversary date during the year in which the qualifying event occurs.

### **Section 10. Employee Assistance Program**

The city has an Employee Assistance Program (EAP) to help employees resolve a wide range of personal problems that have a negative effect on their job performance. This confidential counseling service is available to employees and their family members. City employees are encouraged to use the EAP when they are experiencing problems that impact their ability to be productive at work. Employees may choose to go to the EAP on their own, or they may be encouraged to use the EAP by their supervisor. Referral to or participation in the EAP Program does not pre-empt the utilization of any other provision of the City of Asheboro Personnel Policies and Procedures Manual.

The city will not have access to EAP records without written permission from the employee. All individual rights to confidentiality will be assured in the same manner as any other health records. Using the EAP services will not jeopardize an employee's employment status or promotion possibilities. With approval of the supervisor, employees may use accrued leave for a scheduled EAP appointment. The initial EAP visits are provided to the employee without charge. After the initial visits, the EAP may recommend additional assistance, the cost of which will be the responsibility of the employee. These costs may be covered by medical insurance or available through a community-funded or self-help organization.

Notwithstanding any provision to the contrary, the Employee Assistance Program shall be deemed to be supplemental to the city's Policy on Substance Abuse that is found in this manual as a condition of employment in Article V, Section 11. If a conflict arises between the provisions found in the description of the Employee Assistance Program and the adopted Policy on Substance Abuse, the provisions found in Article V, Section 11 of this manual shall be the controlling authority.

## **EXHIBIT 3**

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

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

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

New Year's Day  
Martin Luther King, Jr. Day  
Good Friday  
Memorial Day  
Independence Day  
Labor Day  
Thanksgiving - 2 days  
Christmas - 3 days

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

~~Employees who return to active status from leave without pay status must be active the day before a holiday in order to be paid for the holiday.~~

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

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

**Section 2. Vacation Leave - Basic Accrual**

Effective January 1, 2002, each full-time regular employee shall earn vacation leave on a monthly basis in accordance with the following schedule of continuous City of Asheboro service. Periods of 15 calendar days or less during one month shall not be counted, but a period of 16 days or more shall count as a whole month for purposes of calculating leave under this section.

<u>Years of Service</u>	<u>40 Scheduled Hours Per Week Employees</u>	<u>Over 40 Scheduled Hours Per Week Employees</u>
less than 5 Years	8 Hours	10 Hours
5 but less than 10 years	10 Hours	12 Hours
10 but less than 20 years	12 Hours	14 Hours
20 or more years	14 Hours	16 Hours

**Section 3. Vacation Leave – Maximum Accumulation**

Vacation leave may be accumulated without any applicable maximum until December 31 of each calendar year. On December 31, any employee with more than 240 hours of accumulated leave shall have the excess accumulation converted to sick leave so that only 240 hours are carried forward to January 1 of the next calendar year.

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

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

**Section 5. Vacation Leave - Terminal Pay**

Unused vacation leave time, up to an absolute maximum of 240 hours, shall be paid as terminal pay.

**Section 6. Vacation Leave - Death Payment**

Upon the death of an employee, compensation for accumulated vacation leave, if any, shall be paid to the estate.

**Section 7. Sick Leave - Generally**

Sick leave is a benefit granted to an employee for personal sickness, bodily injury, required physical or dental examinations or treatment, or exposure to a contagious disease when continuing to work might jeopardize the health of others.

Sick leave may be granted to an employee for illness to the employee's immediate family, which requires the care of the employee. For the purpose of this section, immediate family shall be deemed to include spouse, parents, and children (including step and/or in-law -relationships).

Sick leave may be granted to an employee for death of a member of an employee's family (not to exceed 24 hours off for any one occurrence except by special permission from department head). For the purpose of this section, family shall be deemed to include spouse, parents, children, brother, sister, grandparents and grandchildren. Also included are step, half, and in-law relationships.

**Section 8. Sick Leave - Basic Accrual**

Each full-time regular employee shall earn sick leave at the rate of 8 hours for each month worked. Periods of 15 calendar days or less during 1 month shall not be counted but 16 days or more shall be counted as a whole month for purposes of calculating leave under this section.

**Section 9. Sick Leave – Accumulation**

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

#### **Section 10. Sick Leave – Physician’s Certificate**

If an employee is out more than 3 consecutive days he/she will be required to present a physician’s certificate prior to his/her return to duty. Failure to produce a required physician’s certificate will result in the employee not being allowed to use sick leave. The employee may be allowed to use **accrued compensatory time, vacation leave, and/or leave without pay.**

If a department head has reasonable cause **to believe** that an employee is abusing his/her sick leave privileges, the department head may, with the approval of the Human Resources Director, request a physician’s certificate for each occasion on which an employee chooses to use sick leave.

#### **Section 11. Sick Leave – Retirement**

Employees who are members of the North Carolina Local Governmental Employees’ Retirement System may apply unused sick leave toward retirement credit in accordance with System guidelines. Employees should take note that the application of unused sick leave toward retirement credit is governed exclusively by the North Carolina Local Governmental Employees’ Retirement System. Accordingly, any questions or concerns about this issue should be directed to the North Carolina Local Governmental Employees’ Retirement System.

