

**REGULAR MEETING
ASHEBORO CITY COUNCIL
CITY OF ASHEBORO PUBLIC WORKS FACILITY CONFERENCE ROOM
THURSDAY, NOVEMBER 8, 2012
7:00 p.m.**

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

David H. Smith) – Mayor Presiding

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

John N. Ogburn, III, City Manager
Dumont Bunker, P.E., City Engineer
Michelle H. Dawes, Technical Services Manager
Holly H. Doerr, CMC, NCCMC, City Clerk/Paralegal
John L. Evans, Assistant Community Development Director
Christopher F. Kennedy, Planning Intern
Justin T. Luck, Zoning Administrator/Planner
Ralph W. Norton, Assistant Chief of Police
Trevor L. Nuttall, Community Development Director
Deborah P. Reaves, Finance Director
Michael D. Rhoney, Water Resources Director
Jeffrey C. Sugg, City Attorney

1. Call to order.

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.

After the pledge of allegiance, Mayor Smith welcomed everyone in attendance.

3. Announcement of the retirement of Asheboro Fire Chief Jim Smith.

Mr. Ogburn announced that James W. Smith, II, Fire Chief will be retiring on November 30, 2012 after 41 years of service.

4. Announcement of City of Asheboro Employee Food Drive for CUOC.

Mr. Ogburn announced the City of Asheboro's employee food drive for the Christians United Outreach Center. Collection containers are located at City Hall and the City of Asheboro Public Works Facility.

5. Consent agenda:

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

- (a) The minutes of the city council's regular meeting on October 4, 2012.**
- (b) The minutes of the city council's special meeting on October 25, 2012.**

- (c) A request from the Asheboro/Randolph Chamber of Commerce to temporarily close the following streets and sections of streets for the annual Christmas parade on Friday, December 7, 2012 at 7:00 p.m.: West Kivett Street between South Fayetteville Street and South Church Street, Church Street from Hoover Street to West Walker Avenue, Sunset Avenue from Church Street east to Fayetteville Street, and South Fayetteville Street from Salisbury Street to Kivett Street.
- (d) A request from the Asheboro/Randolph Chamber of Commerce Downtown Development Committee to temporarily close the following streets and sections of streets for the annual "Christmas on Sunset" street festival on Friday, December 14, 2012 from 5:30 p.m. until 9:00 p.m.: Sunset Avenue from Park Street to Fayetteville Street and Church Street from West Academy Street to Hoover Street.
- (e) An ordinance to reduce the speed limit on Oak Drive from 35 miles per hour to 20 miles per hour, as requested by a petition from the residents of Oak Drive.

27 ORD 11-12

ORDINANCE REDUCING THE SPEED LIMIT ON OAK DRIVE

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

WHEREAS, Section 20-141(b) of the North Carolina General Statutes provides as follows:

Except as otherwise provided in this Chapter, it shall be unlawful to operate a vehicle in excess of the following speeds:

- (1) Thirty-five miles per hour inside municipal corporate limits for all vehicles.
- (2) Fifty-five miles per hour outside municipal corporate limits for all vehicles except school buses and school activity buses; and

WHEREAS, Section 20-141(e) of the North Carolina General Statutes provides as follows:

Local authorities, in their respective jurisdictions, may authorize by ordinance higher speeds or lower speeds than those set out in subsection (b) upon all streets which are not part of the State highway system; but no speed so fixed shall authorize a speed in excess of 55 miles per hour. Speed limits set pursuant to this subsection shall be effective when appropriate signs giving notice thereof are erected upon the part of the streets affected; and

WHEREAS, speed restrictions established by the Asheboro City Council by means of the adoption of an appropriate ordinance are to be recorded in Schedule 16 of Chapter 72 of the Code of Asheboro; and

WHEREAS, during a regular meeting of the Asheboro City Council on October 4, 2012, a petition from residents living on Oak Drive, which is a city-maintained street located within the corporate limits of the City of Asheboro, was presented to the Council, and this petition provided, in part, as follows:

It is the experience of the residents on Oak Drive, in Asheboro, NC that the current speed limit of 35 mph is far too high for a dead end street that is approximately .2 of a mile residential street. Because this is a dead end in a neighborhood, this road is used by neighbors and residents on nearby streets to walk their babies in carriages and, also as an exercise walking path and walking dogs.

We, the homeowners and residents on Oak Drive, Asheboro, NC, Asheboro, NC, (sic) petition the city to reduce the speed limit in our subdivision from 35 to at least 20 mph.

This reduction in the speed limit to 20 mph will provide the safety for our children and citizens who occupy residency on this street;

WHEREAS, no traffic study and/or public input in opposition to this petition has been presented to the Asheboro City Council;

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

Section 1. The speed limit on Oak Drive shall be twenty (20) miles per hour.

Section 2. The city manager is hereby directed to cause, in consultation with the chief of police, the appropriate signs giving notice of the authorized speed limit of twenty (20) miles per hour to be erected upon Oak Drive.

Section 3. The city clerk shall amend Schedule 16 of Chapter 72 of the Code of Asheboro to reflect the imposition of the above-stated speed restriction.

Section 4. All ordinances and clauses of ordinances in conflict with this ordinance are hereby repealed.

Section 5. This ordinance shall take effect and be in force from and after December 1, 2012.

This ordinance was adopted by the Asheboro City Council in open session during a regular meeting held on the 8th day of November, 2012.

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

ATTEST:

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

(f) Budget ordinance amendments:

(i) Ordinance to amend the Water and Sewer Fund FY 2012-2013.

28 ORD 11-12

ORDINANCE TO AMEND THE WATER & SEWER FUND FY 2012-2013

WHEREAS, on October 4, 2012, the City Council of the City of Asheboro discussed the purchase of approximately 33 acres of Lake Lucas waterfront property, owned by The Farm at Little River, LLC and appraised at \$415,000, for watershed protection and future park development, and;

WHEREAS, on October 4, 2012, the City Council authorized the City Manager to negotiate the purchase of this land from the property owner, and;

WHEREAS, on October 25, 2012, the City Council approved a resolution authorizing an Offer to Purchase, a Contract to Purchase and the execution of any and all documents and instruments necessary for the acquisition of this land for an amount of \$415,000, and;

WHEREAS, the estimated closing costs associated with this transaction are estimated at \$2,500.00, and;

WHEREAS, the budget as adopted requires amendment appropriate funding for this purchase and to be in compliance with all generally accepted accounting principles, and;

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

Section 1: That the following Revenue line item be increased:

<u>Account #</u>	<u>Revenue Description</u>	<u>Increase</u>	<u>Amended Budget</u>
30-399-0000	Retained Earnings Appropriation	417,500	792,960

Section 2: That the following Expense line item be increased:

<u>Account #</u>	<u>Expense Description</u>	<u>Increase</u>	<u>Amended Budget</u>
30-820-7200	Purchase of Land	417,500	417,500

Adopted this the 8th day of November 2012.

