

LAW AND FINANCE MEETING
Wednesday, January 9, 2013
1:00 P.M.
Council Chambers

The Law and Finance Committee met on Wednesday, January 9, 2013, at 1:00 P.M., in the Council Chambers at City Hall. The following people were present:

Law and Finance Committee:

Mayor Pro Tem Sam Gaskins	Council Member James Williams
Council Member Rebecca Wyhof	Council Member Walter McNeil, Jr.
Council Member L.I. (Poly) Cohen	Council Member Jimmy Haire
City Manager Hal Hegwer	City Clerk Bonnie D. White
City Attorney Susan Patterson	

Absent:

Mayor Cornelia Olive
Council Member Charles Taylor

Mayor Pro Tem Sam Gaskins opened the meeting. He advised that three items need to be added to the agenda: (1) Discussion on Ice Machine – concerns whether it is a building versus a vending machine; (2) Firearms Legislation Recommendation to the State; and (3) Meeting with Lee County.

Consider Changes to Sewer Use Ordinance – (Exhibit A)

City Engineer Paul Weeks gave background on the City sewer use ordinance. The City owns, operates, and maintains a domestic wastewater treatment plant. It is designed to accept domestic wastewater and treat it to certain limits. We have residential and different types of commercial and industrial businesses tied into our collection system. The sewer use ordinance gives the City the ability to regulate those customers who send us something other than domestic waste.

Mr. Weeks advised that we have the sewer use ordinance because it is required by the State. The State is required to have certain rules and regulations by the EPA, so that when the EPA makes a change, it gets passed by the State and passed down to towns and municipalities and that is what has happened with this ordinance. The changes in this ordinance are basically administrative and a lot of textural and definition changes. There is nothing in the changes that is being contemplated that will put some additional restrictions on the users.

Consider Ordinance Amending the Annual Operating Budget of the City of Sanford FY 2012-2013 – (Exhibit B)

City Engineer Paul Weeks advised that this relates to the Wagon Trail Waterline Extension project. The City received a petition from residents on Wagon Trail Road requesting a waterline extension because they were having issues with their wells. Once the petition was received, staff applied for a Rural Center grant and was awarded that grant as Council is aware. The Rural Center is going to pay up to 90 percent of the construction cost which drops the cost to

the homeowners. Staff bid the project and has a contractor and to date, we have collected nine of the fees associated with fifteen of the lots. We have six fees outstanding. Unfortunately, we cannot continue with the project until we have the remaining funds. The grant from the Rural Center expires in April. The bid we have from the contractor is from October and he is willing to hold it for us. He said of the nine fees collected, there are eight individuals waiting to get water. Staff would like to continue with the construction and complete the project. Staff is asking to transfer \$2,124 to the project for completion. In the future, if someone who has not paid their fees comes in for a tap, they will have to pay the current prevailing tap fee, which today is \$950 and also their construction fee they failed to pay. Staff feels this money will be collected in the future.

Attorney Patterson asked Mr. Weeks to explain how this situation is different from our normal process for the expansion of lines. Mr. Weeks advised that had we not received the grant, one of the things we could have done was to assess the cost of the line to each individual homeowner. We have signatures of 72 percent of the property owners who own 60 percent of the properties, which meets our petition assessment requirements. If no grant was received, each lot would have been paying \$6,000 whether or not they signed the petition; however, the grant paid 90 percent of that cost, so the cost to the homeowner is in the neighborhood of about \$490. Staff believes it is not cost effective to assess that \$480 to \$490 to each of the remaining properties because the assessment would be over the next nine years at 8 percent.

Attorney Patterson stated that the difference legally is that under the assessment procedure, you would be able to foreclose on the property in the event the owner did not pay the assessment. Basically, this is the City paying up front for those who did not pay; the City would collect it from the owners when, and if, they tapped on to the line. The City might not have some collection remedies this way. It is staff's intent to collect that money when they use the water.

Mr. Weeks stated that this ordinance transfers the money from water capital improvements to the capital improvements to be used for the completion of the project.

Consider Grant Project Ordinance Amendment Wagon Trail Road Waterline Extension - (Exhibit C)

Mr. Weeks explained that this ordinance allows staff to transfer the funds needed out of the \$2,124 to make up the difference that the homeowners do not pay. If a homeowner comes in next week to pay their fee, we do not need all of the \$2,124. It helps staff with the bookkeeping.

Council Member Wyhof asked if a property is sold and the fees have not been paid, will the new homeowner pay the construction cost and the tap-on fee. Mr. Weeks replied that this issue has to be addressed in that how long down the road do they have to pay the cost. Mr. Gaskins stated that logically, he would hope that we would maintain that indefinitely to pay that cost.

Consider Resolution Supporting and Authorizing the Submittal of a PARTF Application to the North Carolina Division of Parks & Recreation for the Purposes of Developing the Medical Mile Greenway Extension to the Endor Iron Trail – (Exhibit D)

Community Development Director Bob Bridwell stated that for some time, staff has been working on the design and the next phase of the greenway, which would run from the Kiwanis Park, back to Carthage Street, and down Carthage Street. That design work has been completed and staff is prepared to make an application for a PARTF grant for that project, but we are only pursuing half of that project. The part that is being proposed today for the application, which is due January 31, 2013, is that portion that extends from Kiwanis Park, down through the Medical Village, to Carthage Street in front of the hospital and stops. This will be the “therapeutic trail” which was proposed a few years ago and will be used by bikers and runners also.

Mr. Bridwell stated that the maximum of the grant is \$500,000 and it is a 50/50 match, which the City would have to pay \$250,000 at a maximum. The figures are not quite finalized. This project will help continue the concept of a medical village.

Consider Banking Services Contract Recommendation – (Exhibit E)

Financial Services Director Melissa Cardinali said that the City is not required by law to take Requests for Proposals because banking is a service; however, we do like to do that and offer the opportunity to all local banks to participate if they are able and to ensure that the City is getting the best pricing and service. She stated that we last did the process in 2006, and at that time, the contract was awarded to RBC Bank. Then, in 2009, we agreed to a two-year extension with RBC, at which point RBC lowered our monthly price and in 2011, we did another extension. The reason for those extensions was because of the banking environment; it was too tenuous and too many unknowns at that time and felt we should continue that relationship. In 2012, part of RBC (the banking portion in the United States) was sold and merged to PNC. Since last spring, we have actually worked with PNC. They have provided the City with excellent service and probably the best technological systems that she has seen. PNC honored the contract that we had with RBC through the end of our contract period which is February 2013.

She said staff sent requests for proposals to all the banks in Sanford and received responses from four of them. She referred to Exhibit E showing the criteria that was sent out and the response from the four Requests for Proposals. All of the banks are able to provide the service levels that we have currently, except there are a few things that First Citizens is not able to offer us which are: (1) They have a third-party lockbox (this is not necessarily a deal breaker – it does create some inefficiencies for us); (2) They are not able to provide us with procurement cards; (3) the technology is not there that you see at the other three respondents (she cannot quantify this) – you can see that in the pricing because the other three respondents are pretty much in the same ballpark and there is a large difference as listed in the estimated monthly fee. It is about 45 percent less at First Citizens Bank. Mrs. Cardinali said that it is very hard to quantify because she has never had such a huge difference between the pricing and Council needs to note that RBC kept our price so competitive and so low to maintain our relationship. Governmental banking is not profitable for banks. They have a lot of stipulations on them in securing our funds that they do not have with their other customers. However, if we choose to go solely based on price and choose First Citizens, our monthly increase will be approximately

\$2,000 a month or \$24,000 each year. If we choose to maintain our relationship with PNC, then it would be an additional \$20,000 each year. Being sensitive to the issues before Council and the next topic (in light of the potential financial restraints), her proposal to Council is to award the contract to First Citizens in recognition of the fact that we will not have the exact same level of service that we currently have.

Council Member Wyhof asked if the additional work that we have to do to compensate for the lack of technology, will that incur additional staff expenses, or are there other expenses, it will actually create, by saving that amount of money?

Mrs. Cardinali replied that is what she tried to quantify but she can't because she only has what the banks have given her. She said that from working with PNC, one of the things they do and she has never experienced before, is that they were able to detect a virus in one of our computers at City Hall and they shut us down; which meant that we could not access the bank. Thereby, they protected PNC assets and their other customers and that was incredible to her that they had that technology. Those are the kind of things that unless you know every little thing to ask, it is hard to quantify. She said that the technology difference is worth the price difference, and she may come back in a year and request assistance to make a change. It is a big deal to change banks and she does not enter that lightly.

Consider Discussion Regarding Interlocal Agreements with Lee County – (Exhibit F)

City Manager Hal Hegwer said that we sent Council an email informing them that the Lee County Board of Commissioners have requested a meeting with Sanford and with Broadway at a time that is convenient for us. They will meet with Broadway separately. They want to meet at a neutral location that is conducive to talk. He wanted to see if Council would like to meet.

Mayor Pro Tem Gaskins stated that this matter could be discussed today or they could wait until they meet with the County. He asked council members what they would like to do. Ms. Wyhof said she would like to meet with the County. Mr. Hegwer stated that Mr. Crumpton and he have talked and suggested meeting the first week of February with the County.

Ms. Wyhof asked that if the City were to collect its own taxes, would staff need employees year round, or is that something where you have a period of time where you need more personnel than at other times? Mrs. Cardinali replied that the current bill is an annual process; however, everyone does not pay when they are supposed to, so it becomes a twelve-month process. Staff has to go out and find delinquent taxpayers, their bank accounts, their employers etc. It takes a lot of time and if someone refuses to respond to that, there will be foreclosures that have to be done. They have estimated a minimum amount of anticipated annual costs on the sheet. Mr. Hegwer added that when you look at the figures, it is pretty close to the 2 percent the County is requesting. If we were to take this task on, it is pretty consistent to the 2 percent being requested from the County.

Mrs. Cardinali added that if the contract were dissolved, it would have to be worked out as to what happens to the delinquent taxpayers who can stay on their scrolls for ten years and does the County collect those since they have the documents or, do we all of a sudden have ten

years worth of back information to collect on. Those are also items that would play into these numbers and have to be decided because you are talking about the current year and ten years back.

Mr. Hegwer said there is no way staff can get ready this year. He has talked with the county manager and told him that if we were to collect our own taxes, we would have to wait until next year to get the City ready and the City would have to work with their proposal this year until such time if the Council chose to go through its own collection process, then we would move in that direction. Mrs. Cardinali added that we would have to start the process in the upcoming fiscal year to be ready by the next fiscal year.

Mr. Gaskins clarified that basically the cost to let the County collect the taxes is roughly \$220,000. Our annual costs were a little over \$200,000 plus \$72,700 for the upfront costs, which would be a payback in four to five years. Then, we would be completely independent of any whims that the county commissioners might have.