#### **Section 12. Sick Leave - Notification**

The employee shall be required to call his/her supervisor no later than one half hour after the scheduled start of the workday to advise him/her when illness prevents his/her reporting to work.

If an employee is away from his/her job for 2 consecutive days without notice, it shall be assumed that the employee has resigned.

Also, if a physician places any physical restrictions on an employee which will limit the employee’s ability to successfully complete the assigned duties of their position, the employee must notify his/her supervisor about those restrictions. This notification must be made as soon as is practical, but not later than the time appointed for the employee to return to duty for their next scheduled work period. Upon receiving such notification, the employee’s supervisor must relay this information up the chain of command in order to allow the city to lawfully and appropriately respond to the situation.

Employees shall notify their immediate supervisor when required to use prescription medication that they have been informed has the potential to impair job performance. The employee shall advise the supervisor of the known side effects of such medication and the prescribed period of use. The employee may be temporarily reassigned to other duties, where appropriate.

#### **Section 13. Sick Leave - Advancement**

The City Council may, on the recommendation of the City Manager, advance sick leave to an employee with five or more years of service who has exhausted his/her sick leave because of a major operation, illness, or injury. No advancement can be made to an employee who has a warning concerning sick leave in his/her file. After the employee returns to work, advanced sick leave previously used shall be repaid at the rate of 8 hours per month until such time the advanced leave is repaid in full. An employee who has received advanced sick leave and subsequently retires or terminates employment shall repay the city for the balance of the advanced sick leave at a rate of their hourly rate of pay at separation times the number of unpaid hours. In the event of death, liability to the City will cease to exist.

#### **Section 14. Sick Leave - Termination**

All sick leave accumulated by an employee shall end and terminate when an employee resigns or is dismissed by the City. However, at the time of termination, an employee may request that an official record of their unused sick leave balances be made available to them. If a former employee fails to request an official record of their unused sick leave balances at the time of separation of employment, the former employee may file a request with the Human Resources Department for an official record of unused sick leave that was accrued during an earlier term of employment. An official record of unused sick leave balances is not available for employees separated from the City of Asheboro prior to May 10, 2001.

#### **Section 15. Sick Leave – Transfer**

An individual who is employed by the City of Asheboro in a full-time position and who comes to the City from employment with another agency which participates in the Teachers’ and State Employees’ Retirement System of North Carolina or the North Carolina Local Governmental Employees’ Retirement System may have his/her sick leave balance that was accrued as part of his/her previous employment transferred to the City of Asheboro under the following guidelines:

- (1) The employee bears the sole responsibility for requesting and obtaining certification of the prior Sick Leave balance from the former employer.

- (2) The employees' responsibility for obtaining certification of the amount of previously accrued sick leave is not discharged until the employee receives, from the Human Resources Department, a written acknowledgement of the receipt of satisfactory certification of the amount of accrued sick leave.
- (3) Upon completion of a six (6) month probationary period, the employee will be credited with his/her certified prior Sick Leave balance, up to a maximum of forty-eight (48) hours.
- (4) Upon completion of one (1) year of continuous service with the City, the employee will be credited with the remainder of his/her certified prior Sick Leave balance, up to a maximum of forty-eight (48) additional hours.
- (5) Employees rehired by the City of Asheboro will be credited with their prior Sick Leave balance using the same guidelines as specified above. Employees rehired will not be given credit for sick leave earned with the city if the employee separated during the initial probationary period of employment.

#### **Section 16. — Leave Without Pay**

An employee may be granted a leave of absence without pay for up to one year by the City Manager upon recommendation of the department head.

#### **Section 17. — Leave Without Pay – Retention and Continuation of Benefits**

An employee shall retain all unused vacation and sick leave while on leave without pay. An employee ceases to earn leave credits on the date leave without pay begins. The employee may continue to be eligible for benefits under the city's group insurance plans for a period not to exceed six months.

#### **Section 18. — Family and Medical Leave Act**

The Family and Medical Leave Act (FMLA) allows eligible employees to take unpaid leave for up to twelve (12) weeks during each twelve (12) — month FMLA leave year, for the following reasons:

- (1) The birth of a child of the employee and in order to care for the child;
- (2) The placement of a child with the employee for adoption or foster care;
- (3) Taking care of the employee's spouse, child, or parent who has a serious health condition; or
- (4) A serious health condition of the employee that makes the employee unable to perform the functions of the employee's position.

An employee is eligible for FMLA leave if both of the following conditions are met:

- (1) the employee has worked for the City of Asheboro for at least twelve (12) months, which need to be consecutive; and
- (2) the employee has worked at least 1,250 hours for the City of Asheboro during the twelve (12) month period immediately preceding the beginning of the FMLA leave.