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

ATTEST:

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

(ii) **Ordinance to amend the Sunset Theatre Project (Fund #67) FY 2012-2013.**

29 ORD 11-12

ORDINANCE TO AMEND SUNSET THEATRE PROJECT (FUND #67) FY 2012-2013

WHEREAS, the current adopted budget for the Sunset Theatre Project is in the amount of \$2,411,155, and;

WHEREAS, on September 11, 2012, the Local Government Commission approved the City of Asheboro debt service request of \$1,200,000 and;

WHEREAS, on October 4, 2012, the City of Asheboro received the approved Installment purchase amortization schedule from the Local Government Commission, and;

WHEREAS, a total of \$144,714 in debt service payments will be due in the 2012-2013 fiscal year with the first payment due December 2012, and

WHEREAS, the budget as adopted requires amendment to reflect the transfer of funds from the Sunset Theatre project fund to the General fund for payment of this debt service in 2012-2013 and the bank financing origination fee of \$1,700, and;

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

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

Section 1: That the following Revenue line item be increased:

<u>Account #</u>	<u>Revenue Description</u>	<u>Increase</u>	<u>Line item Amended Budget</u>
67-370-0000	Campaign Contributions	146,415	678,734
	Total	146,415	

Section 2: That the following Expense line item be increased / (decreased):

<u>Account #</u>	<u>Expense Description</u>	<u>Increase/ (Decrease)</u>	<u>Line Item Amended Budget</u>
67-840-0000	Professional Services	1,700	396,186
67-830-0000	Contribution to GF- Debt service	144,715	144,715
	Total	146,415	

Adopted this the 8th day of November 2012.

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

ATTEST:

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

(iii) **Ordinance to amend the General Fund FY 2012-2013.**

30 ORD 11-12

ORDINANCE TO AMEND GENERAL FUND FY 2012-2013

WHEREAS, on September 11, 2012, the Local Government Commission approved the City of Asheboro debt service request of \$1,200,000 for the renovation of the Sunset Theatre and;

WHEREAS, the first year of debt service payments are to be made from Sunset Theatre Capital Campaign contributions, and;

WHEREAS, a total of \$144,714 in debt service payments will be due in the 2012-2013 fiscal year with the first payment due December 2012, and;

WHEREAS, the expense for the debt service needs to be properly recorded in the General Operating fund, and;

WHEREAS, the budget as adopted requires amendment to reflect the transfer of funds from the Sunset Theatre project fund to the General fund for payment of this debt service in 2012-2013 and as well as the principal and interest expense , and;

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

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

Section 1: That the following Revenue line item be increased:

<u>Account #</u>	<u>Revenue Description</u>	<u>Increase</u>	<u>Line item Amended Budget</u>
10-397-6700	Transfer from Sunset Theatre Fund	144,715	144,715

Section 2: That the following Expense line item be increased / (decreased):

<u>Account #</u>	<u>Expense Description</u>	<u>Increase/ (Decrease)</u>	<u>Line Item Amended Budget</u>
10-615-8100	Principal on Debt	128,572	128,572
10-615-8200	Interest on Debt	16,143	16,143
	Total	144,715	

Adopted this the 8th day of November 2012.

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

ATTEST:

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

- (g) **The 2012 Municipal Records Retention and Disposition Schedule issued in September 2012 by the North Carolina Department of Cultural Resources.**

6. Community Development Division Items:

- (a) **Public hearing on the possible adoption of a Revised 2012 Extraterritorial Planning Jurisdiction Boundary Map.**

Mayor Smith opened the public hearing on the possible adoption of a Revised 2012 Extraterritorial Planning Jurisdiction Boundary Map.

Mr. Nuttall reported that this public hearing pertaining to the possible relinquishment of portions of the City's current extraterritorial planning jurisdiction was properly advertised and approximately 3,559 property owners were notified by mail of the public hearing.

The individuals and entities that received these notices are the owners of the parcels of land located within the area proposed for release from the City's Extraterritorial Planning Jurisdiction ("ETPJ").

Mr. Nuttall used a visual presentation to convey the Community Development Division staff's analysis of the proposed reduction in territory subject to the City's ETPJ. A copy of this presentation is on file in the City Clerk's office.

In his slide presentation, Mr. Nuttall summarized the following:

ETPJ

- Asheboro's ETPJ extends up to 2 miles in some areas.
- First extended in 1970s and last extended in 1987.
- Intent was to help cities plan for developing areas that may require city services in future.
- At time of state enabling legislation in the 1950s, few Counties regulated land use.
- The area within the ETPJ must be based on existing or projected urban development in accordance with city plans.
- ETPJ not part of city corporate limits:
 - Property owners don't pay city property taxes, nor do they receive full city services.
 - Residents don't vote in city elections.
- Land development permit requests in ETPJ, like City Limits, must comply with city ordinances pertaining to development.
- All city zoning and subdivision standards are enforced by the City in the ETPJ area.
- Under current arrangement, Randolph County performs building permitting and inspections, including fire inspections, in ETPJ area.

Why is Reduction Proposed?

- Effects of Session Law 2012-11.
- Anticipated legislative interest in examining extraterritorial jurisdiction statutes in the upcoming Session.
- County-wide zoning in place; good working relationship with Randolph County.
- Opportunity to review arrangement with County in terms of permitting and inspections in ETPJ area.
 - "Gray" areas in terms of building code enforcement.
- City retains ability to annex property, whether in ETPJ area or not, through processes outlined by state statute.

ETPJ Revision Considerations

- City infrastructure locations and viability of extensions into ETPJ area/anticipated urban growth areas:
 - Example: City has planned for urban growth on eastern edge of City with purchase of property for future Fire Station 3 and completed water and sewer feasibility studies.
- Strategic corridors for economic development purposes and gateway management.
- Identifying "holes" in existing City Limits.
- LDP recommendations related to growth and economic development areas and how changes since 2000 may affect those areas.
- Obstacles to annexation, including referendum requirement.
- Meeting current statutory requirements for ETPJ boundary; more specifically, the new boundary must be readily identifiable on the ground.

Additionally, Mr. Nuttall noted that the proposed revision seeks to reduce the extent of the City's ETPJ based on anticipated growth and development in the coming years. If the proposed revision is adopted, Randolph County would have 60 days from the effective date of the new boundary to apply County zoning to the affected properties. City staff has already met with Randolph County staff and discussed the jurisdictional transition issues. The county will have adequate time to implement its zoning regulations on the affected properties.

Mayor Smith invited members of the public to express their concerns and ask questions. Only two (2) citizens spoke during the hearing. Ms. Sophia Haslett (spelling uncertain) inquired and was informed that the proposed revision does not change the taxes with which she must currently comply. Mr. Andy McArthur stated his sole concern would be to support any action that would enhance growth and development within Asheboro.

During the hearing of this matter, Mr. Nuttall informed the Council that some property owners (approximately one hundred (100) or less) had been inadvertently omitted from the list used to mail notices of this hearing. The omitted property owners have been definitively identified and a second round of notices have been mailed to these property owners in order to give them an opportunity to be heard at the December meeting. For

this reason, staff requested that the Council consider continuing the public hearing to the regular Council meeting in December 2012.

During the Council's discussion of this issue, an inquiry was made by Council Member Moffitt as to whether a joint City/County information session could be held to give citizens an opportunity to inquire about the potential transition from City zoning to County zoning. Mr. Ogburn indicated that City staff would contact the County and facilitate such an informational session prior to the December Council meeting.

Upon motion by Mr. Bell and seconded by Ms. Carter, Council voted unanimously to continue this public hearing to the Council's regular December meeting.

Additionally, in anticipation of high attendance at the meeting, Mr. Bell moved to hold the Council's regular December meeting at the City of Asheboro Public Works Facility Conference Room. Mr. Baker seconded the motion. Council Members Baker, Bell, Burks, Carter, Hunter, Moffitt, and Swiers voted in favor of the motion.