Mr. Hegwer advised that he has researched this issue and from statistics he has seen, about 35 percent of municipalities across the state collect their own taxes.

It was the consensus of council members to look at their calendars and let Mr. Hegwer know if they have any conflict with the first week of February to meet with the commissioners. Mr. Gaskins felt that we should meet at a location where it can be televised.

Consider NCLM Advocacy Goals Conference – (Exhibit G)

City Manager Hegwer advised that one of the advocacy goals is about the sales tax distribution methodology. It says that every April, each county has the opportunity to change the method of sales tax distribution it is using. Any change takes effect on July 1 of the same calendar year. This creates an incentive for counties to change methods to solve budgetary problems and causes immediate budgetary shortfalls for their cities. A one-year delay in implementation of the change would reduce the incentive to counties and give cities and towns time to plan how to respond to a change. The conference is Thursday, January 24 and the League has asked that we have a voting representative from the City, an authorized delegate and then a backup delegate. Mr. Hegwer said he plans to attend. He felt that a council member should be the voting delegate but he would do it if so needed. He wanted to make sure the goals are congruent with where council members would like to see the League work and if there is anything extra, to let him know so he can pass it along.

Mr. Gaskins added that there is also information regarding hydraulic fracking because municipalities have been stripped of any opportunity to regulate what is going on. It will be important for the City of Sanford. He asked if there is any council member interested and available on January 24 to represent the City. No one responded.

Discussion on Ice Machine – Concerns whether it is building versus the vending machines – (Exhibit H)

City Attorney Susan Patterson explained that this is information for council that deals with the recent decision of the Board of Adjustment (BOA). Several years ago before 2007,

there was technology developed to have a self-contained vending unit for ice. The Joint Planning Commission met and proposed rules for the Unified Development Ordinance (UDO) for these units. Rules were put in place that if you had a free-standing ice vending unit it had to meet certain appearance criteria. Twice the Ice was the first unit put in place on Horner Boulevard at Adcock Realty. It had to meet certain criteria such as the exterior could not be metal and it had to have certain neutral color schemes, landscaping etc. Recently, at the Tramway area, an individual came to planning staff and said the technology has changed to some extent. He wanted to put in a self-contained unit. It was to be off-loaded off a truck and it would make ice in the same manner. You put in money and ice would be dispensed in a bag. Staff made the interpretation that the rules that were in the UDO apply. The individual did not want to comply with those standards and appealed the decision to the Board of Adjustment.

She advised that the Board of Adjustment met in December and decided that for the size of his machine or smaller that had a UL listing and produced a certain capacity of ice that the appearance rules in the UDO did not apply. Section 5.37 of the UDO has the rules regarding the free-standing ice vending units. She referred to pictures in Exhibit H of where ice vending units have been constructed under the rules in the UDO and also a picture of an ice machine unit and the location where the applicant would like to put the unit. The individual said that basically this is not a building or structure; it is a unit like a Coke/vending machine. It is about 7 x 10 x 10 feet high structure. She wanted to bring this issue to Council's attention that the BOA overruled staff's interpretation and decided that the UDO standards did not apply to a machine that size or smaller. The applicant's argument was that it was not a building or structure; it was a machine. She said if Council chooses to appeal that decision, there is a small window of 30 days from the time the decision is filed in the Clerk's office. She said this is for Council to consider if they want to either (A) change the UDO rules; (B) challenge the decision that staff was proper in their interpretation and have a court decide; or (C) whether to let this decision stand, and do nothing.

Attorney Patterson said that the BOA, in making this ruling, clarified that free-standing ice vending units, that are 2,500 lbs or less in capacity and are 84.5" x 117.375 (7.04' x 9.78') or less in size and 129" (10.75') or less in height, shall not be subject to the design standards of Section 5.37 of the UDO. She said the question is – is this decision fine for the City of Sanford or would you like the City of Sanford appearance standards to apply to this sort of thing and support staff's interpretation and appeal it in court, or change the rules. She added that Council does not have to make the decision today; it is for Council's consideration. She asked them to let her know their feelings because there is a small window of time in which to appeal.

Community Development Director Bob Bridwell stated that one of the things Council needs to consider is the original intent when the Joint Planning Commission proposed the regulations for these kinds of units. Their overwhelming concern was the appearance issue because most of these units are in parking lots or external to the building in the front area. Their intent was for these units to comply with and present an image that is consistent with what the City, County and Broadway wanted to project; they were not to be self-standing units just sitting in a parking lot for a truck to drop them off. Staff made the interpretation based upon that intent and not detracting from the appearance of corridors, etc.

Mr. Gaskins stated that other than this particular ordinance under question, do we have anything that regulates vending machines, such as Coke/Pepsi machines, the Redbox machines, ATM machines, etc. Mr. Bridwell replied that Assistant Community Development Director Marshall Downey is researching this issue right now.

Mr. Bridwell stated what counsel is saying is that by having this decision overturned, we have implications.

Firearms Legislation Recommendation to the State – (Exhibit I)

Mr. Gaskins said that this issue was brought up by Police Chief Ronnie Yarborough. City Attorney Susan Patterson stated that she was not ready to discuss this today; she just wanted to pass it out to Council for their review, because at the last meeting, Mr. Williams and Mr. Taylor were asking for needed legislation for people who committed crimes to have to serve an active sentence if they used a firearm. She was asked to get with Mr. Taylor and Chief Yarborough to work with them on preparing necessary legislation and a resolution for this Council to support. This is just a draft and she has not been able to get up with Mr. Taylor and go over these things with him. She did not want to give out to any council member information unless she gives it to all of them. She has worked with Chief Yarborough on it and he has gathered information from other states, which has been used to help craft this resolution. She would like for Council to review this document and she would like for Mr. Taylor to contact her to see what he wants in this document.

Meeting with Lee County

Item was discussed under Interlocal Agreements with Lee County.

Other Business

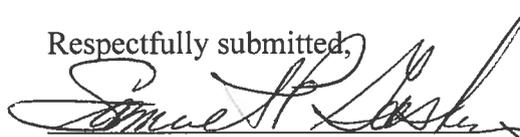
There was no other business.

ALL EXHIBITS CONTAINED HEREIN ARE HEREBY INCORPORATED BY REFERENCE AND MADE A PART OF THESE MINUTES.

ADJOURNMENT

Having no further business to come before the Law & Finance Committee, the meeting was adjourned upon the motion of Council Member L. I. "Poly" Cohen; seconded by Council Member Walter McNeil, Jr., the motion passed unanimously.

Respectfully submitted,



Sam P. Gaskins, Mayor Pro Tem

ATTEST:



Bonnie D. White, City Clerk

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ARTICLE VII. WASTEWATER DISCHARGE AND POLLUTION ABATEMENT

DIVISION 1. GENERALLY

Sec. 38-221. Purpose and scope of article.

(a) This article sets forth uniform requirements for direct and indirect contributors into the wastewater collection and treatment system for the **City of Sanford, 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 USC 1251 et seq.) and the general pretreatment regulations (40 CFR 403).

(b) The objectives of this article are to:

- (1) 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) 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) Promote reuse and recycling of industrial wastewater and sludges from the municipal system;
- (4) Protect 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) Provide for equitable distribution of the cost of operation, maintenance and improvement of the municipal wastewater system; and.
- (6) Ensure that the city 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.

(c) This article provides for the regulation of direct and indirect contributors to the municipal wastewater system, through the issuance of permits to certain nondomestic 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 in this article.

(d) This article shall apply to all users of the municipal wastewater system, as authorized by N.C.G.S. 160A-312 and/or 153A-275. **The City shall designate an administrator of the Publicly Owned Treatment Works (POTW) and pretreatment program.** Except as otherwise provided in this article, the POTW director shall administer, implement and enforce the provisions of this article. 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 City wastewater system, industrial users located **within or outside** the City limits agree to comply with the terms and conditions established in this article, as well as any permits, enforcement actions or orders issued

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under this article. This includes all industrial users discharging in the wastewater collection system owned by any Satellite POTW.

(Ord. No. 1995-16, part 1, 5-2-1995)

Sec. 38-222. Definitions and abbreviations.

(a) The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

1. *Act* and *the act* -- the Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 USC 1251 et seq.

2. *Approval authority* -- the Director of the Division of Water Quality of the North Carolina Department of Environment and Natural Resources or his designee.

3. *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 the 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 in subsections (1) through (3) of this definition may designate another 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

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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 POTW director/superintendent prior to or together with any reports to be signed by an authorized representative.

4. *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 degrees Celsius, usually expressed as a concentration (e.g., mg/l).

5. *Building sewer* -- a sewer conveying wastewater from the premises of a user to the POTW.

6. *Bypass* -- the intentional diversion of waste streams from any portion of a user's treatment facility.

7. *Carbonaceous biochemical oxygen demand (CBOD)* -- the quantity of oxygen utilized (less the nitrogenous demand by the addition of a nitrogen inhibitor) in the biological oxidation of organic matter under standard laboratory procedures for five days at 20 degrees Celsius, usually expressed as a concentration (e.g., mg/l).

8. *Categorical standards* -- national categorical pretreatment standards or pretreatment standard.

9. *Control Authority* refers to the POTW organization if the POTW organization's Pretreatment Program approval has not been withdrawn.

10. *Environmental Protection Agency* and *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 such agency.

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

12. *Holding tank waste* -- any waste from holding tanks, including but not limited to such holding tanks as vessels, chemical toilets, campers, trailers, septic tanks and vacuum-pump tank trucks.

13. *Indirect discharge* and *discharge* -- the discharge or the introduction from any nondomestic source regulated under section 307(b), (c) or (d) of the act, 33 USC 1317, into the POTW, including holding tank waste discharged into the system.

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14. *Industrial user* and *user* -- any person who is a source of indirect discharge.

15. *Interference* means the inhibition or disruption of the POTW collection system, treatment processes or operations, or its sludge process, use, or disposal, which causes or contributes to a violation of any requirement of the Control Authority's and/or POTW's if different from the Control Authority 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 section 405 of the act (33 USC 1345) or any criteria, guidelines or regulations developed pursuant to the Solid Waste Disposal Act (SWDA) (42 USC 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 of SWDA) applicable to the method of disposal or use employed by the POTW.

16. *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.

17. *National categorical pretreatment standard* and *categorical standard* -- any regulation containing pollutant discharge limits promulgated by the EPA in accordance with sections 307(b) and (c) of the act (33 USC 1317) which applies to a specific category of industrial users, and which appears in 40 CFR chapter 1, subchapter N, parts 405 to 471.

18. *National Pollutant Discharge Elimination System, or NPDES permit* -- a permit issued pursuant to section 402 of the act (33 USC 1342), or pursuant to G.S. 143-215.1 by the state under delegation from the EPA.