#### **Section 16. Family and Medical Leave Act**

The Family and Medical Leave Act (FMLA) requires employers to grant eligible employees a total of 12 workweeks, or up to 26 weeks in the case of military caregiver leave, of job-protected, unpaid leave during any 12-month period for one or more of the following reasons:

- (1) The birth of a child of the employee and in order to care for the child;
- (2) The placement of a child with the employee for adoption or foster care;
- (3) Taking care of the employee's spouse, child, or parent who has a serious health condition;
- (4) A serious health condition of the employee that makes the employee unable to perform the functions of the employee's position;
- (5) A qualifying military exigency when the employee's spouse, son, daughter, or parent who is a covered military member of the National Guard or Reserve is on active duty or called to active duty in support of a contingency operation; and
- (6) To care for a covered service member (a member of the armed services including the Guard and Reserve) if the eligible employee is the spouse, son, daughter, parent, or next of kin, where the service member has a serious illness or injury incurred in the line of active duty that renders the service member unable to perform the duties of his or her office, grade, rank, or rating.

An employee is eligible for FMLA leave if both of the following conditions are met:

- (1) The employee has worked for the City of Asheboro for at least 12 consecutive months; and
- (2) The employee has worked at least 1,250 hours for the City of Asheboro during the 12-month period immediately preceding the beginning of the FMLA leave. Pursuant to the Uniformed Services Employment and Reemployment Rights Act (USERRA), a break in service due to the employee's fulfillment of Guard or Reserve obligations may count toward the 12-month and 1,250-hour requirement.

To the full extent permitted by the FMLA, the City reserves the right to designate as FMLA leave any approved paid or unpaid leave used by an eligible employee for a qualifying FMLA purpose. All accrued

compensatory time and accrued paid leave (e.g. vacation, sick, and holiday leave) shall be substituted for unpaid FMLA leave. Article VI, Section 8 in this manual prescribes the manner in which FMLA leave interacts with workers' compensation leave.

The City of Asheboro ~~must~~ will maintain any employer-paid health benefits while the employee is on FMLA leave.

The FMLA leave year shall be a rolling twelve (12) – month period measured forward from the date the employee first takes FMLA leave after completion of any previous FMLA year.

~~With the exception of accrued compensatory time, accrued paid leave (e.g. vacation, sick, and holiday leave) shall be substituted for unpaid FMLA leave. Section 8 of Article VI of this manual describes the interaction of FMLA leave with absences connected to a workers' compensation claim.~~

Permanent employees approved for leave of absence retain their permanent status upon return from the authorized leave.

Benefits under the Family and Medical Leave Act are available to eligible employees requesting Family Medical Leave. When the need for FMLA Leave arises, the employee should complete an FMLA Form (available in Human Resources) in a timely manner. Whether or not the employee elects to use paid or unpaid leave, the time counted toward the FMLA Leave Year will begin on the date designated by the employee or the date designated by the Human Resources Department after consultation with the employee. When the need to use FMLA leave is foreseeable, the employee should provide the Human Resources Department with not less than 30 days' notice, before the date the leave is to begin, of the employee's intention to take leave.

~~If at any time, it is determined that the Personnel Policy of the City of Asheboro conflicts with the regulations stated in the Family and Medical Leave Act, the FMLA will take precedence.~~

The City of Asheboro is committed to fully implementing the FMLA. All questions of interpretation that arise with regard to the provisions found in the City of Asheboro Personnel Policies and Procedures Manual shall be resolved in a manner that is consistent with this goal of full implementation. If a conflict is discovered between a provision in the City of Asheboro Personnel Policies and Procedures Manual and the FMLA, the offending provision shall be deemed to be void and severed from the remaining provisions of the manual that are compliant with the FMLA.

#### **Section 19. Section 17. Voluntary Shared Leave**

The purpose of voluntary shared leave is to provide economic relief for full-time employees who are likely to suffer financial hardship because of a prolonged absence.

Eligibility: Only full-time employees who have exhausted all accumulated leave are eligible to receive donated leave.

Qualifying to receive leave: In order to receive voluntary shared leave, an employee must have complied with existing leave rules and:

- Have a prolonged medical condition or have an immediate family member (spouse, child or parent) whose medical care will require the employee's absence for a prolonged period of time;
- Apply to become a recipient of a specified amount of leave time;
- Produce medical evidence to support the need for the requested amount of leave time beyond the available accumulated leave; and
- Be approved by the City Manager to participate in the program.

Application: An employee who, due to a serious medical condition of self or of his/her immediate family, faces prolonged or frequent absences from work may apply for donated leave by completing a "Voluntary Shared Leave Application" and submitting it to the Human Resources Director. Application may also be made by someone acting on the employee's behalf if the employee is unable to make application. The application must include a doctor's statement.

Donation: Any eligible employee in the city may donate vacation leave to any approved employee. In order to donate leave an employee must complete a "Voluntary Shared Leave Authorization of Donation of Leave" and submit it to the Human Resources Director.

Restrictions on Donation of Leave:

1. All leave donations must be to a designated employee approved by the City Manager for receipt of donated leave.
2. All donations must be in writing and signed by the donating employee. The employee to receive the donation of leave shall be named and the amount of vacation leave donated shall be specified.
3. Any eligible employee may donate vacation leave to any approved employee.

4. A donating employee may not donate more vacation leave than he/she could earn in one year. Additionally, the amount donated must not reduce the donor's vacation leave balance below one-half of what that person can earn in the year.
5. For the purposes of voluntary shared leave, all leave donated will be credited to the recipient's sick leave account.
6. The minimum amount of leave donated is 4 hours.