(b) Legislative hearings on zoning cases:

(i) Zoning Case RZ-12-09: A request to remove properties located at 638, 665, and 672 Green Valley Road from the City of Asheboro's Extraterritorial Planning Jurisdiction.

Mayor Smith opened the public hearing on the following request.

This request pertains to approximately 35.97 acres of land located at 638, 665, and 672 Green Valley Road. This property is more specifically identified by Randolph County Parcel Identification Numbers 7771203637, 7771300740, 7771306518, 7771207273, 7771205496, and 7771301591.

Mr. Nuttall presented the Community Development Division staff's analysis of the request by Hershel and Wendy Rutledge, James L. and Marie G. Dunn, William T. and Ann C. Trogdon to remove the above-described property from the city's extraterritorial planning jurisdiction. The Planning Board concurred with the following Community Development Division staff's analysis and recommended approval of the request.

"Staff believes the request conforms with the Land Development Plan goals and policies that encourage extraterritorial zoning jurisdiction (ETJ) to be utilized in areas likely to be annexed within a reasonable length of time. The lack of urban services within a reasonable distance decrease the viability of annexing this area in a reasonable length of time.

Economic development growth strategy areas were mapped prior to an exact alignment of the planned U.S. Highway 64 Bypass. The final alignment of the planned U.S. Highway 64 Bypass places the interchange with N.C. Highway 42 a considerable distance away from the subject property, decreasing the likelihood of economic development opportunities that may occur in the future. In addition, the subject properties area also in the area proposed to be removed from the ETJ in the City-initiated ETJ revision. Staff therefore believes the request is reasonable and in the public interest.

After considering the above factors, staff believes the zoning map amendment will allow a reasonable use of the property and ensure consistency with the Land Development Plan."

However, if the city-initiated release of a larger amount of territory, which includes the parcels identified in this request, is approved, the request filed under case number RZ-12-09 will be moot. This fact, in combination with the fact that the hearing on the city-initiated request was continued, led Mr. Nuttall to recommend that Council also continue this public hearing to December.

After discussion, and upon motion by Mr. Bell and seconded by Ms. Carter, Council voted unanimously to continue this public hearing to its regular December meeting.

(ii) **Zoning Case RZ-12-10: A request to rezone property located at 1935 Gold Hill Road from I1 (Light Industrial) to R10 (Medium-Density Residential).**

Mayor Smith opened the public hearing on the following request.

The requested rezoning pertains to approximately 39,204 square feet of land owned by Robert W. Syriac and Renee C. Syriac and located at 1935 Gold Hill Road. This property is more specifically identified by Randolph County Parcel Identification Number 7762697240.

Mr. Nuttall presented the Community Development Division staff's analysis of the request by Robert W. Syriac and Renee C. Syriac to rezone the above-described property from I1 (Light Industrial) to R10 (Medium Density Residential). The Planning Board concurred with the following Community Development Division staff's analysis and recommended approval of the requested rezoning.

"The request complies with the Land Development Plan map, text, and goals/policies and recognizes the established residential use of the property and residential nature of the property's location. The Land Development Plan also emphasizes protection of existing residential neighborhoods, and staff believes the proposed zoning map amendment will help achieve this goal. Therefore, staff recommends approval of the request."

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

Upon motion by Mr. Bell and seconded by Mr. Burks, Council adopted the recommendation/analysis of the Community Development Division staff and the Planning Board and voted unanimously to approve the requested rezoning and to adopt, as its own, the following consistency statement:

"After considering the above-stated factors, the Council believes the Zoning map amendment will allow a reasonable use of the property and ensure consistency with the Land Development Plan. The Council therefore believes the request is reasonable and in the public interest."

(iii) **Zoning Case RZ-12-11: A request to rezone property located at 262 North Carolina Highway 49 South from B2 (General Commercial) to R10 (Medium-Density Residential).**

Mayor Smith opened the public hearing on the following request.

The requested rezoning pertains to approximately 5.22 acres of land owned by Russell Dean Farlow and located at 262 North Carolina Highway 49. This property is more specifically identified by Randolph County Parcel Identification Numbers 7750053169 and 7750050416.

This rezoning request was actually initiated by the City of Asheboro when the property owner applied for a building permit for an accessory structure. Mr. Nuttall reported that extensive research by the Community Development Division staff led to an attempt to reconcile an ambiguity in this property's zoning district classification, but a determination of whether or not the purported B2 classification is erroneous cannot be ascertained.

Currently, there is a single-family residential structure located on the property, and tax records indicate that this structure was constructed in 1958. Records show no indication of any other use on this property. Designating the property residential will continue to allow viable residential use for the property.

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

"Although the Land Development Plan map proposes commercial use of the property, the map is reflective of the purported zoning at this location. The Southwest area plan indicates that commercial land use designations are proposed to accommodate existing commercial development and accommodate limited future commercial development. Designating the subject property with a residential zoning classification will continue to allow the property to be viably used for residential purposes and refocus commercial development to other key locations in the Southwest Planning Area. Therefore, staff recommends approval of the request."

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

Upon motion by Mr. Baker and seconded by Ms. Carter, Council adopted the recommendation/analysis of the Community Development Division staff and the Planning Board and voted unanimously to approve the requested rezoning and to adopt, as its own, the following consistency statement:

After considering these factors, the Council believes the Zoning map amendment will allow a reasonable use of the property and ensure consistency with the Land Development Plan. The Council therefore believes the request is reasonable and in the public interest.

(iv) **Zoning Case RZ-12-12: A request to amend the zoning ordinance provisions pertaining to breweries and microbreweries.**

Mayor Smith opened the public hearing on the following request.

Mr. Nuttall presented the Community Development Division staff's analysis of the request by Mr. Joel McClosky to amend the Table of Uses 200-2, Article 300A (Supplemental Regulations), off-street parking and loading requirements found in Table 400-1, and Article 1100 (Definitions) of the Asheboro Zoning Ordinance.

Currently, the Asheboro Zoning Ordinance consolidates breweries and microbreweries into one use that is permitted in Industrial Districts (I1, I2), while brewpubs are treated as a separate use permitted in commercial districts (M, B2, TH, B3) and Industrial Districts (I1, I2).

The applicant proposed separating the classifications of "brewery" and "microbrewery" and allowing a "microbrewery" in certain commercial districts. The applicant has presented a proposal to staff that more finely distinguishes between a larger scale "brewery" and a "microbrewery." A microbrewery is envisioned to be similar to a brewpub in scale. The absence of an eating establishment (restaurant) is what would distinguish a "microbrewery" from a "brewpub."

Taking the Applicant's proposal into consideration, the Community Development Division staff proposed the following text amendments that can be summarized as follows:

- Distinguish between brewery and microbrewery based on square footage (18,000 square feet plus – is considered a brewery)
 - Brewery: Permitted by right in I1, I2 with Buffer Group 3
 - Microbrewery: Permitted by right in B2*, TH*, B3*, I1, I2 with Buffer Group 2
- *Newly permitted in these districts
- **Add supplemental regulations for microbrewery (Section 329A)**
 - Require demonstration, education, retail sales are in B3 district.
 - Maximum of 7,000 square feet production area in B3 district.
 - Open storage is not permitted in non-industrial districts.
 - No drive through is permitted.
 - Loading shall be off-street or in alley.