19. *National prohibitive discharge standard* and *prohibitive discharge standard* -- absolute prohibitions against the discharge of certain substances. These prohibitions appear in division 2 of this article and are developed under the authority of section 307(b) of the act and 40 CFR 403.5.

20. *New source*.

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

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

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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 subsection (1)b or c of this definition 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 is 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.

21. *Non-contact cooling water* -- water used for cooling which does not come into direct contact with any raw material, intermediate product, waste product or finished product.

22. *Non-discharge permit* -- a permit issued by the state pursuant to G.S. 143-215.1(d) 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.

23. *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 Control Authority's (and/or POTW's if different from the Control Authority) NPDES, collection system, or Non-discharge Permit or a downstream water quality standard.

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- 24. *Person*** -- any individual, partnership, copartnership, 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.
- 25. *pH*** is 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.
- 26. *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 discarded equipment, rock, sand, cellar dirt and industrial, municipal and agricultural waste, and certain characteristics of wastewater (e.g., pH, temperature, TSS, turbidity, color, **metals**, CBOD, COD, toxicity, **and** odor).
- 27. *POTW director*** -- the city director of public works. The administrator designated with the responsibility for the pretreatment program and enforcement of this Sewer Use Ordinance.
- 28. *POTW treatment plant*** -- that portion of the POTW designed to provide treatment to wastewater.
- 29. *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 into a POTW **collection system and/or treatment plant**. The reduction or alteration can 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 (**as prohibited by 40 CFR Part 403.6(d)**).
- 30. *Pretreatment program*** -- the program for the control of pollutants introduced into the POTW from nondomestic 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.
- 31. *Pretreatment requirements*** -- any substantive or procedural requirement related to pretreatment, other than a pretreatment standard.
- 32. *Pretreatment standards*** -- **any prohibited discharge standards, categorical standards and/or local limit which applies to a user.**
- 33. *Publicly owned treatment works (POTW) and municipal wastewater system*** -- a treatment works as defined by section 212 of the act (33 USC 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

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other conveyances only if they convey wastewater to the POTW treatment plant. For the purposes of this article, the term "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.

34. *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.

35. *Significant industrial user (SIU)* -- any 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;
- (2) Contributes more than five percent of any design or treatment capacity (i.e., allowable pollutant load) of the wastewater treatment plant receiving the indirect discharge;
- (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 found by the City, the Division of Water Quality or the U.S. Environmental Protection Agency to have the 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.

36. *Significant noncompliance (SNC)* is 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 (a) 36. Parts c, d, or h shall also be SNC.

- a. Chronic violation of wastewater discharge limits, defined here as those in which sixty-six (66) percent or more of the measurements taken for the same pollutant parameter (excluding 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(1);
- b. Technical review criteria (TRC) violations defined here as those in which thirty-three (33) percent or more of all 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(1) multiplied by the applicable TRC; (TRC= 1.4 for CBOD, TSS, fats, oil, and grease, 1.2 for all other pollutants (except flow and pH);
- c. Any other violation of a Pretreatment Standard or Requirement as defined by 40 CFR Part 403.3(1) (daily maximum, long term average,

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instantaneous limit, or narrative standard) that the Control authority and/or POTW 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).

d. Any discharge of a pollutant or wastewater that has caused imminent endangerment to human health, welfare or to the environment or has resulted either the Control Authority's or the POTW's, if different from the Control Authority, exercise of its emergency authority under 40 CFR Part 403.8(f) (1)(vi)(B) and Sec. 38-224 (a) (5) of this article to halt or prevent such a discharge;

e. 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.

f. Failure to provide reports for compliance schedules, self-monitoring data, baseline monitoring reports, 90-day compliance reports and periodic compliance reports within 45 days from the due date.

g. Failure to accurately report noncompliance.

h. Any other violation or group of violations that the Control Authority and/or POTW determine will adversely affect the operation or implementation of the local pretreatment program.

37. *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 division 2 of this article.

38. *Standard Industrial Classification (SIC)* is a classification pursuant to the Standard Industrial Classification Manual issued by the Executive Office of the President, Office of Management and Budget, 1987.

39. *Storm water* -- storm water, groundwater, rainwater, street drainage, subsurface drainage, yard drainage or any flow occurring during or following any form of natural precipitation and resulting there from.

40. *Superintendent* -- 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 article, or his duly authorized representative.

41. *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.

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42. *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.

43. *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 either treated or untreated, which are contributed into or permitted to enter the POTW.

44. *Wastewater permit* -- the permit provided for in division 4 of this article.

45. *Waters of the state* -- all streams, rivers, brooks, swamps, sounds, tidal estuaries, bays, creeks, lakes, waterways, wells, reservoirs, drainage systems, and 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.

(b) The following abbreviations, when used in this article, shall have the designated meanings:

TABLE INSET:

BOD	Biochemical oxygen demand
CBOD	Carbonaceous biochemical oxygen demand
CFR	Code of Federal Regulations
COD	Chemical oxygen demand
EPA	Environmental Protection Agency
gpd	Gallons per day
l	Liter
mg	Milligrams
mg/l	Milligrams per liter
N.C.G.S.	North Carolina General Statutes
NPDES	National Pollutant Discharge Elimination System
O&M	Operation and maintenance
POTW	Publicly owned treatment works
RCRA	Resource Conservation and Recovery Act
SIC	Standard Industrial Classification
SWDA	Solid Waste Disposal Act
TKN	Total Kjeldahl nitrogen

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TSS	Total suspended solids
USC	United States Code

(Ord. No. 1995-16, part 1, § 1.2, 5-2-1995)

Cross references: Definitions generally, § 1-2.

Sec. 38-223. Confidential information

- (a) Information and data provided by an industrial user to the POTW Director/Superintendent pursuant to this article identifying the nature and frequency of a discharge shall be available to the public without restriction. All other information which may be so submitted by an industrial user to the POTW Director/Superintendent in connection with any required reports shall 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/Superintendent 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/Superintendent 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, storm water 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 agencies under paragraph (b) above shall be subject to the processes set forth in G.S. 143-215.3C. (Ord. No. 1995-16, part 7, 5-2-1995)

Sec. 38-224. Enforcement

(a) *Administrative remedies.*

(1) *Notification of violation.* Whenever the POTW director/superintendent finds that any industrial user has violated or is violating this article, a wastewater permit or any prohibition, limitation or requirements contained therein, or any other pretreatment requirement, the POTW director/superintendent may serve upon such a person a written notice stating the nature of the violation. Within 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.

(2) *Consent orders.* The POTW director/superintendent is hereby empowered to enter into consent orders, assurances of voluntary compliance, or other similar documents establishing an agreement with the person 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

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have the same force and effect as an administrative order issued pursuant to subsection (a) (4) of this section.

(3) *Show cause hearing.*

a. The POTW director/superintendent may order any industrial user who causes or is responsible for an unauthorized discharge, has violated this article or is in noncompliance with a wastewater discharge permit to show cause why a proposed enforcement action should not be taken. If the POTW director/superintendent 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 days before the hearing. Service may be made on any agent or officer of a corporation.

b. The POTW director/superintendent shall review the evidence presented at the hearing and determine whether the proposed enforcement action is appropriate.

c. A show cause hearing under this section is not a prerequisite to the assessment of a civil penalty under subsection (b) of this section, nor is any action or inaction taken by the POTW director/superintendent under this section subject to an administrative appeal under section 38-310.

(4) *Administrative orders.* When the POTW director/superintendent finds that an industrial user has violated or continues to violate this article, permits or orders issued under this article, or any other pretreatment requirement, the POTW director/superintendent may issue an order to cease and desist all such violations and direct those persons in noncompliance to do any of the following:

a. Immediately comply with all requirements.

b. Comply in accordance with a compliance time schedule set forth in the order.

c. Take appropriate remedial or preventive action in the event of a continuing or threatened violation.

d. Disconnect unless adequate treatment facilities, devices or other related appurtenances are installed and properly operated within a specified time period.

(5) *Emergency suspensions.*

a. The POTW director/superintendent 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.

b. 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 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

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director/superintendent 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/superintendent 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/superintendent prior to the date of the hearing described in this subsection.

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

- a. Failure to accurately report the wastewater constituents and characteristics of his discharge;
- b. Failure to report significant changes in operations, or wastewater constituents and characteristics;
- c. Refusal of reasonable access to the user's premises for the purpose of inspection or monitoring; or
- d. Violation of conditions of the permit or permission to discharge, conditions of this ordinance, or any applicable State and Federal regulations.

Noncompliant industrial users will be notified of the proposed termination of their wastewater permit and will be offered an opportunity to show cause under subsection (a) of this section why the proposed action should not be taken.

(b) *Other available remedies.* Remedies in addition to those otherwise mentioned in this article are available to the POTW director/superintendent, who may use any single one or a combination against a noncompliant user. Additional available remedies include but are not limited to the following:

(1) *Criminal violations.* The district attorney for the 11th Judicial District may, at the request of the city, prosecute noncompliant users who violate the provisions of G.S. 143-215.6B. Under state law, it is a crime to negligently violate any term, condition or requirement of a pretreatment permit, or negligently fail to apply for a pretreatment permit, issued by local governments (G.S. 143-215.6B(f)), to knowingly and willfully violate any term, condition or requirement of a pretreatment permit, or to knowingly and willfully fail to apply for a pretreatment permit, issued by local governments (G.S. 143-215.6B(g)), to knowingly violate any term, condition or requirement of a pretreatment permit issued by local governments, or knowingly fail to apply for a pretreatment permit, knowing at the time a person is placed in imminent danger of death or serious bodily injury (G.S. 143-215.6B(h)), and to falsify information required under G.S. ch. 143, art. 21 (G.S. 143-215.6B (i)).

(2) *Injunctive relief.* Whenever a user is in violation of the provisions of this article or an order or permit issued under this article, the POTW director/superintendent, through

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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.

(3) *Water supply severance.* Whenever an industrial user is in violation of the provisions of this article or an order or permit issued under this article, water service to the industrial user may be severed and service will only recommence, at the user's expense, after it has satisfactorily demonstrated ability to comply.

(4) *Public nuisances.* Any violation of the prohibitions or effluent limitations of this article, or of a permit or order issued under this article, is hereby declared a public nuisance and shall be corrected or abated as directed by the POTW director/superintendent. Any person creating a public nuisance shall be subject to the provisions of chapter 16 governing such nuisances, including reimbursing the POTW for any costs incurred in removing, abating or remedying the nuisance.

(c) *Remedies nonexclusive.* The remedies provided for in this article are not exclusive. The POTW director/superintendent 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/superintendent may take other action against any user when the circumstances warrant. Further, the POTW director/superintendent is empowered to take more than one enforcement action against any noncompliant user.