Use of Donated Leave:

1. All donated leave must be used in 4-hour increments.
2. Holidays occurring while the employee is using donated leave will be paid. Vacation and sick leave will continue to be earned by the employee while he/she is using donated leave. Available earned leave accrued during this period must be used by the employee prior to continued use of any voluntary shared leave.

Unused Leave: At the expiration of the period approved for voluntary shared leave as determined by the City Manager, the recipient's sick leave account balance shall not exceed a total of 40 hours. Donated leave time in excess of the time allowed by this policy shall be returned to the appropriate donor(s) vacation leave account(s). In calculating the return of donated leave, priority shall be given to the most recent donor(s) in reverse chronological order.

If a recipient separates due to resignation, death, or retirement from local government, participation in the program ends. Unused leave shall be returned to the appropriate donor(s) vacation leave account(s) with priority being given to the most recent donor(s) in reverse chronological order.

Required Process:

1. Requests to participate in the Voluntary Shared Leave Program shall be submitted to the Human Resources Director. Each request must then be approved the City Manager.
2. The Human Resources Director shall give written acknowledgement to both recipient and the donor(s) of his/her request to participate in the program.
3. A doctor's statement regarding the medical condition of the recipient, or family member of the recipient, must be submitted to the Human Resources Director before action can be taken on a request for shared leave.

Limitation on Leave Amounts: The amount of leave donated to an employee may not exceed the amount of leave requested. Donated leave will be taken in the order received by the Human Resources Director. ~~If an employee's authorization to donate leave is approved by the Human Resources Director, the employee will be notified in writing.~~

~~Leave Records: Leave donated shall be recorded and maintained as part of the affected employee's personnel file. The privacy of this information shall be maintained in accordance with the provisions of Section 160A-168 of the NC General Statutes.~~

~~Be credited to the recipient's sick leave account and charged according to the Sick Leave Policy as stated in Article VII of the Personnel Policies and Procedures Manual.~~

**Section 20. Section 18. Americans with Disabilities Act**

~~The City of Asheboro prohibits any form of discrimination ~~to~~ against persons with physical or mental disabilities. The city will make every reasonable effort to comply with the act, and is committed to full compliance with the Americans with Disabilities Act.~~

**Section 21. Section 19. Military Leave**

An employee who is a member of the National Guard or the Armed Forces Reserve will be allowed ten (10) working days of military training leave annually, with partial compensation. If the compensation received while on military leaves is less than the salary that would have been earned during the same period as an active employee, the employee shall receive partial compensation equal to the difference between the base salary earned as a reservist and the salary that would have been earned during this same period as a city employee. The effect will be to maintain the employee's salary at the normal level during this period of ten (10) working days. If such military duty is required beyond this period of ten (10) working days, the employee shall be eligible to take accumulated annual leave or be placed on leave-without pay status.

While on military leave with partial pay or without pay, the employee's leave credits and other benefits shall continue to accrue as if the employee remained with the city during this period. Employees who are reservists have all applicable job rights specified in the Veterans Readjustment Assistance Act.

Notwithstanding the above stated provisions, all compensation and benefits authorized by this section shall be paid or accrued in strict accordance with the applicable laws and regulations, specifically including without limitation, the Internal Revenue Service regulations.

**~~Section 22.~~ Section 20. Civil Leave**

A full-time employee called for jury duty or as a witness in any civil or criminal legal proceeding shall receive leave with pay for each duty day during the required absence without charge to accumulated vacation or sick leave accrued compensatory time or accrued paid leave.

An employee may keep fees and travel allowances received for jury or witness duty in addition to regular compensation. Law enforcement officers may not receive or keep any witness fees for appearing in a civil or criminal court in connection with their official duties while on civil leave, benefits and leave shall accrue though on regular duty.

**~~Section 23.~~ Section 21. Unauthorized Leave**

If an employee is absent from work without department head approval or if he/she has exhausted all accrued time and are not on any approved leave, this may be deemed unauthorized leave and disciplinary action may be taken.

**~~Section 24.~~ Section 22. Inclement Weather**

Because of their essential and direct impact on public safety and health, many city services must continue regardless of the weather. Employees who are required to work when city offices are closed because of inclement weather will be given compensatory time off at the rate of one hour for each hour worked. A maximum of eight (8) hours in a twenty-four (24) hour period may be given. Notwithstanding any other provision found in this paragraph, this section shall not be interpreted in a manner that creates a conflict with the applicable federal and state Wage and Hour Laws.

Employees are encouraged to use their own judgment about reporting to work during inclement weather. Those who are not able to report when city offices are not officially closed will be charged with accrued compensatory time, holiday time, or vacation leave.

**~~Section 23.~~ Leave Without Pay**

If an employee is ineligible to request leave on the basis of any other provision in the City of Asheboro Personnel Policies and Procedures Manual, the employee, with the recommendation of his or her division/department head may be granted a leave of absence without pay for up to one year by the City Manager. The decision as to whether to grant the requested leave shall be at the sole discretion of the City Manager.