The actual proposed text amendments are as follows:

ARTICLE 1100 - Definitions

Brewery/Microbrewery

~~An establishment primarily engaged in the wholesale production and distribution of beer, ale, porter and other fermented malt beverages. Areas for demonstration, education or tasting are included in this definition and are incidental to the primary use of producing beverages in accordance with state ABC permits.~~

Brewery

An establishment greater than 18,000 square feet in area primarily engaged in the wholesale production and distribution of beer, ale, porter and other fermented malt beverages. Areas for demonstration, education, retail sales or tasting are included in this definition, are incidental to the primary use of

producing beverages in accordance with state ABC permits and shall not be counted towards the square footage limitation.

Microbrewery

An establishment less than 18,000 square feet in area primarily engaged in the wholesale production and distribution of beer, ale, porter and other fermented malt beverages. Areas for demonstration, education, retail sales or tasting are included in this definition, are incidental to the primary use of producing beverages in accordance with state ABC permits and shall not be counted towards the square footage limitation.

ARTICLE 300A - Supplemental Regulations

329A Microbrewery

A microbrewery shall meet the following requirements:

- (1) Areas for demonstration, education, retail sales or tasting shall be included in the B3 District.
- (2) Excluding areas for demonstration, education, retail sales or tasting, a microbrewery shall not exceed 7,000 square feet in area in B3 District
- (3) Open storage of materials shall not be permitted in non-industrial districts.
- (4) No Drive through is permitted.
- (5) A microbrewery shall have an off-street or alley loading space in accordance with Article 400 in every zoning district where permitted, including the B3 district.

Table 400-1

Brewery/Microbrewery Wholesale Distribution	4 spaces per 1,000 sq ft GFA of retail space plus 1 per employee of largest shift; and 1 per facility vehicle
Brewery	4 spaces per 1,000 sq ft GFA of retail space plus 1 per employee of largest shift; and 1 per facility vehicle
Microbrewery	4 spaces per 1,000 sq ft GFA of retail space plus 1 per employee of largest shift; and 1 per facility vehicle

TABLE 200-2 - Uses and Districts

Brewery/Microbrewery (Wholesale Distribution)												
Microbrewery												329A
Brewery												

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

"The applicant's proposal to distinguish smaller scale microbreweries from larger breweries is supported by several Land Development Plan goals and policies, including providing for potential tourism development and ensuring zoning regulations are fine-tuned to address the scale of land uses and their external effects of adjoining properties."

The Applicant, Mr. Joel McClosky of Four Saints Brewing Company, presented comments in support of the request.

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

Upon motion by Mr. Moffitt and seconded by Mr. Swiers, Council accepted the recommendations of the Planning Board and the Community Development Staff and unanimously approved the proposed amendments to the Asheboro Zoning Ordinance along with adopting, as its own, the following consistency statement:

After considering the above factors, the Council believes the zoning text amendment will ensure consistency with the Land Development Plan. The Council therefore believes the request is reasonable and in the public interest.

(v) Zoning Case RZ-12-13: A request to amend the zoning ordinance provisions pertaining to the Extraterritorial Planning Jurisdiction.

Mayor Smith opened the public hearing on the following request.

Mr. Nuttall presented an overview of the Community Development Division staff's proposed amendments to Article 100 and Article 1100 of the Asheboro Zoning Ordinance. These amendments would be necessary to conform the text of the zoning ordinance with the new maps if the previously discussed change to the extraterritorial planning jurisdiction boundary of the City of Asheboro is adopted. Due to the continuation of the public hearing on the adoption of the "Revised 2012 Extraterritorial Planning Jurisdiction Boundary Map," city staff recommended that Council also continue this item to its regular December meeting.

Upon motion by Mr. Bell and seconded by Mr. Baker, Council voted unanimously to continue this item to its regular December meeting.

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

Mr. Nuttall presented a written request from Mr. Kevin Jessup, Manager of Waterford RE, LLC for a twelve month extension of the deadline to submit a final plat for review. This delay is requested because of the overall building market conditions and financing of the project. The developers expect to continue the project as market conditions improve.

Upon motion by Mr. Baker and seconded by Mr. Burks, Council voted unanimously to approve the requested extension.

(d) Consideration of a potential curb and gutter and sidewalk project for Old Liberty Road.

Mr. Nuttall reported that the North Carolina Department of Transportation (NCDOT) has been seeking input for potential projects. A curb and gutter and sidewalk project for Old Liberty Road, which is already listed on the Transportation Improvement Plan, was identified by city staff as a project that should be moved in priority. No NCDOT funding is available at this time. City staff will update the Council as information becomes available.

(e) Receive an update on the plans of U.S. Highway 64 Bypass project.

Mr. Nuttall reported that a public hearing on the plans for the U.S. Highway 64 Bypass project (TIP Project No. R-2536) was scheduled for November 8, 2012 at 7:00 p.m. at Southmont Elementary School. An informal open house was also scheduled from 4:00 until 6:30 p.m. The construction of the bypass is scheduled to begin in 2014 with an

estimated completion in 2017. The proposed zoo connector, which was part of this project at one time, has been deferred until future years.

7. Public comment period.

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

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

8. Consideration of a request received from Todd Lassiter, owner of the Shepherd's Way Day School at 314 North Cox Street, for an ordinance allowing three (3) marked parking spaces on the east side of North Cox Street between the main Coxborough entrance and the south exit.

Mr. Bunker presented the request from Mr. Todd Lassiter, owner of the Shepherd's Way Day School at 314 North Cox Street, for an ordinance allowing three (3) marked parking spaces on the east side of North Cox Street between the main Coxborough entrance and the south exit. Along with the written request from Mr. Lassiter, Mr. Bunker presented the parking plan drawn by city's engineering department to illustrate Mr. Lassiter's request. A copy of the written request from Mr. Lassiter and a copy of the parking plan are on file in the City Clerk's office.

During a discussion, Council Members felt more information was needed from the property owner prior to directing city staff to draft a parking ordinance. Upon motion by Mr. Bell and seconded by Mr. Hunter, Council voted unanimously to continue the above-referenced item to its regular December meeting and directed city staff members to invite Mr. Lassiter to discuss his request with the Council at that meeting.

9. Consideration of a request received from Martin Brown for an ordinance to stop traffic on West Pritchard Street before entering York Street, and to rescind an existing ordinance that stops traffic on York Street at West Pritchard Street.

Mr. Bunker presented a written request by Mr. Martin Brown for an ordinance to stop traffic on West Pritchard Street before entering York Street and to rescind an existing ordinance that stops traffic on York Street at West Pritchard Street. In his request, Mr. Brown stated that, due to the fact that Pritchard Street is a short, dead-end street and no longer connects to Fayetteville Street, he believes it would be "more safe and convenient to move the Stop Sign to Pritchard Street, to allow the heavy flow of traffic to continue moving into the (Fayetteville Street) School driveway." Additionally, Mr. Bunker presented a stop sign relocation drawn by the city's engineering department to illustrate Mr. Brown's request. A copy of the written request from Mr. Brown and a copy of the stop sign relocation are on file in the City Clerk's office.

Upon motion by Mr. Bell and seconded by Ms. Carter, Council unanimously authorized city staff to draft an ordinance to stop traffic on West Pritchard Street before entering York Street, and to rescind the existing ordinance that stops traffic on York Street at West Pritchard Street.

An ordinance implementing this directive will be on the consent agenda of the Council's regular December meeting.