(d) *Civil penalties.*

(1) Any user who is found to have failed to comply with any provision of this article, or the orders, rules, regulations and permits issued under this article, may be assessed a civil penalty of up to twenty-five thousand dollars (\$25,000.00) per day per violation.

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

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

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

(3) In determining the amount of the civil penalty, the POTW director/superintendent shall consider the following:

- a. 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.
- b. The duration and gravity of the violation.
- c. The effect on groundwater or surface water quantity or quality or on air quality.
- d. The cost of rectifying the damage.
- e. The amount of money saved by noncompliance.

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- f. Whether the violation was committed willfully or intentionally.
- g. The prior record of the violator in complying or failing to comply with the pretreatment program.
- h. The costs of enforcement to the city.

(4) Appeals of civil penalties assessed in accordance with this section shall be as provided in section 38-310.

(Ord. No. 1995-16, part 8, 5-2-1995; Ord. No. 2000-13, 2-15-2000)

Sec. 38-225. Annual publication of significant noncompliance.

At least annually, the POTW Director/Superintendent 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) (10), with applicable pretreatment standards and requirements, during the previous 12 months.

(Ord. No. 1995-16, part 9, 5-2-1995)

Sec. 38-226. Affirmative defenses to discharge violations.

(a) *Upset.*

(1) An upset shall constitute an affirmative defense to an action brought for noncompliance with categorical pretreatment standards if the requirements of subsection (a)(2) of this section are met.

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

- a. An upset occurred and the user can identify the cause of the upset;
- b. The facility was at the time being operated in a prudent and workmanlike manner and in compliance with applicable operation and maintenance procedures; and
- c. The user has submitted the following information to the POTW director/superintendent within 24 hours of becoming aware of the upset if this information is provided orally; a written submission must be provided within five days:
 - 1. A description of the indirect discharge and cause of noncompliance;
 - 2. The period of noncompliance, including exact dates and times or, if not corrected, the anticipated time the noncompliance is expected to continue; and
 - 3. Steps being taken and/or planned to reduce, eliminate and prevent recurrence of the noncompliance.

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

(4) 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.

(5) Users shall control production of all discharges to the extent necessary to maintain compliance with categorical pretreatment standards upon reduction, loss or failure of the user's 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, is lost, or fails.

(b) *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 section 38-241(a) of this Article or the specific prohibitions in section 38-241(b)(2), (b)(3), and (b)(5) through (7), (b)(9) through (22), (c), (d) and (e) of this Article if it can prove that it did not 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:

(1) 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

(2) 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.

(c) *Bypass.*

(1) 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 ensure efficient operation. These bypasses are not subject to the provisions of subsections (c)(2), (3) and (4) of this section.

(2) If a user knows in advance of the need for a bypass, it shall submit prior notice to the POTW director/superintendent, at least ten days before the date of the bypass, if possible.

(3) A user shall submit oral notice to the POTW director/superintendent of an unanticipated bypass that exceeds applicable pretreatment standards within 24 hours from the time it becomes aware of the bypass. A written submission shall also be provided within five days of the time the user becomes 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,

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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/superintendent may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.

- (4) Bypass is prohibited, and the POTW director/superintendent may take an enforcement action against a user for a bypass, unless:
- a. Bypass was unavoidable to prevent loss of life, personal injury or severe property damage;
 - 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 backup 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 preventive maintenance; and
 - c. The user submitted notices as required under subsection (c)(2) of this section.

(5) The POTW director/superintendent may approve an anticipated bypass, after considering its adverse effects, if the POTW director/superintendent determines that it will meet the three conditions listed in subsection (c)(4) of this section.

(Ord. No. 1995-16, part 10, 5-2-1995)
Secs. 38-227--38-240. Reserved.

DIVISION 2. REGULATIONS GOVERNING SEWER USE

Sec. 38-241. 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 waste streams with a closed cup flashpoint of less than 140 degrees Fahrenheit (60 degrees Celsius) 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, such solid or viscous substances including but not being limited to ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, bones, feathers, slurry, lime residues, graphite sludge, textile lints or fibers, slops, whole blood, fleshings, chemical residues, paint residues, waxes, asphalt, hair, tar, plastics, wood, paunch manure, butcher's offal, animal viscera, lime or any solid or

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viscous substances capable of causing obstructions of any kind in either the collection system or at any point in the treatment plant. Also, any waste that will not pass through a one-fourth-inch mesh screen or its equivalent in screening ability is not to be discharged into the sanitary sewer collection system, but disposed of by an alternative means.

(3) Petroleum oil, non-biodegradable 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 5.5 or more than 10.5 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 (CBOD, 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 degrees Fahrenheit (66 degrees Celsius), 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 degrees Fahrenheit (40 degrees Celsius).

(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/superintendent in accordance with section 38-249.

(9) Any noxious or malodorous liquid, gas or solid or other wastewater which, either singly or by interaction with other wastes, is sufficient to create a public nuisance or hazard to life or is 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 section 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/superintendent in compliance with applicable state or federal regulations.

(13) Storm water, surface water, groundwater, artesian well water, roof runoff, subsurface drainage, swimming pool drainage, condensate, deionized water, non-contact cooling water and unpolluted industrial wastewater, unless specifically authorized by the POTW director/superintendent.

(14) Fats, oils or greases of mineral, petroleum, 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.

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- (16) Any medical wastes, except as specifically authorized by the POTW director/superintendent 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 261 if not disposed of in a sewer, except as may be specifically authorized by the POTW director/superintendent.
- (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.
- (c) *Explosion hazards.* 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 five percent (5%), nor any single reading over ten percent (10%), of the lower explosive limit (LEL) of the meter.
- (d) *Use of garbage grinders.*
- (1) Waste from garbage shredders and grinders shall not be acceptable for discharge into a community sewer except:
 - a. Wastes generated in preparation of food normally consumed on the premises; or
 - b. Where the user has obtained a permit for that specific use from the city, and agrees to undertake whatever self-monitoring is required to enable the city to determine the waste constituents and characteristics and applicable fees and charges.
 - (2) All grinders must shred the waste to a degree that all particles will be carried freely under normal flow conditions prevailing in the community sewer.
 - (3) Garbage grinders shall not be used for grinding plastic, paper products, inert materials or garden refuse.
- (e) *Direct discharge through manhole or other opening.* No person shall discharge any substances directly into a manhole or other opening in a community sewer other than through an approved building sewer, unless he has been issued a permit by the city. If a permit is issued for such a direct discharge, the user shall pay the applicable charges and fees and shall meet the other conditions necessary to properly treat this discharge as required by the city.
- (f) *Drainage of pollutants from processing or storage areas.* 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 to the municipal wastewater system. All floor drains located in processing or materials storage areas must discharge to the industrial user's pretreatment facility before connecting with the system.
- (g) *Enforcement.* When the POTW director/superintendent determines that a user is contributing to the POTW any of the substances enumerated in this section in amounts that may cause or contribute to interference with POTW operation or pass-through, the POTW director/superintendent shall:

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- (1) Advise the user of the potential impact of the contribution on the POTW in accordance with section 38-224(a); and
 - (2) Take appropriate actions in accordance with division 4 of this article for such user to protect the POTW from interference or pass-through.
- (Ord. No. 1995-16, part 2, § 2.1, 5-2-1995)

Sec. 38-242. 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 to 471, which are incorporated in this article.

(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/superintendent 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/superintendent shall impose an alternate limit using the combined waste stream formula in 40 CFR 403.6(e).

(d) A user may obtain a variance from a categorical pretreatment standard if the user 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 the 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.

(Ord. No. 1995-16, part 2, § 2.2, 5-2-1995)

Sec. 38-243. Local limits.

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

250	mg/l	CBOD
200	mg/l	TSS
40	mg/l	TKN
25	mg/l	NH ₃
0.003	mg/l	arsenic
0.003	mg/l	cadmium
0.061	mg/l	copper
0.015	mg/l	cyanide
0.049	mg/l	lead
<0.0002	mg/l	mercury
0.021	mg/l	nickel
0.005	mg/l	silver
0.05	mg/l	total chromium
0.175	mg/l	zinc
2.13	mg/l	TTO

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(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.
(Ord. No. 1995-16, part 2, § 2.3, 5-2-1995)

Sec. 38-244. 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 article.
(Ord. No. 1995-16, part 2, § 2.4, 5-2-1995)

Sec. 38-245. 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 regulations if deemed necessary to comply with the objectives presented in section 38-221 or the general and specific prohibitions in section 38-241, as allowed by 40 CFR 403.4.
(Ord. No. 1995-16, part 2, § 2.5, 5-2-1995)

Sec. 38-246. Dilution of discharge.

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.
(Ord. No. 1995-16, part 2, § 2.6, 5-2-1995)

Sec. 38-247. Pretreatment of wastewater.

(a) Pretreatment facilities.

(1) Users shall provide wastewater treatment as necessary to comply with this article and wastewater permits issued under division 4 of this article and shall achieve compliance with all national categorical pretreatment standards, local limits, and the prohibitions set out in section 38-241 within the time limitations as specified by the EPA, the state or the POTW director/superintendent, 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/superintendent before construction of the facility.

(2) 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 article. Any subsequent changes in the pretreatment facilities or method of operation shall be reported to and be approved by the POTW director/superintendent prior to the user's initiation of the changes.

(b) Additional pretreatment measures.

(1) *Authority of director.* Whenever deemed necessary, the POTW director/superintendent 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 waste streams from industrial waste streams, and impose such other conditions as may be

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necessary to protect the POTW and determine the user's compliance with the requirements of this article.

(2) *Flow-control facilities.* The POTW director/superintendent may require any person discharging into the POTW to install and maintain, on such person's property and at his 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) *Grease, oil and sand interceptors.* Grease, oil and sand interceptors shall be provided when, in the opinion of the POTW director/superintendent, 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 a type and capacity approved by the POTW director/superintendent and shall be so located as to be easily accessible for cleaning and inspection. Such interceptors shall be inspected, cleaned and repaired regularly, as needed, by the user, at his expense.

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

(5) *Control manhole.* A control manhole shall be provided downstream from any building treatment, storage tank, or any other approved works to facilitate monitoring of industrial waste. The discharger shall provide and maintain the control manhole. Any and all users may be required by the city to construct a control manhole. The user who has constructed a monitoring facility may be waived of the requirement of a control manhole by the approving authority.

(Ord. No. 1995-16, part 2, § 2.7, 5-2-1995)

Sec. 38-248. Accidental discharge/slug control plans.

(a) The director/superintendent 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 38-222(a) 37. All SIUs must evaluate within one year of being designated an SIU. The director/superintendent may require any user to develop, submit for approval, and implement such a plan or other specific action. Alternatively, the director/superintendent 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 Sections 38-335 and 38-336.