An employee ceases to earn leave credits, including holiday leave, on the date the authorized leave period begins. The employee will continue to be provided with group hospitalization and life insurance, at no cost, for a period not to exceed 6 months. After this 6-month period expires, group insurance shall be made available to the employee and his or her dependents on a participating basis for the duration of the authorized leave period.

**EXHIBIT 4**

**ARTICLE XI. DISCIPLINARY ACTIONS**

**Section 1. Policy**

The city administers a progressive disciplinary procedure by which discipline is administered in proportion to the degree of severity and frequency of unacceptable employee behavior.

Progressive disciplinary actions are to be administered consistently and equitably without regard to race, color, sex, or national origin, age, disability, or religion.

All disciplinary actions are subject to the approval of the city manager.

**Section 2. Purpose**

Progressive discipline is intended to allow the employee the opportunity to correct deficiencies in work behavior by clarifying and prescribing to the employee the appropriate behavior.

**Section 3. Causation**

Employees may be disciplined for improper personal conduct or unsatisfactory performance of job duties.

#### Section 4. Procedure

A private discussion should be initiated by the supervisor as soon as the performance deficiency or improper personal conduct is observed.

Progressive discipline is effectively administered by the employee's supervisor through the following stages:

##### (1) Documented Oral Warning(s)

Documented discussion of specific work-related concerns indicating corrective measures to be followed. Receipt of a documented oral warning must be acknowledged in writing by the employee. If the employee refuses to acknowledge in writing the receipt of a documented oral warning, note the employee's refusal on the supporting documentation and have an additional supervisor sign the supporting documentation as a witness to the fact that the employee refused to provide a written acknowledgement of the discussion. All documented oral warning(s), including any and all supporting documentation, shall be forwarded to the Human Resources Department for review and incorporation into the employee's personnel file.

##### (2) Written Warning(s)

Documented performance concerns which have been previously discussed, but have not improved. An employee may receive written warning(s) for similar or different infractions. The written warning(s) shall state that dismissal/demotion will result if the infraction(s) is (are) not corrected. Receipt of a written warning must be acknowledged in writing by the employee. If the employee refuses to acknowledge the written warning, note the employee's refusal and have an additional supervisor witness the refusal and sign the written warning. All written warning(s), along with any supporting documentation, shall be forwarded to the Human Resources Department for review and incorporation into the employee's personnel file. Improper personal conduct does not require prior oral warning, documented or otherwise.

When deemed appropriate by the management team, progressive formal discipline is to be administered and recorded in an employee's personnel jacket as follows:

##### (1) Written Warning(s)

Documented discussion of specific work-related concerns indicating corrective measures to be followed. The receipt of a written warning must be acknowledged in writing by the employee. If the employee refuses to properly acknowledge the receipt of a written warning, the supervisor issuing the written warning shall note the employee's refusal on the employee disciplinary report and have an additional supervisor sign the disciplinary report as a witness to the fact that the employee refused to sign the disciplinary report.

##### (2) Written Warning with Condition(s) of Continued Employment

If an employee continues to perform his or her duties in an unsatisfactory manner after the receipt of a written warning about deficiencies in the employees' work performance, or if the employee engages in improper personal conduct that involves a mitigating factor or a combination of mitigating factors deemed by the management team to warrant disciplinary action short of dismissal, the employee may be issued a written warning that contains conditions with which the employee must comply in order to maintain his or her employment with the city. These conditions of employment may include, but are not limited to, performance standards that are designed to establish a defined goal for the employee to attain in order to demonstrate that substantive progress has been made toward the employee working and conducting himself or herself in a manner that meets the expectations of the City of Asheboro. The performance standards established as part of a specific written warning may remain in effect for up to six (6) calendar months after the employee's receipt of the written warning. The receipt of a written warning must be acknowledged in writing by the employee. If the employee refuses to properly acknowledge the receipt of a written warning, the supervisor issuing the written warning shall note the employee's refusal on the employee disciplinary report and have an additional supervisor sign the disciplinary report as a witness to the fact that the employee refused to sign the disciplinary report.

Dismissal from employment or the issuance of a written warning with conditions of continued employment as a consequence of improper personal conduct does not require prior warning, documented or otherwise.

##### (3) Pre-Dismissal Hearing

The supervisor recommending dismissal shall discuss the recommendation with the Human Resources Department. The supervisor shall schedule and conduct a pre-dismissal conference with the employee. In the conference, the supervisor shall give the employee written notice of the recommendation for dismissal, including specific reasons for the proposed dismissal and a summary of the information supporting that recommendation. The employee shall have an opportunity to respond to the proposed dismissal, to refute information supporting the recommended dismissal action, and to offer information or arguments to support his/her position.

#### (4) Suspension

If the behavioral infraction is extremely serious to the city, fellow employees, or the public, supervisors may suspend an employee without warning.