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

(a) Authorization to publish notice of a public hearing on the question of renewing the taxicab franchise for Red Bird Cab, LLC.

Mr. Sugg reported to the Council that Red Bird Cab, LLC has submitted an application to renew its taxicab franchise to operate three (3) taxicabs within the City's corporate limits. With the exception of resolving certain issues pertaining to the status of the limited liability company with the Secretary of State's office, the taxicab franchise applicant has submitted the information requested by the city to process the renewal application. In light of this fact and the purported efforts of the cab company to update the administrative status of the limited liability company, Mr. Sugg recommended that Council authorize City staff to advertise a public hearing on the question of renewing the taxicab franchise for Red Bird Cab, LLC. The public hearing would be held during the Council's regular December meeting.

(b) First reading of an ordinance granting a Certificate of Convenience and Necessity to Red Bird Cab, LLC for the question of three (3) taxicabs.

In combination with his discussion about the public hearing, Mr. Sugg presented and recommended adoption, by reference, of the first reading of the ordinance granting the requested franchise.

Upon motion by Mr. Bell and seconded by Mr. Swiers, Council voted unanimously to adopt the first reading of the following ordinance by reference and to authorize the advertisement of a public hearing to be held during the regular December meeting prior to final consideration of the franchise ordinance.

**AN ORDINANCE GRANTING A RENEWAL OF A CERTIFICATE OF CONVENIENCE AND
NECESSITY TO RED BIRD CAB, LLC**

WHEREAS, Red Bird Cab, LLC, which has an office in Asheboro at 106 West Beasley Street, operates a taxicab service within the corporate limits of the City of Asheboro pursuant to an existing Certificate of Convenience and Necessity; and

WHEREAS, Red Bird Cab, LLC's franchise expires on December 9, 2012, and the limited liability company must properly renew its Certificate of Convenience and Necessity in order to lawfully continue to operate taxicabs within the jurisdiction of the City of Asheboro; and

WHEREAS, the available evidence indicates that Red Bird Cab, LLC is providing taxicab service within the City of Asheboro in a manner that furthers the public's convenience and addresses the public necessity for the operation of adequate taxicab services within the city;

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

Section 1. A renewed Certificate of Convenience and Necessity to operate three (3) taxicabs upon and over the streets of the City of Asheboro is hereby granted to Red Bird Cab, LLC (hereinafter referred to as the "Grantee").

Section 2. This franchise is granted for a term of one (1) year from and after the 9th day of December, 2012. Thereafter, applications for renewals shall be filed annually in accordance with the Code of Asheboro.

Section 3. This franchise is granted upon the following specific conditions and requirements:

- (a) Prior to 5:00 p.m. on December 7, 2012, the Grantee shall furnish to the City Clerk of the City of Asheboro, during the city's normal business hours, a certificate of insurance from an insurance carrier duly authorized to do business in the State of North Carolina evidencing that insurance coverage for the taxicabs identified in the Grantee's application to renew its taxicab franchise is in effect in an amount that complies with Section 114.14 of the Code of Asheboro for the duration of the Certificate of Convenience and Necessity issued pursuant to this ordinance.
- (b) Prior to 5:00 p.m. on December 7, 2012, the Grantee shall pay to the City Clerk of the City of Asheboro the privilege license tax of fifteen and no hundredths dollars (\$15.00) charged for each taxicab operated within the city and shall further pay the sum of money required to reimburse the city in full for the cost of running the legal notice of the public hearing conducted on December 6, 2012. The collection of these fees and charges is mandated in accordance with Sections 114.02, 114.12, and 114.17 of the Code of Asheboro.
- (c) The Grantee shall otherwise comply at all times with any and all applicable laws and regulations pertaining to the operation of taxicabs in the City of Asheboro, specifically including without limitation Chapter 20 of the North Carolina General Statutes and Chapter 114 of the Code of Asheboro.

Section 4. If a conflict is discovered between the provisions of this ordinance granting a Certificate of Convenience and Necessity to Red Bird Cab, LLC and Chapter 114 of the Code of Asheboro, the provisions found in Chapter 114 of the Code of Asheboro shall control.

Section 5. This ordinance shall be deemed to have been finally adopted by the Asheboro City Council after receiving approval during two (2) regular meetings of the governing board.

This ordinance was read and approved by the Asheboro City Council for the first time in open session during a regular meeting held on the 8th day of November, 2012.

This ordinance was read and approved by the Asheboro City Council for the second and final time in open session during a regular meeting held on the 6th day of December, 2012.

David H. Smith, Mayor

ATTEST:

Holly H. Doerr, CMC, NCCMC, City Clerk

11. Water Resources Division Items:

(a) Consideration of an ordinance amending Chapter 52 (Sewer Use) of the Code of Asheboro.

In order to address regulatory changes at the federal and state levels, Mr. Rhoney presented and recommended adoption of the first reading of an ordinance amending Chapter 52 (Sewer Use) of the Code of Asheboro.

Upon motion by Mr. Baker and seconded by Mr. Burks, Council voted unanimously to adopt the first reading of the following ordinance. This ordinance will be placed on the consent agenda for the December 2012 regular meeting for final approval.

AN ORDINANCE AMENDING CHAPTER 52 OF THE CODE OF ASHEBORO

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

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

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

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

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

GENERAL PROVISIONS

§ 52.01 PURPOSE AND POLICY.

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

- (1) To prevent the introduction of pollutants **and wastewater discharges** into the municipal wastewater system which will interfere with the operation of the system or contaminate the resulting sludge;
- (2) To prevent the introduction of pollutants **and wastewater discharges** into the municipal wastewater system which will pass through the system, inadequately treated, into any waters of the State or otherwise be incompatible with the system;
- (3) To promote reuse and recycling of industrial wastewater and sludges from the municipal system;
- (4) To protect both municipal personnel who may be affected by sewage, sludge, and effluent in the course of their employment as well as protecting the general public;
- (5) To provide for equitable distribution of the cost of operation, maintenance, and improvement of the municipal wastewater system; and
- (6) To ensure the municipality complies with its NPDES or Non-discharge Permit conditions, sludge use and disposal requirements, and any other federal or state laws to which the municipal wastewater system is subject.

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

(C) This Chapter shall apply to all users of the municipal wastewater system, as authorized by G.S. § 160A-312. The City shall designate an administrator of the **Publicly Owned Treatment Works (POTW)**

POTW and pretreatment program that shall be hereinafter referred to as the POTW Director. Except as otherwise provided herein, the POTW Director shall administer, implement, and enforce the provisions of This Chapter. Any powers granted to or imposed upon the POTW Director may be delegated by the POTW Director to other City personnel. By discharging wastewater into the municipal wastewater system, industrial users located outside the city limits agree to comply with the terms and conditions established in This Chapter, as well as any permits, enforcement actions, or orders issued hereunder.

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

§ 52.02 DEFINITIONS AND ABBREVIATIONS.

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

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

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

AUTHORIZED REPRESENTATIVE OF THE INDUSTRIAL USER.

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

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

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

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

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

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

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

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

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

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

CATEGORICAL STANDARDS. National Categorical Pretreatment Standards or Pretreatment Standard.

CFR. Code of Federal Regulations.

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

COD. Chemical Oxygen Demand.

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

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

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

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

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

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

gpd. Gallons per day.

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

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

G.S. North Carolina General Statutes.

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

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

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

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

l. Liter.

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

mg. Milligrams.

mg/l. Milligrams per liter.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

O & M. Operation and Maintenance.