(c) Alternatively, the POTW director/superintendent may develop such a plan for any user. An accidental discharge/slug control plan shall address, at a minimum, the following:

- (1) Description of discharge practices, including non-routine batch discharges;
- (2) Description of stored chemicals;
- (3) Procedures for immediately notifying the POTW director/superintendent of any accidental or slug discharge, as required by section 38-336; 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.

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(Ord. No. 1995-16, part 2, § 2.8, 5-2-1995)

Sec. 38-249. Hauled wastewater.

(a) Septic tank waste may be introduced into the POTW only at locations designated by the POTW director/superintendent, and at such times as are established by the POTW director/superintendent. Such waste shall not violate this division or any other requirements established by the city. The POTW director/superintendent may require septic tank waste haulers to obtain wastewater discharge permits.

(b) The POTW director/superintendent may require haulers of industrial waste to obtain wastewater discharge permits. The POTW director/superintendent may require generators of hauled industrial waste to obtain wastewater discharge permits. The POTW director/superintendent also may prohibit the disposal of hauled industrial waste. The discharge of hauled industrial waste is subject to all other requirements of this article.

(c) Industrial waste haulers may discharge loads only at locations designated by the POTW director/superintendent. No load may be discharged without prior consent of the POTW director/superintendent. The POTW director/superintendent may collect samples of each hauled load to ensure compliance with applicable standards. The POTW director/superintendent 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. The form shall identify the type of industry, known or suspected waste constituents, and whether any wastes are RCRA hazardous wastes.

(Ord. No. 1995-16, part 2, § 2.9, 5-2-1995)

Secs. 38-250--38-270. Reserved.

DIVISION 3. FEES AND CHARGES

Sec. 38-271. Generally.

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

(Ord. No. 1995-16, part 3, § 3.1, 5-2-1995)

Sec. 38-272. User charges.

(a) *Applicability.* 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) *Costs included.* The user charge shall reflect at least the cost of debt service and operation and maintenance (including replacement) of the POTW.

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(c) *Basis and calculation.* Each user shall pay its proportionate cost based on volume of flow.

(d) *Review.* The city shall review annually the sewage contributions of users and the total costs of debt service and operation and maintenance of the POTW and will make recommendations to the council for adjustments in the schedule of charges and fees as necessary.

(e) *Charges for flow not directly attributable to users.* 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.

(f) *Measurement of water usage.* When charges and fees are based on the water usage, the charges and fees shall be applied against the total amount of water used from all sources, public and private, determined by means of the user and approved by the city, adding the private sources' volume to the metered water consumption.
(Ord. No. 1995-16, part 3, § 3.2, 5-2-1995)

Sec. 38-273. Surcharges generally.

The amount of the surcharges will be based upon the volume of flow and the character and concentration of the constituents of the wastewater:

(a) Determination of flow; credit for water not returned to sewer.

(1) 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:

- a. Metered water consumption as shown in the records of meter readings maintained by the city; or
- b. If required by the city, or at the individual discharger's 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 metering system shall be installed and maintained at the user's expense according to arrangements that may be made with the city.

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

(3) If the discharger elects to be billed for wastewater volume by a wastewater flow-monitoring device as provided in this article, the flow-monitoring device will be inspected and certified for accuracy each quarter of the calendar year by a city-approved technician at the discharger's expense. Failure to inspect and to provide the certification will result in the use of the water meter readings for calculation of charges by the city. City sewer customers are billed based on 100 percent of the water volume meters; however, the rate charged is set to reflect a savings to the discharger for 20 percent of water not returned to the sewer. Dischargers that wish to receive credit in excess of the 20 percent allowance built in the rates may use readings of a flow-monitoring device. For any readings below 80 percent, the discharger may receive credit not to exceed a total credit of ten percent. In cases where the reading is below 70 percent of the water usage, the discharger will be

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given only the ten percent credit unless detailed calculations are submitted to and approved by the city manager annually verifying that such flow-monitoring device reading is reasonable and expected. Dischargers shall be charged for 100 percent of the water used when the reading of the flow-monitoring device reflects a volume returned greater than 80 percent of the water meter reading. In no case shall dischargers be billed at a volume greater than 100 percent of the water volume supplied from all sources.

(b) *Sampling of wastewater.* 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 136.

(c) *Determination of wastewater constituents.* The determination of the character and concentration of the constituents of the wastewater discharge by the POTW director/superintendent or his duly appointed representatives shall be binding as a basis for charges.

(Ord. No. 1995-16, part 3, § 3.3, 5-2-1995; Ord. No. 1996-12, 4-16-1996; Ord. No. 1997-80, 12-16-1997)

Sec. 38-274. Pretreatment program administration charges.

The schedule of charges and fees adopted by the city under this article may include charges and fees for:

- (1) Reimbursement of costs of setting up and operating the pretreatment program.
- (2) Monitoring, inspections and surveillance procedures.
- (3) Reviewing slug control plans, including accidental and/or slug load discharge procedures and construction plans and specifications.
- (4) Permitting.
- (5) Other fees as the city may deem necessary to carry out the requirements of the pretreatment program.

(Ord. No. 1995-16, part 3, § 3.4, 5-2-1995)

Sec. 38-275. Calculation of surcharges.

The basis for determination of surcharges under this article is as follows:

(1) *Characteristics of domestic wastewater.* Charges and fees shall be based upon a minimum basic charge for each premises, computed on the basis of wastewater from domestic premises with the following characteristics:

- a. CBOD: 250 mg/l.
- b. Total suspended solids: 200 mg/l.
- c. Oil and grease: 40 mg/l.
- d. Volume: 375 gallons per day per domestic premises.

(2) *Classification of users.* All users are to be classified by the city either by assigning each one to a user classification category according to the principal activity conducted on the user's premises, by individual user analyzation, or by a combination thereof. The purpose of such collective or individual classification is to facilitate the regulation of wastewater discharges based on wastewater constituents and characteristics to provide an effective means of source control, and to establish a system of charges and fees which will ensure an equitable recovery of the city's cost.

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(3) *Basis of surcharge for nondomestic users.* The charges and fees for all classifications of users other than domestic premises shall be based on the relative difference between the average wastewater constituents and characteristics of that classification as related to those of domestic premises.

(4) *Basis of charges for permit users.* The charges and fees established for permit users shall be based on the measured or estimated constituents and characteristics of the wastewater discharge of that user, which may include but shall not be limited to CBOD, COD, oil and grease, chlorine demand and volume.

(5) *Calculation of charges.* The charges for excesses of the constituents listed in this section will be based upon the mass emission rate of those constituents and determined thusly:

a. Mass emission rate shall be determined as follows:

$$\text{Mass Emission Rate, MER ()} = \text{MG} \times \text{C} \times 8.34$$

Where:

MER is the mass emission rate in pounds of a particular constituent.

MG is millions of gallons of wastewater.

C is the concentration in mg/l of the particular constituent being charged for (as an example, CBOD, COD, etc.).

8.34 is equal to the number of pounds per one gallon of water.

b. The amount of the charge in dollars will be calculated thusly:

$$A_o = R \times \text{MER ()}$$

Where:

A_o is equal to the amount of the charge in dollars.

R is equal to the rate of charge per pound of constituent.

MER () is equal to the pounds of a constituent.

c. An example of surcharge determination is as follows: Cannon's Corporation is a producer of canned fruits. They discharged 1,000,000 gallons of wastewater in the month of January. Analysis found that the wastewater has the following characteristics: CBOD = 400 mg/l, TSS = 950 mg/l. There were no other limitations exceeded in this example. There were 100 employees employed at the cannery. The limits of CBOD and TSS are 250 mg/l and 200 mg/l respectively.

The MER of CBOD is equal to:

$$\begin{aligned} \text{MERC}_{\text{CBOD}} &= (400 - 250) \times 8.34 \times 1 \text{ MG} \\ &= (150) \times 8.34 \times 1 \end{aligned}$$

$$= 1,121 \text{ lbs. of CBOD or } 1.121 \text{ thousand lbs. CBOD}$$

If the charge for CBOD is R = \$145.00/1,000 lbs. CBOD, then the total charge for CBOD is equal to:

$$A_o = R \times \text{MER}$$

$$A_o = \$145.00 \times 1.121$$

$$A_o = \$162.55$$

If the charge for TSS is \$220.00/1,000 lbs., the charge would be computed thusly:

$$\begin{aligned} \text{MERT}_{\text{TSS}} &= (950 - 200) \times 8.34 \times 1 \text{ MG} \\ &= 750 \times 8.34 \times 1 \end{aligned}$$

$$= 6,255 \text{ lbs. TSS or } 6.255 \text{ thousand lbs. TSS}$$

$$\begin{aligned} \text{At a charge of } \$220.00/\text{thousand lbs.}, \text{ the charge for TSS} &= 6.255 \times \$220.00 = \\ &= \$1,376.10 \end{aligned}$$

$$\text{Total surcharge for January} = \$162.55 + \$1,376.10 = \$1,538.65$$

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(Ord. No. 1995-16, part 3, § 3.5, 5-2-1995)

Sec. 38-276. Method of determining rates.

(a) The council will annually review the actual cost of operation and maintenance of the city's wastewater treatment plants and adjust the surcharge rates and the volume user charge rate (per 100 cubic feet) to reflect the true cost of constituent treatment. The adjustments, if any, will become effective following the first day of each new fiscal year. The council may review these rates and adjust them accordingly at any time it deems adjustments are in the best interest of the city.

(b) The council shall set the surcharge rates and volume user rates from time to time and a schedule of such rates is on file in the city offices.

(Ord. No. 1995-16, part 3, § 3.6, 5-2-1995)

Sec. 38-277. Industrial cost recovery.

(a) *Applicability.*

(1) This section shall be applicable only to industrial users of those portions of the city's treatment works funded (in whole or in part) by a federal grant awarded after March 1, 1973, when required by section 204(b)(1)(B) of the Federal Water Pollution Control Act Amendments of 1972.

(2) Each year during the industrial cost recovery period, each industrial user of the city's treatment works shall pay to the city such user's share of the total amount of the applicable federal grant and any grant amendment, divided by the recovery period.

(b) *Determination of payments.*

(1) *Generally.* The industrial cost recovery period and each industrial user's share of industrial cost recovery (IRC payments) shall be fixed by the city manager, after consultation with the public works director, in accordance with the methods and procedures set forth in 40 CFR 35, subpart E, February 11, 1974, and Industrial Cost Recovery Systems, Publication No. MCD-45, by the Environmental Protection Agency, February 1976.