### **Section 5. Dismissal/Demotion**

An employee may be demoted/dismissed for unsatisfactory performance of duties after the employee has received prior written warning (s) on his/her job performance. An employee may be demoted/dismissed for improper personal conduct without prior warning(s). Before an employee is demoted/dismissed for either reason, the following shall apply:

- (1) A written summary of facts and circumstances leading to the decision will be prepared by the supervisor or a higher level administrator. A copy of the report shall be submitted to the Human Resources Department prior to informing the employee of the decision.
- (2) Documentation of previous disciplinary action taken (oral and written warning(s)) and other documents that support the decision shall be attached to the summary.
- (3) The summary shall be reviewed by the division/department head, the Human Resources Department, and City Manager for approval prior to the demotion/dismissal.
- (4) After the supervisor division/department head has held a pre-dismissal hearing with the employee and it is determined that the employee will be demoted/dismissed, he shall present the employee with the letter the next working day after the hearing. This letter must include the specific:
  - (a) Reason (s) for demotion or dismissal;
  - (b) An effective date of the action;
  - (c) A numerical list of the specific acts; and
  - (d) The employee's right to appeal.
- (5) Upon dismissal on the basis of unsatisfactory job performance, an employee may be given up to two (2) week's notice.
- (6) Upon dismissal on the basis of personal conduct, an employee may be dismissed without notice. Management should consult with the Human Resources Department and receive prior approval from the City Manager.

The dismissal/demotion of probationary employees shall be governed by Article V, Section 4 of the City of Asheboro Personnel Policies and Procedures Manual. Furthermore, Section 6 of this Article shall be deemed to be inapplicable to probationary employees.

### **Section 6. Rights of Appeal**

In the cases of suspension, demotion, or dismissal, a regular employee has appeal rights. The appeal procedure shall be as provided in Article XII, Section 1(C).

### **Section 7. Administrative Guidelines**

#### A. Unsatisfactory Performance of Duties

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

- (1) Inefficient or incompetence in performing duties;
- (2) Negligence in performance of duties;
- (3) Physical or mental incapability for performing duties;
- (4) Careless or improper use of city property;
- (5) Failure to maintain satisfactory and harmonious working relationships with fellow employees and the public;
- (6) Habitual pattern of failure to report for duty at the assigned time and place;
- (7) Absence without approved leave;
- (8) Habitual and improper use of sick leave privileges;

- (9) Failure to obtain or maintain current license or certificate required as a condition for performing the job;
- (10) Failure to wear and use appropriate safety equipment or otherwise to abide by safety rules and policies.

#### B. Improper Personal Conduct

If the infraction or behavior is extremely serious or injurious to the city, fellow employees, or the public, supervisors may suspend an employee without warning. However, before any further formal disciplinary action such as demotion or dismissal is taken against an employee occurs, supervisors and managers the employee's division/department head must consult with the Human Resources Department and receive approval from the City Manager. Improper personal conduct may include, but is not limited to:

- (1) Conduct unbecoming a city employee;
- (2) Conviction of a felony;
- (3) Committed guilty of a criminal act;
- (4) Misusing city funds;
- (5) Falsifying job information to secure position;
- (6) Participating Engaging in any action that would in any way seriously disrupt or disturb the normal operation of the city;
- (7) Trespassing on the grounds or home of any official or employee for the purpose of harassing or forcing dialogue or discussion for the occupants;
- (8) Willful acts that would endanger the lives or property of others;
- (9) Willfully damaging city property;
- (10) Possessing unauthorized weapons, alcohol, or illegal substances while on the job;
- (11) Threats, pressure or physical actions against others;
- (12) Insubordination;
- (13) Reporting to work under the influence of alcohol or drugs, or partaking of such items on the job;
- (14) Accepting gifts for "favors" or "influence";
- (15) Betraying confidential information;
- (16) Unauthorized possession of city's or another employee's property;
- (17) Leaving the work area repeatedly for excessively long periods without proper authorization;
- (18) Sexual harassment;
- (19) Providing or maintaining improper records;
- (20) Sleeping during work time;
- (21) Gambling during work time.

#### C. Written Warning(s)

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

#### D. Suspension(s)

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

- (1) An employee who has been suspended for either investigatory or disciplinary reasons may be placed on compulsory leave without pay.
- (2) Investigatory suspension with or without pay may be appropriate:
  - (a) To provide time to investigate, establish facts, and reach a decision concerning an employee's status in those cases where it is determined the employee should not continue to work pending a decision; and
  - (b) When management elects to use investigatory suspension in order to avoid undue disruption of work or to protect the safety of persons or property.
- (3) Investigatory suspension without pay shall not exceed thirty (30) calendar days. Investigatory suspension with pay will be at the request of the division/department head and authorized only by the City Manager, and shall not exceed thirty (30) calendar days.
- (4) 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 should shall be forwarded to the Human Resources Department in advance.
- (5) Suspension with or without pay must be fully documented.

#### E. Review of Documentation

In accordance with Section 160A-168(d) of the North Carolina General Statutes, an employee is hereby expressly authorized to submit for inclusion in his or her personnel jacket a statement relating to material in his or her file that the employee objects to on the basis of the employee's contention the material is inaccurate or misleading. Additionally, management shall periodically review any documented disciplinary actions which have been placed in an employee's personnel jacket. Where disciplinary actions noted in the employee's personnel jacket are deemed by the division/department head to have served their purpose and to be no longer necessary, the division/department head shall submit documentation to support this conclusion. Any such documentation shall be subject to review and approval by the Human Resources Director and the City Manager prior to inclusion in the employee's personnel jacket.