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

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

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

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

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

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

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

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

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

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

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

RCRA. Resource Conservation and Recovery Act.

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

SIC. Standard Industrial Classification.

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

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

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

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

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

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

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

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

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

(1) ~~Violations of wastewater discharge limits.~~

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

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

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

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

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

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

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

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

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

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

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

(2) Technical Review Criteria (TRC) violations, defined here as those in which thirty-three percent (33%) or more of all the measurements taken for the same pollutant parameter during a six-month period equal or exceed the product of the numeric Pretreatment Standard or Requirement including instantaneous limits, as defined by 40 CFR Part 403.3(l), multiplied by the applicable

TRC (TRC = 1.4 for BOD, TSS, fats, oil, and grease, 1.2 for all other pollutants (except flow and pH)).

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

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

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

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

(7) Failure to accurately report noncompliance.

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

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

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

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

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

SWDA. Solid Waste Disposal Act.

THIS CHAPTER. Chapter 52 of the Code of Asheboro.

TKN. Total Kjeldahl Nitrogen.

TSS. Total Suspended Solids.

U.S.C. United States Code.

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

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

WASTEWATER PERMIT. As set forth in § 52.21.

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

GENERAL SEWER USE REQUIREMENTS

§ 52.05 PROHIBITED DISCHARGE STANDARDS.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 52.06 NATIONAL CATEGORICAL PRETREATMENT STANDARDS.

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

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

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

(D) A user may obtain a variance from a categorical pretreatment standard if the user(s) can prove, pursuant to the procedural and substantive provisions in 40 CFR 403.13, that factors relating to its discharge are fundamentally different from the factors considered by EPA when developing the categorical pretreatment standard.

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

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

§ 52.07 LOCAL LIMITS.

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

250 mg/l	BOD
250 mg/l	TSS
25 mg/l	<u>Ammonia</u> NH ³
0.005 mg/l	Arsenic
0.005 mg/l	Cadmium
0.05 mg/l (<u>total chromium</u>)	Chromium (<u>Total Chromium</u>)
0.06 mg/l	Copper
0.01 mg/l	Cyanide
0.05 mg/l	Lead

0.0002 mg/l	Mercury
0.02 mg/l	Nickel
0.005 mg/l	Silver
0.17 mg/l	Zinc
100 mg/l	Oil & Grease

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

§ 52.08 STATE REQUIREMENTS.

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

§ 52.09 RIGHT OF REVISION.

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

§ 52.10 DILUTION.

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

§ 52.11 PRETREATMENT OF WASTEWATER.

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

(B) Additional pretreatment measures.

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

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

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

required to provide/install and maintain a grease interceptor in compliance with the following supplemental regulations for grease interceptors prior to such users opening, expanding, or reopening the food preparation and/or serving facility.

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

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

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

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

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

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

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

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

§ 52.12 ACCIDENTAL DISCHARGE/SLUG CONTROL PLANS.

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

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

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

(1) Description of discharge practices, including non-routine batch discharges; and

(2) Description of stored chemicals; and

(3) Procedures for immediately notifying the POTW Director of any accidental or slug discharge, as required by § 52.30; and

(4) Procedures to prevent adverse impact from any accidental or slug discharge. Such procedures include, but are not limited to, inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site runoff, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants, including solvents, and/or measures and equipment for emergency response.

§ 52.13 HAULED WASTEWATER.

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

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

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

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

FEES

§ 52.15 PURPOSE OF FEES.

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

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

§ 52.16 USER CHARGES.

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

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

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

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

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

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

§ 52.17 SURCHARGES.

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

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

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

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

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

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

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

§ 52.18 PRETREATMENT PROGRAM ADMINISTRATIVE CHARGES.

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

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

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

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

(D) Permitting; and

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

WASTEWATER DISCHARGE PERMIT APPLICATION AND ISSUANCE

§ 52.20 WASTEWATER DISCHARGERS.

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

§ 52.21 WASTEWATER PERMITS.

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

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

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

- ~~(1) Name, address, and location (if different from the address); and~~
- ~~(2) Standard Industrial Classification (SIC) codes for pretreatment, the industry as a whole, and any processes for which categorical pretreatment standards have been promulgated; and~~
- ~~(3) Analytical data on wastewater constituents and characteristics including but not limited to those mentioned in §§ 52.05 through 52.13, any of the priority pollutants (§ 307(a) of the Act) which the applicant knows or suspects are present in the discharge as determined by a reliable analytical laboratory, and any other pollutant of concern to the POTW; sampling and analysis shall be performed in accordance with procedures established by the EPA pursuant to § 304(g) of the Act and contained in 40 CFR Part 136, as amended, and required in § 52.34 and § 52.35; and~~
- ~~(4) Time and duration of the indirect discharge; and~~
- ~~(5) Average daily and 30 minute peak wastewater flow rates, including daily, monthly, and seasonal variations if any; and~~
- ~~(6) Site plans, floor plans, mechanical and plumbing plans, and details to show all sewers, floor drains, sewer connections, directions of flow, and appurtenances by the size, location, and elevation; and~~
- ~~(7) Description of activities, facilities, and plant processes on the premises including all materials which are or could be accidentally or intentionally discharged; and~~
- ~~(8) Where known, the nature and concentration of any pollutants in the discharge which are limited by any city, state, or federal pretreatment standards, and a statement regarding whether or not the pretreatment standards are being met on a consistent basis and if not, whether additional operation and maintenance (O&M) and/or additional pretreatment is required for the user to meet applicable pretreatment standards; and~~
- ~~(9) If additional pretreatment and/or O&M will be required to meet the pretreatment standards; the shortest schedule by which the user will provide such additional pretreatment. The completion date in this schedule shall not be longer than the compliance date established for the applicable pretreatment standard. The following conditions apply to this schedule:
 - ~~(a) The schedule shall contain progress increments in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the user to meet the applicable pretreatment standards. No increment in the schedule shall exceed nine months;~~
 - ~~(b) No later than 14 days following each date in the schedule and the final date for compliance, the user shall submit a progress report to the POTW Director including, at a minimum, whether or not it complied with the increment of progress, the reason for any delay, and if appropriate, the steps being taken by the user to return to the established schedule. In no event shall more than nine months elapse between such progress reports to the POTW Director;~~~~
- ~~(10) Each product produced by type, amount, process or processes and rate of production; and~~
- ~~(11) Type and amount of raw materials processed (average and maximum per day); and~~
- ~~(12) Number and type of employees, and hours of operation of plant and proposed or actual hours of operation of pretreatment system; and~~
- ~~(13) If subject to a categorical standard, a baseline monitoring report in accordance with 40 CFR 403.12(b) and 15A NCAC 2H .0908(a), as outlined in § 52.25;~~
- ~~(14) Any other information as may be deemed by the POTW Director to be necessary to evaluate the permit application.~~

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

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the

information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

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

(1) The POTW Director is authorized to accept applications for the City and shall refer all applications to the POTW staff for review and evaluation.

(2) Within 30 days of receipt, the POTW Director shall acknowledge and accept the complete application; or if not complete, shall return the application to the applicant with a statement of what additional information is required.

(F) *Tentative determination and draft permit.*

(1) The POTW staff shall conduct a review of the application and an on-site inspection of the Significant Industrial User, including any pretreatment facilities, and shall prepare a written evaluation and tentative determination to issue or deny the Significant Industrial User permit.