(2) *Selection of method or procedure.* Except as expressly provided in this section, whenever those rules, regulations or guidelines provided for permit alternative methods or procedures, the city manager shall select those methods or procedures which in his judgment will ensure that the proper amount of federal funds are recovered from industrial users and that each industrial user is treated fairly and consistently and assessed industrial cost recovery payments in accordance with applicable law and generally accepted accounting principles.

(3) *Factors to be considered.* The city manager must take the following into consideration in computing an individual industrial user's industrial cost recovery payment:

a. If an industrial user's maximum flow (hourly, daily, monthly, seasonally, and the like) contributes to the cost of construction of the treatment works, it shall be the basis of that user's industrial cost recovery payment. No credit shall be given to the industrial user for the time period when the user is not operating and is not discharging water.

b. Uncontaminated cooling waters discharged into the city's treatment facilities are declared to be process wastes and must be included in computing industrial cost recovery payments.

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c. The cost of building unreserved excess capacity into the city's treatment facility shall not be recovered from existing industrial users.

d. Only those costs which can be related to the construction or preparation for construction of the city's treatment facilities will be subject to industrial cost recovery.

e. Industrial users discharging pretreated processed wastes into the city's treatment facilities must pay industrial cost recovery based on the characteristics of the pretreated wastes.

(4) *Reservation of capacity.* Industrial users may reserve capacity in the city's treatment works through a formal, written agreement. In such cases, the following will apply:

a. The industrial user shall pay to the city the full industrial cost recovery applicable to the capacity reserved;

b. If the industrial user exceeds its reserved capacity, it shall be required to pay industrial cost recovery calculated on the full reserve capacity plus additional industrial cost recovery for use above the limits of the reserve capacity or any element thereof;

c. If the treatment works are expanded in the future with Public Law 92-500 grant assistance, an industrial user who has executed a reserve capacity agreement and has made industrial cost payments based on full reserved capacity will not incur additional industrial cost recovery payments associated with the cost of expansion until such user's actual use of the treatment works exceeds its reserved capacity; and

d. Industrial users shall pay additional industrial charges associated with the cost of upgrading treatment works.

(c) *Exempt industrial users.* Anything in this section to the contrary notwithstanding, industrial cost recovery shall not be charged to or collected from any industrial user that discharges into the city's system only non-process, segregated domestic wastes, or wastes from sanitary conveniences, and which is not a significant industrial user as defined in 40 CFR 403.3.

(d) *New industries.* Industrial cost recovery payments for new industries shall begin on the date use is initiated, and shall continue for the unexpired portion of the applicable industrial cost recovery period or until the industry ceases use of the facility, whichever occurs first. The new industry shall pay to the city its share of the total amount of the applicable federal grant and any grant amendment multiplied by the ratio of its period of use to the industrial cost recovery period. For the purpose of this section, a new industry is one which connects to the city's treatment works after the treatment works have been put into service.

(e) *Monitoring of wastewater characteristics.*

(1) In developing the industrial cost recovery system, the wastewater characteristics of each industrial user shall be determined by monitoring or, when the city manager finds that monitoring is not feasible, by estimating using historical records, data from similar industrial users, and the like.

(2) After the industrial cost recovery system is placed into operation, major industrial users shall be monitored on a regular basis, not less often than annually; minor industries may be monitored on a random basis.

(3) Monitoring shall be conducted during periods of normal discharge.

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(4) For the purposes of this subsection, a major industry shall mean one which discharges more than five percent of the total design capacity of any wastewater characteristics used in determining industrial cost recovery payments, and a minor industry shall mean any industry which is not a major industry.

(f) *Discontinuance of use of treatment works; termination of reserved capacity.* If an industrial user discontinues use of the city's treatment works or terminates its agreement with the city for reserved capacity, then it shall not be liable to the city for further industrial cost recovery payments. Other industries using the city's treatment works will not be required to assume that portion of industrial cost recovery payments which is unrecovered due to the departure of an industrial user. Any significant industrial user planning to discontinue its use of the treatment facility during the industrial cost recovery period must make its intention known in a letter of intent as required under 40 CFR 403.3.

(g) *Lump sum payments.* An industrial user may make a single lump sum payment to fulfill its industrial cost recovery obligation in lieu of periodic payments. The lump sum payments shall not relieve the industrial user of making additional payments should its wastewater flow or load increase. The city shall not grant any discounts from the total industrial cost recovery requirement to industrial users making advance industrial cost recovery payments.

(h) *Implementation of system; disposition of funds.*

(1) At the time any element of a treatment works funded by an applicable federal construction grant becomes operable, it shall be placed in the industrial cost recovery system, and the industrial cost recovery period will begin from the date of beneficial use by the first industrial user. Immediately after the industrial cost recovery period begins, the city manager will establish the accounting period for the industrial cost recovery system and, not more than 30 days after the industrial cost recovery period begins, will notify the regional administrator of the Environmental Protection Agency, in writing, of the date of implementation of the industrial cost recovery system.

(2) The first payment to the city by the industrial users shall be made not later than 12 months after the beginning of the industrial cost recovery period, and payments shall continue every 12 months thereafter.

(3) All funds recovered by the city under this section shall be deposited, accounted for and paid to the Environmental Protection Agency or otherwise used as authorized by it in accordance with the provisions of paragraph 16, Industrial Cost Recovery Systems, Publication No. MCD-45, Environmental Protection Agency, February 1976.

(i) *Appeals and requests for review.*

(1) Any industrial user may request the city manager in writing to reconsider the reasonableness of the allocation and industrial cost recovery payments imposed on it. The request shall set forth in detail why the user deems the allocation or industrial cost recovery payments unreasonable. Within 30 days after receipt of the request, the city manager shall furnish in writing to the user the results of his reconsideration. If the user is not satisfied with the reconsideration, the user may appeal the decision of the city manager to the council, provided that written notice of appeal shall be filed with the city clerk not later than 30 days from the date the user receives the report from the city manager.

(2) Any person affected by the industrial cost recovery system may request in writing that the council review the city's administration of the city's industrial cost recovery

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system. The request shall specify the area to be reviewed and shall identify the methods, practices and procedures which are being challenged. The request for review shall be filed with the city clerk.

(3) Within 30 days from the receipt of an appeal under subsection (i)(1) of this section or a request for review under subsection (i)(2) of this section, the council shall grant a hearing to the applicant. The procedure for conducting the hearing, rendering the decision, and appellate review shall be as set forth by the city from time to time. The decision of the council shall be final as to all administrative matters.

(Ord. No. 1995-16, part 3, §§ 3.7--3.15, 5-2-1995)

Sec. 38-278. Liability for expense, loss or damage caused by violation.

Any person violating any of the provisions of this article shall become liable to the city for any expense, loss or damage occasioned the city by reason of the violation.

(Ord. No. 1995-16, part 3, § 3.16, 5-2-1995)

Secs. 38-279--38-300. Reserved.

DIVISION 4. WASTEWATER DISCHARGE PERMITS

Sec. 38-301. General requirements for all wastewater dischargers.

(a) It shall be unlawful for any person to connect or discharge to the POTW without first obtaining the permission of the city.

(b) When requested by the POTW director/superintendent, a user must submit information on the nature and characteristics of its wastewater within 90 days of the request. The POTW director/superintendent is authorized to prepare a form for this purpose and may periodically require users to update this information.

(Ord. No. 1995-16, part 4, § 4.1, 5-2-1995)

Sec. 38-302. Permit required for certain users.

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/superintendent 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/superintendent be required to obtain a wastewater discharge permit for non-significant industrial users.

(Ord. No. 1995-16, part 4, § 4.2, 5-2-1995)

Sec. 38-303. Significant industrial user determination.

All persons proposing to discharge nondomestic wastewater, or proposing to change the volume or characteristics of an existing discharge of nondomestic wastewater, shall request from the POTW director/superintendent a significant industrial user determination. If the POTW director/superintendent determines or suspects that the proposed discharge fits the significant industrial user criteria, he will require that a significant industrial user permit application be filed.

(Ord. No. 1995-16, part 4, § 4.2(a), 5-2-1995)

Sec. 38-304. Contents of 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/Superintendent, and accompanied by an application fee in the amount prescribed in the schedule of charges

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and fees. Significant industrial users shall apply for a significant industrial user permit within 90 days after notification of the POTW director's determination under section 38-303. 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, in units and terms appropriate for evaluation, the following information:

- (1) Name, address and location of industrial user;
- (2) Standard Industrial Classification (SIC) codes(s) or expected classification and industrial user category (any processes for which categorical pretreatment standards have been promulgated);
- (3) Wastewater flow (average daily and 30-minute peak wastewater flow rates, daily, monthly and seasonal variations if any including time and duration of the discharge). Types and concentrations of pollutants contained in the discharge (Analytical data on wastewater constituents and characteristics, including but not limited to those mentioned in division 2 of this article, any of the priority pollutants (section 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 section 304(g) of the act and contained in 40 CFR 136, as amended and as required in Section 38-340 and 38-341);
- (4) Types and concentrations (or mass) of pollutants contained in the discharge;
- (5) Major products manufactured or services supplied (each product produced, its type, amount, process and rate of production);
- (6) Description of existing on-site pretreatment facilities and practices include all materials which are or could be accidentally or intentionally discharged.
- (7) Location of discharge points);
- (8) Raw materials used or stored at the site;
- (9) Flow diagram or sewer map of the facility (site plans, floor plans, mechanical and plumbing plans and details to show all sewers, floor drains, sewer connections, direction of flow and appurtenances by the size, location and elevation);
- (10) Number of employees;
- (11) Operation and production schedules;
- (12) Description of current and projected waste reduction activities in accordance with G.S. 143-215.1(g);
- (13) If additional pretreatment and/or operation and maintenance 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

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no event shall more than nine months elapse between such progress reports to the POTW director/superintendent.

(14) Any other information as may be deemed by the POTW director/superintendent to be necessary to evaluate the permit application.

(Ord. No. 1995-16, part 4, § 4.2(b), 5-2-1995)

Sec. 38-305. Application signatories and certification.

All wastewater discharge permit applications and user reports must be signed by the current authorized representative of the user on file with the Control Authority and/or Municipality as defined in **Sec. 38-222(a)3** 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."

(Ord. No. 1995-16, part 4, § 4.2(c), 5-2-1995)

Sec. 38-306. Application review and evaluation.

(a) The POTW director/superintendent will evaluate the data furnished by the user pursuant to section 38-304 and may require additional information.

(b) The POTW director/superintendent is authorized to accept applications for the city and shall refer all applications to the POTW staff for review and evaluation.

(c) Within 30 days of receipt, the POTW Director/Superintendent 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.

(Ord. No. 1995-16, part 4, § 4.2(d), 5-2-1995)

Sec. 38-307. Tentative determination and draft permit.