Probationary employees who have been subject to disciplinary action for improper personal conduct, and are ineligible for access to the city's Grievance Procedure, may submit to the Human Resources Director a written request for an informal name-clearing proceeding that will be conducted by the Human Resources Director. The Human Resources Director must receive such a written request within 30 business days of the date of receipt by the probationary employee of notification that the problem causing documentation had been placed in the employee's personnel jacket. In his or her request, the probationary employee must state the basis for his or her belief that the submitted documentation should be amended.

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/department head and/or employee, which is germane to the issue. In deciding the question presented by the probationary employee, the Human Resources Director may confirm or note the need to modify the documentation previously placed in the employee's personnel jacket.

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 15 business days of the date on which the individual received the Human Resource Director's written decision.

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/department head and/or employee that is germane to the issue. 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/department head, and the Human Resources Director of this final ruling.

This name-clearing opportunity is for the limited and sole purpose of affording an employee who has no other grievance or appeal rights an opportunity to request the mitigation of potentially damaging information from a personnel jacket file. The name-clearing process shall not afford probationary employees access to the city's grievance procedure. During the name clearing process, the dismissed

probationary employee does not have the right to appeal his or her dismissal from employment and is expressly prohibited from raising such an appeal.

## EXHIBIT 5

### ARTICLE XII. GRIEVANCE PROCEDURE

#### Section 1. Grievance Procedure

The grievance procedure is designed to ensure an employee of fair, impartial, and prompt consideration of a problem or dissatisfaction without fear of reprisal. The procedure also encourages employees at all levels to express themselves regarding conditions of work. The grievance procedure is intended to promote better understanding of policies, practices, and procedures; to instill confidence in employees that fair and impartial treatment will be received; and develop in supervisors a continuing sense of responsibility for maintaining effective working relationships with subordinate employees.

All employees, including supervisors and division/department heads, are expected to discuss their problems and misunderstandings with their superiors. Open two-way communication is a proven factor in reducing and resolving grievances.

When an employee feels the need to resolve a work-related problem, dissatisfaction, or complaint, the following procedure should be followed:

#### A. Informal Discussion with Immediate Supervisor

An employee who feels he/she has a grievance shall first discuss the problem with the immediate supervisor. The employee must inform the supervisor about the grievance as soon as possible, but not later than five (5) workdays following the incident or action that caused or revealed the problem. It is supervisory responsibility to encourage the subordinate to discuss the problem with the supervisor so as to promote understanding. Most misunderstandings should be clarified and resolved during this free exchange of viewpoints. If the employee still feels the grievance is not resolved, he/she may proceed to the next step of this procedure.

#### B. Appeal to Division/Department Head

An employee may request a hearing with the division/department head to appeal an unresolved grievance. Such a request must be received by the division/department head in writing from the employee no later than ten (10) workdays following the event that caused or revealed the grievance.

The division/department head shall promptly notify the Human Resources Director Department, the employee, and the employee's immediate supervisor of a date and time for the hearing, which will be no later than fifteen (15) workdays after the problem causing event. The division/department head will open the meeting with an informal discussion of the problem and will explore possible solutions with those in attendance. Every effort will be made during this discussion to resolve the grievance to the satisfaction of all concerned. However, if the grievance cannot be resolved through this discussion, the parties will together prepare a written report of all sides of the issue, including the recommendation of the division/department head. This report shall be promptly submitted to the Human Resources Director for further consideration through the next step.

#### C. Appeal to the Human Resources Director

The Human Resources Director shall review all written reports and may request additional information and documentation.

The Human Resources Director shall notify all concerned of a time and date to conduct an appeals hearing to take place as soon as possible, but not later than twenty-five (25) workdays after the problem causing event. The Human Resources Director shall review all written reports and may request additional information and documentation. At the hearing, the Human Resources Director may receive new evidence, written or oral, from the division/department head and/or employee, which is germane to the issue. In deciding the issue on appeal, the Human Resources Director may confirm or modify the recommendation of the division/department head and recommend such order, as he or she may deem appropriate in the manner matter.

If the grievance cannot be resolved at this hearing, the Human Resources Director will prepare a written report of all sides of the issue, including the recommendation of the division/department head and his or her own recommendation. This report shall be promptly submitted to the City Manager for further consideration through the next step.

In the event the grievance is filed by an employee in the Human Resources Department, the employee may immediately appeal to the City Manager. Notwithstanding any other provision in this section, in the event the grievance is filed by an employee in the Human Resources Department or by a division/department head, the grievance will be heard directly by the City Manager.

D. Appeal to the City Manager

The City Manager shall review all written reports and may request additional information and documentation.

The City Manager shall notify all concerned of a time and date to conduct an appeals hearing to take place as soon as possible, but not later than thirty (30) workdays after the problem causing event. At the hearing, the City Manager may receive new evidence, written or oral, from the division/department head and/or employee, which is germane to the issue. In deciding the issue on appeal, the City Manager may confirm or modify the decision of the Human Resources Director and/or the division/department head and enter such order as the manager may deem appropriate in the matter. The decision rendered by the City Manager shall be final.