(2) If the staff's tentative determination in division (F)(1) above is to issue the permit, the following additional determinations shall be made in writing:

(a) Proposed discharge limitations for those pollutants proposed to be limited; and

(b) A proposed schedule of compliance, including interim dates and requirements, for meeting the proposed limitations; and

(c) A brief description of any other proposed special conditions which will have significant impact upon the discharge described in the application.

(3) The staff shall organize the determinations made pursuant to divisions (F)(1) and (F)(2) above and the City's general permit conditions into a ~~single industrial user permit~~ Significant Industrial User permit.

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

~~(1) A sketch and detailed description of the industrial facilities and pretreatment facilities including the location of all points of discharge to the POTW and all established compliance monitoring points;~~

~~(2) A quantitative description of the discharge described in the application which includes at least the following:~~

~~(a) The rate or frequency of the proposed discharge; if the discharge is continuous, the average daily flow; and~~

~~(b) The actual average daily discharge in pounds per day of any limited pollutant and any pollutant identified in the application as known or suspected present; and~~

~~(c) The basis for the pretreatment limitations including the documentation of any calculations in applying categorical pretreatment standards.~~

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

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

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

(a) documentation of categorical determination, including documentation of any calculations used in applying categorical pretreatment standards; and

(b) documentation of the rationale of any parameters for which monitoring has been waived under 40 CFR Part 403.12(e)(2).

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

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

(2) The POTW Director is authorized to:

(a) Issue a Significant Industrial User permit containing such conditions as are necessary to effectuate the purposes of This Chapter and G.S. § 143-215.1; and

(b) Issue a Significant Industrial User permit containing time schedules for achieving compliance with applicable pretreatment standards and requirements; and

(c) Modify any permits upon not less than 60 days notice and pursuant to division (J) below; and

(d) Revoke any permit pursuant to § 52.50; and

(e) Suspend a permit pursuant to § 52.50; and

(f) Deny a permit application when in the opinion of the POTW Director such discharge may cause or contribute to pass-through or interference of the wastewater treatment plant or where necessary to effectuate the purposes of G.S. § 143-215.1.

(I) Hearings.

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

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

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

~~(2) *Final appeal hearing.* Any decision of a hearing officer made as a result of an adjudicatory hearing held under division (I)(1) above may be appealed to the City Council upon filing a written demand within ten days of receipt of notice of the decision. Hearings held under this subdivision shall be conducted in accordance with the quasi-judicial principles and procedures utilized by the City Council when conducting a public hearing on an application for a Special Use Permit under Article 600 of the Asheboro Zoning Ordinance. Failure to make written demand within the time specified herein shall bar further appeal. The City Council shall make a final decision on the appeal within 90 days of the date the appeal was filed and shall transmit a written copy of its decision by registered or certified mail.~~

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

~~(a) All notices, motions, and other like pleadings; and~~

~~(b) A copy of all documentary evidence introduced; and~~

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

~~(d) A copy of the final decision of the City Council.~~

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

(J) Permit modification.

(I) Permit modification.

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

(a) Changes in the ownership of the discharge when no other change in the permit is indicated, ~~and~~

(b) A single modification of any compliance schedule not in excess of four months, ~~and~~

(c) ~~A modification~~ **Modification** of compliance schedules (construction schedules) in permits for new sources where the new source will not begin to discharge until control facilities are operational.

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

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

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

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

(a) A statement of duration (in no case more than five years); and

(b) A statement of non-transferability; and

(c) Applicable effluent limits based on categorical standards or local limits or both; and

(d) Applicable monitoring, sampling, reporting, notification, and record keeping requirements. These requirements shall include an identification of pollutants to be monitored, sampling location, sampling frequency, and sample type based on federal, state, and local law; and

(e) Requirements for notifying the POTW in the event of an accidental discharge or slug load as defined in § 52.02; and

(f) Requirements to implement a plan or other controls for prevention of accidental discharges and/or slug loads as defined in § 52.02, if determined by the POTW Director to be necessary for the User; and

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

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

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

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

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

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

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

- (e) The unit charge or schedule of user charges and fees for the management of the wastewater discharged to the system; and
- (f) Requirements for installation and maintenance of inspection and sampling facilities and equipment; and
- (g) Specifications for monitoring programs which may include sampling locations, frequency of sampling, number, types, and standards for tests, and reporting schedules; and
- (h) Requirements for immediate reporting of any instance of noncompliance and for automatic resampling and reporting within 30 days where self-monitoring indicates a violation; and
- (i) Compliance schedules for meeting pretreatment standards and requirements; and
- (j) Requirements for submission of periodic self-monitoring or special notification reports; and
- (k) Requirements for maintaining and retaining plans and records relating to wastewater discharges as specified in § 52.37 and affording the POTW Director, or his or her representatives, access thereto; and
- (l) Requirements for prior notification and approval by the POTW Director of any new introduction of wastewater pollutants or of any significant change in the volume or character of the wastewater prior to introduction in the system; and
- (m) Requirements for the prior notification and approval by the POTW Director of any change in the manufacturing and/or pretreatment process used by the permittee; and
- (n) Requirements for immediate notification of excessive, accidental, or slug discharges, or any discharge which could cause any problems to the system; and
- (o) A statement that compliance with the permit does not relieve the permittee of responsibility for compliance with all applicable federal and state pretreatment standards, including those which become effective during the terms of the permit; and
- (p) Other conditions as deemed appropriate by the POTW Director to ensure compliance with This Chapter, and state and federal laws, rules, and regulations.

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

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

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

REPORTING REQUIREMENTS

§ 52.25 BASELINE MONITORING REPORTS.

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

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

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

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

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

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

(5) Measurement of pollutants.

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

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

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

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

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

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

§ 52.26 COMPLIANCE SCHEDULE PROGRESS REPORTS.

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

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

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

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

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

§ 52.27 REPORTS ON COMPLIANCE WITH CATEGORICAL PRETREATMENT STANDARD DEADLINE.

Within **ninety (90) 90** days following the date for final compliance with applicable categorical pretreatment standards, or in the case of a new source following commencement of the introduction of wastewater into the POTW, any user subject to such pretreatment standards and requirements shall submit to the POTW Director a report containing the information described in **§ Section 52.25(B)(4) - (B)(6) of This Chapter.** For users subject to equivalent mass or concentration limits established in accordance with the procedures in 40 CFR 403.6(c), this report shall contain a reasonable measure of the

user's long-term production rate. For all other users subject to categorical pretreatment standards expressed in terms of allowable pollutant discharge per unit of production (or other measure of operation), this report shall include the user's actual production during the appropriate sampling period. All compliance reports must be signed and certified in accordance with § Section 52.21(D) of This Chapter.

§ 52.28 PERIODIC COMPLIANCE REPORTS.

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

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

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

§ 52.29 REPORTS OF CHANGED CONDITIONS.

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

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

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

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

§ 52.30 REPORTS OF POTENTIAL PROBLEMS.

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

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

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

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

§ 52.31 REPORTS FROM UNPERMITTED USERS.

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

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

§ 52.32 NOTICE OF VIOLATION/REPEAT SAMPLING AND REPORTING.

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

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

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

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

§ 52.33 NOTIFICATION OF THE DISCHARGE OF HAZARDOUS WASTE.