(a) The POTW staff shall conduct a review of the application for a wastewater permit 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.

(b) If the staff's tentative determination in subsection (a) of this section is to issue the permit, the following additional determinations shall be made in writing:

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

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

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

(c) The staff shall organize the determinations made pursuant to subsections (a) and (b) of this section and the general permit conditions of the City's into a significant industrial user permit.

(Ord. No. 1995-16, part 4, § 4.2(e), 5-2-1995)

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Sec. 38-308. Permit supporting documentation.

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 limitation, including the following:

- a. documentation of categorical determination, including documentation of any calculations used in applying categorical pretreatment standards; and
- b. documentation of rationale of any parameters for which monitoring has been waived under 40 CFR Part 403.12(e)(2).

(Ord. No. 1995-16, part 4, § 4.2(f), 5-2-1995)

Sec. 38-309. Final action on Permit Application; authority of director.

(a) The POTW director/superintendent shall take final action on all applications for wastewater permits not later than 90 days following receipt of a complete application.

(b) The POTW director/superintendent is authorized to:

- (1) Issue a significant industrial user permit containing such conditions as are necessary to effectuate the purposes of this article and G.S. 143-215.1.
- (2) Issue a significant industrial user permit containing time schedules for achieving compliance with applicable pretreatment standards and requirements.
- (3) Modify any permit upon not less than 60 days' notice and pursuant to section 38-311.
- (4) Revoke any permit pursuant to section 38-224(a).
- (5) Suspend a permit pursuant to section 38-224(a).
- (6) Deny a permit application when in the opinion of the POTW director/superintendent such discharge may cause or contribute to pass-through or interference with the wastewater treatment plant or where necessary to effectuate the purposes of G.S. 143-215.1.

(Ord. No. 1995-16, part 3, § 4.2(g), 5-2-1995)

Sec. 38-310. Adjudicatory hearings; appeals.

The local government may conduct hearings in accordance with its regular hearing procedure.

(a) *Adjudicatory hearing.* An applicant whose wastewater permit is denied, or is granted subject to conditions he deems unacceptable, a permittee/user assessed a civil penalty under section 38-224(d) or a permittee/user issued an administrative order under section 38-224, shall have the right to an adjudicatory hearing before the POTW Director/Superintendent or other hearing officer appointed by the POTW Director upon making written demand, identifying the specific issues to be contested, to the POTW Director within 30 days following receipt of the significant industrial user permit, civil penalty assessment, or administrative order. Unless such written demand is made within the time specified in this subsection, the action shall be final and binding and further appeal is barred. For modified permits, only those parts of the permit being modified

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may be adjudicated. 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 as described in the paragraph (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 or 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 or 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 paragraph (a) above may be appealed to the Council serving the City upon filing a written demand within ten (10) days of receipt of notice of the decision. Hearings held under this Subdivision shall be conducted in accordance with local hearing procedures. Failure to make written demand within the time specified in this subsection shall bar further appeal. The Council serving the City shall make a final decision on the appeal within 90 days from receipt of the demand filed under paragraph (a) above and shall transmit a written copy of its decision by registered or certified mail as described in paragraph (c) below. The decision is a final decision for the purpose of seeking judicial review.

(c) *Official record.* When a final decision is issued under paragraph (b) above, the Council serving the City 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 Council serving the City.

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

(Ord. No. 1995-16, part 4, § 4.2(h), 5-2-1995)

Sec. 38-311. Permit Modification.

(a) Modifications of wastewater 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

- (1) Changes in the ownership of the discharge when no other change in the permit is indicated.
- (2) A single modification of any compliance schedule not in excess of four months.
- (3) 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.

(b) 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 timeframe 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 section 38-304, the user shall apply for a wastewater discharge permit within 180 days after the promulgation of the applicable national categorical pretreatment standard.

(c) 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.

(Ord. No. 1995-16, part 4, § 4.2(i), 5-2-1995)

Sec. 38-312. Conditions.

(a) The POTW director/superintendent shall have the authority to grant a wastewater permit with such conditions attached as he believes necessary to achieve the purpose of this article and G.S. 143-215.1. Wastewater permits shall contain, but are not limited to, the following:

- (1) A statement of duration (in no case more than five years);
- (2) A statement of non-transferability;
- (3) Applicable effluent limits based on categorical standards or local limits or both;
- (4) Applicable monitoring, sampling, reporting, notification and recordkeeping 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;
- (5) Requirements for notifying the POTW in the event of an accidental discharge or slug load as defined in Section 38-222(a)36;
- (6) Requirements to implement a Plan or other controls for prevention of accidental discharges and/or slug loads as defined in Section 38-222(a)36, if determined by the POTW director/superintendent to be necessary for the User and,
- (7) 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 38-222(a)36. Also see Sections 38-335 and 38-336;
- (8) A statement of applicable civil **and/or** criminal penalties for violation of pretreatment standards and requirements and any applicable compliance schedule.

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

- (1) Limits on the average and/or maximum rate of discharge, and/or requirements for flow regulation and equalization.
- (2) Limits on the instantaneous, daily and/or monthly average and/or maximum concentration, mass or other measure of identified wastewater pollutants or properties.
- (3) Requirements for the installation of pretreatment technology or construction of appropriate containment devices, etc., designed to reduce, eliminate or prevent the introduction of pollutants into the treatment works.
- (4) Development and implementation of waste minimization plans to reduce the amount of pollutants discharged to the municipal wastewater system.
- (5) The unit charge or schedule of user charges and fees for the management of the wastewater discharged to the system.
- (6) Requirements for installation and maintenance of inspection and sampling facilities and equipment.
- (7) Specifications for monitoring programs, which may include sampling locations, frequency of sampling, number and types of and standards for tests, and reporting schedules.
- (8) Requirements for immediate reporting of any instance of noncompliance and for automatic resampling and reporting within 30 days where self-monitoring indicates a violation(s).
- (9) Compliance schedules for meeting pretreatment standards and requirements.
- (10) Requirements for submission of periodic self-monitoring or special notification reports.
- (11) Requirements for maintaining and retaining plans and records relating to wastewater discharges as specified in section 38-343 and affording the POTW director/superintendent or his representatives access thereto.
- (12) Requirements for prior notification of and approval by the POTW director/superintendent of any new introduction of wastewater pollutants or of any significant change in the volume or character of the wastewater prior to introduction into the system.
- (13) Requirements for the prior notification of and approval by the POTW director/superintendent of any change in the manufacturing and/or pretreatment process used by the permittee.
- (14) 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.
- (15) Other conditions as deemed appropriate by the POTW director/superintendent to ensure compliance with this article and state and federal laws, rules and regulations.
(Ord. No. 1995-16, part 4, § 4.2(j), 5-2-1995)

Sec. 38-313. Duration.

Wastewater permits shall be issued for a specified time period, not to exceed five years. A permit may be issued for a period less than a year or may be stated to expire on a specific date.

(Ord. No. 1995-16, part 4, § 4.2(k), 5-2-1995)

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Sec. 38-314. 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.

(Ord. No. 1995-16, part 4, § 4.2(l), 5-2-1995)

Sec. 38-315. Reissuance.

A significant industrial user shall apply for wastewater permit reissuance by submitting a complete permit application in accordance with this division a minimum of 180 days prior to the expiration of the existing permit.

(Ord. No. 1995-16, part 4, § 4.2(m), 5-2-1995)

Secs. 38-316--38-330. Reserved.

DIVISION 5. DISCHARGE REPORTS

Sec. 38-331. 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/superintendent a report which contains the information listed in subsection (b) of this section. 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/superintendent a report which contains the information listed in subsection (b) of this section. 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 in subsection (a) of this section shall submit the following information:

(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 Classification of the operation 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 waste stream formula set out in 40 CFR 403.6(e).

(5) *Measurement of pollutants.*

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

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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/superintendent, 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 procedures set out in section 38-340.

c. Sampling must be performed in accordance with procedures set out in section 38-341 of this ordinance 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 **Sec. 38-222(a)3** 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 and/or additional pretreatment is required to meet the pretreatment standards and requirements.

(7) *Compliance schedule.* If additional pretreatment and/or operation and maintenance will be required to meet the pretreatment standards, the shortest schedule by which the user will provide such additional pretreatment and/or operation and maintenance. 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 subsection must meet the requirements set out in **Sec. 38-332**.

(8) *Signatures and certification.* All baseline monitoring reports must be signed and certified in accordance with **Sec. 38-305**.

(Ord. No. 1995-16, part 5, § 5.1, 5-2-1995)

Sec. 38-332. Compliance schedule progress reports.

The following conditions shall apply to the compliance schedule required by **Sec. 38-331(b) (7)**:

(1) 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.

(2) No increment referred to in subsection (1) of this section shall exceed nine months.

(3) The user shall submit a progress report to the POTW director/superintendent no later than 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.

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(4) In no event shall more than nine months elapse between such progress reports to the POTW director/superintendent.

(Ord. No. 1995-16, part 5, § 5.2, 5-2-1995)

Sec. 38-333. Reports on certification with categorical pretreatment standard deadline.

Within 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/superintendent a report containing the information described in **Sec. 38-331(b)(4)–(6)**. 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 certification reports must be signed and certified in accordance with **Sec. 38-305**.

(Ord. No. 1995-16, part 5, § 5.3, 5-2-1995)

Sec. 38-334. Periodic certification reports.

Municipalities may sample and analyze user discharges in lieu of requiring the users to conduct sampling and analysis.

(a) All significant industrial users shall, at a frequency determined by the POTW director/superintendent, but in no case less than once every six 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 **Sec. 38-340** and **38-341** of this ordinance. All periodic certification reports must be signed and certified in accordance with section 38-305 of this ordinance.

(b) If a user subject to the reporting requirement in this section monitors any pollutant more frequently than required by the POTW director/superintendent, using the procedures prescribed in **Sec. 38-340** and **38-341** of this ordinance, the results of this monitoring shall be included in the report.

(Ord. No. 1995-16, part 5, § 5.4, 5-2-1995)

Sec. 38-335. Reports of changed conditions.

(a) Each user must notify the POTW Director/Superintendent 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 30 days before the change. The permittee shall not begin the changes until receiving written approval from the Control Authority and/or Municipality. See **Sec. 38-336(d)** for other reporting requirements.

(b) The POTW Director/superintendent 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 division 4 of this article.

(c) The POTW Director/Superintendent may issue a wastewater discharge permit under division 4 of this article or modify an existing wastewater discharge permit under

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division 4 of this article 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 20 percent or greater, and the discharge of any previously unreported pollutants; increases or decreases to production; increases in discharge of previously unreported pollutants; discharge of pollutants not previously reported to the Control Authority and/or Municipality; new or changed product lines; new or changed manufacturing processes and/or chemicals; or new or changed customers.