The City Manager shall furnish written notice to the employee, the division/department head, and the Human Resources Department Director of his ruling. This notice shall be made not later than thirty five (35) workdays from from the original date of the event that caused or revealed the problem. Any deviation from the above policy and procedure shall be subject to approval by the City Manager.

12. **Public works items:**

- (a) **In response to a recommendation received from the Asheboro Airport Authority, consideration of a resolution requesting state aid to the Asheboro Regional Airport in the Aviation Element of the Transportation Improvement Program.**

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

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

06 RES 2-11

**RESOLUTION APPROVING REQUESTS FOR STATE AID TO THE  
ASHEBORO REGIONAL AIRPORT IN THE AVIATION ELEMENT OF THE  
TRANSPORTATION IMPROVEMENT PROGRAM BY THE CITY COUNCIL  
OF THE CITY OF ASHEBORO**

WHEREAS, the North Carolina Department of Transportation Division of Aviation has requested that the City of Asheboro submit a list of projects for the Aviation Element of the FY 2012-2016 Transportation Improvement Program; and

WHEREAS, the City of Asheboro has prepared a list titled "Airport Project Request Review Report" incorporated herein by reference to modify previously submitted requests.

NOW, THEREFORE, BE IT RESOLVED that the Asheboro City Council has reviewed the referenced TIP submission, and that the City Council hereby formally approves the submission of these requests for State Aid to Airports and for the State Block Grant Program where applicable.

Adopted in regular session on this 10<sup>th</sup> day of February, 2011.

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

ATTEST:

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

- (b) **In response to a recommendation received from the Asheboro Airport Authority, consideration of approving the selection of W.K. Dickson and Company, Inc. to provide engineering services for airport improvements for the next five (5) years.**

Mr. Bunker reported that, in response to an advertisement for airport planning/engineering services that was published on December 23, 2010, statements of qualification were received from W.K. Dickson and Company, Inc. and the LPA Group of North Carolina. These statements have been reviewed, and at its meeting on January 18, 2011, the Asheboro Airport Authority

recommended that the City Council select W.K. Dickson and Company, Inc. to provide engineering services for airport improvements for the next five (5) years.

Upon motion by Mr. Hunter and seconded by Mr. Moffitt, Council voted unanimously to select W.K. Dickson and Company, Inc. to provide engineering services for airport improvements at the Asheboro Regional Airport for the next five (5) years.

**(c) Consideration of a request received from Roger Chriscoe on behalf of St. John's Lutheran Church to designate a handicapped parking space on the south side of Holly Street adjacent to the church.**

Mr. Bunker presented and recommended adoption, by reference, of an ordinance designating an on-street parking space on Holly Street for persons with mobility impairments.

Upon motion by Dr. Fountain and seconded by Mr. Hunter, Council voted unanimously to adopt the following ordinance by reference.

**05 ORD 2-11**

**AN ORDINANCE DESIGNATING AN ON-STREET PARKING SPACE ON HOLLY STREET FOR PERSONS WITH MOBILITY IMPAIRMENTS**

**WHEREAS**, Section 160A-301(a) of the North Carolina General Statutes provides that the "city may by ordinance regulate, restrict, and prohibit the parking of vehicles on the public streets, alleys, and bridges within the city;" and

**WHEREAS**, the Asheboro City Council has received a request from Roger Chriscoe, on behalf of St. John's Lutheran Church, 505 South Park Street, Asheboro, North Carolina 27203, requesting the designation of an on-street parking space for handicapped persons in a location that is on the south side of Holly Street and adjacent to the church; and

**WHEREAS**, this request has been submitted in order to accommodate the needs of persons with mobility impairments that are served by the church in the normal course of operations; and

**WHEREAS**, the city council has concluded that this request should be approved;

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

**Section 1.** The existing on-street parking space that is located on the south side of Holly Street between a point on the curb line that is approximately 64.3 feet east of the centerline of South Park Street (North Carolina Secondary Road 1451) and another point on the curb line of the south side of Holly Street that is approximately 90.3 feet east of the centerline of South Park Street is hereby designated as a parking space for handicapped persons.

**Section 2.** The city manager is hereby authorized and directed to cause the above-described on-street parking space to be designated as a parking space for handicapped persons in compliance with Section 20-37.6(d) of the North Carolina General Statutes.

**Section 3.** All ordinances and clauses of ordinances in conflict with this ordinance are hereby repealed.

**Section 4.** This ordinance shall take effect and be in force from and after the date of its adoption.

This ordinance was adopted by the Asheboro City Council in open session during a regular meeting held on the 10<sup>th</sup> day of February, 2011.

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

ATTEST:

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

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

- (a) Mayor Smith acknowledged the Council's receipt of the minutes of the Asheboro ABC Board meeting held on January 3, 2011.

There being no further business, the meeting was adjourned at 9:53 p.m.

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

s/ Talmadge S. Baker  
Talmadge S. Baker, Mayor Pro Tempore