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

~~(A)~~ (B) Any user who commences the discharge of hazardous waste shall notify the POTW, the EPA Regional Waste Management Division Director, and state hazardous waste authorities, in writing, of any discharge into the POTW of a substance which, if otherwise disposed of, would be a hazardous waste under 40 CFR ~~Part~~ 261. Such notification must include the name of the hazardous waste as set forth in 40 CFR Part 261, the EPA hazardous waste number, and the type of discharge (continuous, batch, or other). If the user discharges more than ~~one hundred (100)~~ 400 kilograms of such waste per calendar month to the POTW, the notification also shall contain the following information to the extent ~~such~~ information is known and readily available to the user: an identification of the hazardous constituents contained in the wastes; an estimation of the mass and concentration of such constituents in the wastestream discharge during the calendar month; and an estimation of the mass ~~and concentration~~ of ~~such~~ constituents in the wastestream expected to be discharged during the following 12 months. ~~With the exception of the notification required by the first sentence of this subdivision, all notifications must take place no later than 180 days after discharge commences. With the exception of the notification required by the first sentence of this subdivision, All notifications must take place no later than one hundred eighty (180) days before the discharge commences. The user shall not begin the discharge until written approval is received from the City. Any any notification under this paragraph need be submitted only once for each hazardous waste discharge. However, notifications of changed conditions must be submitted under § 52.29 Section 52.29 of This Chapter. The notification requirement in this section does not apply to pollutants already reported by users subject to categorical pretreatment standards under the self-monitoring requirements of §§ 52.25, 52.27, and 52.28 Sections 52.25, 52.27, and 52.28 of This Chapter.~~

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

~~(C)~~ (D) In the case of any new regulation under Section 3001 of RCRA identifying additional characteristics of hazardous waste or listing any additional substance as a hazardous waste, the user must notify the POTW Director, the EPA Regional Waste Management Waste Division Director, and

state hazardous waste authorities of the discharge of such substance within **ninety (90) 90** days of the effective date of such regulations.

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

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

§ 52.34 ANALYTICAL REQUIREMENTS.

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

§ 52.35 GRAB AND COMPOSITE SAMPLE COLLECTION.

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

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

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

§ 52.36 TIMING.

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

§ 52.37 RECORD KEEPING.

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

§ 52.38 ELECTRONIC REPORTING.

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

COMPLIANCE MONITORING

§ 52.40 MONITORING FACILITIES.

(A) The City requires the user to provide and operate, at the user's own expense, monitoring facilities to allow inspection, sampling, and flow measurement of the building sewer and/or internal drainage systems. The monitoring facility should normally be situated on the user's premises, but the City may, when such a location would be impractical or cause undue hardship on the user, allow the facility to

be constructed in the public street or sidewalk area located so that it will not be obstructed by landscaping or parked vehicles.

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

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

§ 52.41 INSPECTION AND SAMPLING.

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

§ 52.42 SEARCH WARRANTS.

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

CONFIDENTIAL INFORMATION

§ 52.45 CONFIDENTIAL INFORMATION.

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

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

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

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

(B) Information provided by an Industrial User to the POTW Director that is determined to be entitled to confidential treatment shall be made available upon written request to the Division of Water Quality

or any state agency for uses related to the Pretreatment Program, the National Pollutant Discharge Elimination System (NPDES) Permit, collection system permit, stormwater permit, and/or Non-discharge permit, and for uses related to judicial review or enforcement proceedings involving the person furnishing the report.

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

ENFORCEMENT

§ 52.50 ADMINISTRATIVE REMEDIES.

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

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

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

- (1) The POTW Director shall review the evidence presented at the hearing and determine whether the proposed enforcement action is appropriate.
- (2) A show cause hearing under this Subdivision is not a prerequisite to the assessment of a civil penalty under § 52.99 nor is any action or inaction taken by the POTW Director under this division subject to an administrative appeal under § ~~52.24(i)~~ 52.58.

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

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

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

noncompliant discharge. The Industrial User shall submit a detailed written statement describing the causes of the harmful contribution and the measures taken to prevent any future occurrence to the POTW Director prior to the date of the above-described hearing.

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

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

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

§ 52.51 OTHER AVAILABLE REMEDIES.

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

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

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

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

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

§ 52.52 REMEDIES ARE NONEXCLUSIVE.

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

ANNUAL PUBLICATION OF SIGNIFICANT NONCOMPLIANCE

§ 52.55 ANNUAL PUBLICATION OF SIGNIFICANT NONCOMPLIANCE.

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

ADJUDICATORY HEARINGS

§ 52.58 ADJUDICATORY HEARINGS.

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

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

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

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

- (1) All notices, motions, and other like pleadings.*
- (2) A copy of all documentary evidence introduced.*
- (3) A certified transcript of all testimony taken, if testimony is transcribed. If testimony is taken and not transcribed, then a narrative summary of any testimony taken.*
- (4) A copy of the final decision of the City Council.*

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

AFFIRMATIVE DEFENSES TO DISCHARGE VIOLATIONS

§ 52.60 UPSET.

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

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

- (1) An upset occurred and the user can identify the cause of the upset; and
- (2) The facility was at the time being operated in a prudent and workmanlike manner and in compliance with applicable operation and maintenance procedures; and
- (3) The user has submitted (verbal notification of the required information is acceptable so long as the verbal notification is followed-up with written notification that is submitted within five (5) days) the following information to the POTW Director within ~~twenty-four (24)~~ 24 hours of becoming aware of the upset:
 - (a) A description of the indirect discharge and cause of noncompliance; and
 - (b) The period of noncompliance, including exact dates and times or, if not corrected, the anticipated time the noncompliance is expected to continue; and
 - (c) The steps being taken and/or planned to reduce, eliminate, and prevent recurrence of the noncompliance.

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

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

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

§ 52.61 PROHIBITED DISCHARGE STANDARDS DEFENSE.

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

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

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

§ 52.62 BYPASS.

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

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

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

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

bypass. The POTW Director may waive the written report on a case-by-case basis if the verbal report has been received within 24 hours.

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

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

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

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

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

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

§ 52.99 **CIVIL PENALTY.**

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

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

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

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

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

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

(1) The degree and extent of the harm to the natural resources, to the public health, or to public or private property resulting from the violation; and

(2) The duration and gravity of the violation; and

(3) The effect on ground or surface water quantity or quality or on air quality; and

(4) The cost of rectifying the damage; and

(5) The amount of money saved by noncompliance; and

(6) Whether the violation was committed willfully or intentionally; and

(7) The prior record of the violator in complying or failing to comply with the pretreatment program; and

(8) The cost of enforcement to the City.

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

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

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

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

INTRODUCED: November 8, 2012

FIRST READING: November 8, 2012

SECOND READING: December 6, 2012

RECEIVED initial approval after the first reading on the ____ day of November, 2012.

AYES: _____

NAYS: _____

ABSENT: _____

NOT VOTING: _____

PASSED after the second and final reading on the ____ day of December, 2012.

AYES: _____

NAYS: _____

ABSENT: _____

NOT VOTING: _____

APPROVED this ____ day of December, 2012.

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

ATTEST:

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

(b) Consideration of a resolution approving the purchase of a sewer vacuum tanker truck.

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

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

50 RES 11-12

RESOLUTION APPROVING THE PURCHASE OF A SEWER VACUUM TANKER TRUCK

WHEREAS, upon the request of the city's water resources director, the city manager has recommended to the Asheboro City Council that a new sewer vacuum tanker truck be purchased for the systems maintenance department within the water resources division; and