(Ord. No. 1995-16, part 5, § 5.5, 5-2-1995)

Sec. 38-336. Reports of accidental discharges and other potential problems.

(a) In the case of any discharge, including but not limited to accidental discharges, discharges of a non-routine, episodic nature, a non-customary batch discharge, or a slug load as defined in **Sec. 38-222(a)36**, that may cause potential problems for the POTW, the user shall immediately telephone and notify the POTW director/superintendent 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 days following such discharge, the user shall, unless waived by the POTW director/superintendent, 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 article.

(c) A notice shall be permanently posted on the user's bulletin board or other prominent place advising employees who to call in the event of a discharge described in subsection (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.

(Ord. No. 1995-16, part 5, § 5.6, 5-2-1995)

(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 a non-routine, episodic nature, a non-customary batch discharge, or a slug load as defined in **Sec. 38-222(a)36**.

Sec. 38-337. Reports from unpermitted users.

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

(Ord. No. 1995-16, part 5, § 5.7, 5-2-1995)

Sec. 38-338. Notification of violation; repeat sampling and reporting.

(a) If sampling performed by a user indicates a violation, the user must notify the POTW director/superintendent within 24 hours of becoming aware of the violation. The user

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shall also repeat the sampling and analysis and submit the results of the repeat analysis to the POTW director/superintendent within 30 days after becoming aware of the violation. If allowed by the director/superintendent the user is not required to resample:

- (1) if the POTW director/superintendent monitors at the user's facility at least once a month, or
- (2) if the POTW director/superintendent samples between the user's initial sampling and when the user receives the results of this sampling.

(b) If the POTW Director/Superintendent has performed the sampling and analysis in lieu of the industrial user and the POTW sampling of the user indicates a violation, the POTW director/superintendent shall repeat the sampling and obtain the results of the repeat analysis within thirty (30) days after becoming aware of the violations, unless one of the following occurs:

- (1) the POTW director/superintendent monitors at the user's facility at least once a month; or
- (2) the POTW director/superintendent samples the user between their initial sampling and when the POTW receives the results of this initial sampling; or
- (3) the POTW director/superintendent requires the user to perform sampling and submit the results to the POTW director/superintendent within the 30 day deadline of the POTW becoming aware of the violation.
(Ord. No. 1995-16, part 5, § 5.8, 5-2-1995)

Sec. 38-339. Notification of discharge of hazardous waste.

Wastes not permitted to be discharged into the community sewer must be transported to a state-approved disposal site. In case of a spill, the following applies:

(1) 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 261. Such notification must include the name of the hazardous waste as set forth in 40 CFR 261, the EPA hazardous waste number, and the type of discharge (continuous, batch, or other). If the user discharges more than 100 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 waste stream discharge during the calendar month, and an estimation of the mass and concentration of such constituents in the waste stream expected to be discharged during the following 12 months. All notifications must take place no later than 180 days before the discharge commences. The user shall not begin the discharge until receiving written approval from the City. Any notification under this subsection need be submitted only once for each hazardous waste discharge. However, notifications of changed conditions must be submitted under section 38-335. The notification requirements in this section do not apply to pollutants already reported by users subject to categorical pretreatment standards under the self-monitoring requirements of sections 38-331, 38-333 and 38-334.

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(2) Dischargers are exempt from the requirements of subsection (1) of this section during a calendar month in which they discharge no more than 15 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 15 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.

(3) 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/superintendent, the EPA regional waste management waste division director and state hazardous waste authorities of the discharge of such substance within 90 days of the effective date of such regulations.

(4) 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.

(5) This section does not create a right to discharge any substance not otherwise permitted to be discharged by this article, a permit issued there-under, or any applicable federal or state law.

(Ord. No. 1995-16, part 5, § 5.9, 5-2-1995)

Sec. 38-340. Techniques for pollutant analysis.

All pollutant analyses, including sampling techniques, to be submitted as part of a wastewater discharge permit application or report shall be performed in accordance with the techniques prescribed in 40 CFR 136, unless otherwise specified in an applicable categorical pretreatment standard. If 40 CFR 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 EPA and the City. Analyses must be performed by a State certified lab for each parameter analyzed, if such certification exists for that parameter.

(Ord. No. 1995-16, part 5, § 5.10, 5-2-1995)

Sec. 38-341. 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/superintendent may allow collection of multiple grabs during a 24 hour period which are composited prior to analysis as allowed under 40 CFR 136.

UTILITIES

(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/superintendent. When authorizing time-proportional composites or grabs, the samples must be representative and the decision to allow the alternative sampling must be documented.

(Ord. No. 1995-16, part 5, § 5.11, 5-2-1995)

Sec. 38-342. Date of submission of reports.

Written reports required by this article will be deemed to have been submitted on the date postmarked. For reports which 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.

(Ord. No. 1995-16, part 5, § 5.12, 5-2-1995)

Sec. 38-343. Recordkeeping requirements.

Users subject to the reporting requirements of this article shall retain, and make available for inspection and copying, all records of information obtained pursuant to any monitoring activities required by this article 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 dates analyses 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 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/superintendent.

(Ord. No. 1995-16, part 5, § 5.13, 5-2-1995)

Sec. 38-344. Electronic Reporting

The POTW Director/Superintendent may develop procedures for receipt of electronic reports for any reporting requirements of this Ordinance. Such procedures shall comply with 40 CFR Part 3. These procedures shall be enforceable under Section 8 of this Article.

Sec. 38-345. Special Reporting Requirements for IUs in Satellite POTWs

In the case of Industrial user located in a Satellite POTW organization's jurisdiction, all information required to be reported to the industrial user's Pretreatment Program Control Authority by the Section shall also be reported to the POTW treatment plant organization.

Secs. 38-346--38-360. Reserved.

DIVISION 6. COMPLIANCE MONITORING

Sec. 38-361. 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.

UTILITIES

(b) 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 and located so that it will not be obstructed by landscaping or parked vehicles.

(c) 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 and sampling and measuring equipment shall be maintained at all times in a safe and proper operating condition at the expense of the user.

(d) 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 90 days following written notification by the city.

(Ord. No. 1995-16, part 6, § 6.1, 5-2-1995)

Sec. 38-362. Access to premises.

The City will inspect the facilities of any user to ascertain whether the purpose of this article is being met and whether the use is in compliance with all requirements. 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, 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 the user's premises, the user shall make necessary arrangements with the user's 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 City's, Approval Authority's or EPA's access to the user's premises shall be a violation of this article. Unreasonable delays may constitute denial of access.

(Ord. No. 1995-16, part 6, § 6.2, 5-2-1995)

Sec. 38-363. Search warrants.

If the 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 article 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 article or any permit or order issued under this article, or to protect the overall public health, safety and welfare of the community, then the City, Approval Authority, or EPA may seek issuance of a search warrant from the district court of the City.

(Ord. No. 1995-16, part 6, § 6.3, 5-2-1995)

UTILITIES

Sec. 38-364. - EFFECTIVE DATE.

This ordinance shall be in full force and effect

on the ___ day of _____, _____.

Secs. 38-365--38-370. Reserved.

FIRST READING: _____, 20__.

SECOND READING: _____, 20__.

PASSED this ___ day of _____, 20__.

AYES:

NAYS:

ABSENT:

NOT VOTING:

APPROVED this ___ day of _____, 20__.

MAYOR, of the [Town]

ATTEST: _____ (Seal) City Clerk

Published the ___ day of _____, 20__.

Secs. 38-365--38-370. Reserved.

**AN ORDINANCE AMENDING THE ANNUAL OPERATING BUDGET
OF THE CITY OF SANFORD FY 2012-2013**

BE IT ORDAINED by the City Council of the City of Sanford, North Carolina in regular session assembled.

Section 1: The following amounts are hereby amended to ordinance 2012-37 per G. S. 159-15 for the continued operation of the City of Sanford, its government, and activities for the balance of the fiscal year 2012-2013.

**UTILITY FUND
TRANSFER OF FUNDS**

Transfer from the Following Accounts:

Transfer to the Following Accounts:

30098180 64500	Water Capital Improvements	2,124	30096650 66033	Contribution to Capital Project	2,124
	Total Appropriation	<u>\$ 2,124</u>			

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

ADOPTED this, the 15th day of January, 2013.

Cornelia P. Olive, Mayor

ATTEST:

Bonnie D. White, City Clerk

Susan C. Patterson, City Attorney

2012-2013 BUDGET ORDINANCE AMENDMENT

UTILITY FUND

Transfer from the Following Funds - results in decreasing of budget

Water Capital Improvements	2,124	To transfer water rehabilitation funds into item described below
----------------------------	-------	--

Transfer to the Following Funds - results in increasing of budget

Contribution to Capital Project	2,124	To contribute funds into the Wagon Trail Waterline Extension Capital Project
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GRANT PROJECT ORDINANCE AMENDMENT Exhibit C

WAGON TRAIL ROAD WATERLINE EXTENSION

BE IT ORDAINED by the City Council of the City of Sanford, North Carolina that, pursuant to Section 13.2 of Chapter 159 of the General Statutes of North Carolina, the following grant project ordinance number 2012-53 is hereby amended:

Section 1: The project authorized is to extend the waterline on Wagon Trail Road to be financed through Clean Water Bond Supplemental Grants Program Contract No. 02-89-02, contribution from property owners and Utility Fund.

Section 2: The officers of this unit are hereby directed to proceed with the grant project within the terms of the grant documents, the rules and regulations of the NC Rural Economic Development Center, and the budget contained herein.

Section 3: The following transfer is required to complete this project:

Transfer from the following revenue account:

Transfer to the following revenue account:

Contribution from Property Owners \$2,124

Contribution from Utility Fund \$2,124

Section 4: The Finance Officer is hereby directed to maintain within the Grant Project Fund sufficient specific detailed accounting records to satisfy the requirements of the grantor agency, the grant agreements, and state regulations.

Section 5: Funds may be advanced from the Utility Fund for the purpose of making payments as due. Reimbursement request should be made to the grantor agency in an orderly and timely manner.

Section 6: The Finance Officer is directed to report, on a quarterly basis, on the financial status of each project element in Section 3 and on the total revenues received and claimed.

Section 7: The Finance Officer is directed to include in the annual budget information projects authorized by previously adopted project ordinances which will have appropriations available for expenditure during the budget year.

Section 8: Copies of this grant project ordinance shall be furnished to the Clerk to the City Council and the Finance Officer for direction in carrying out this project.

ADOPTED this, the 15th day of January, 2013.

Cornelia P. Olive, Mayor

ATTEST:

Bonnie D. White, City Clerk

Susan C. Patterson, City Attorney

RESOLUTION SUPPORTING AND AUTHORIZING THE SUBMITTAL OF A PARTF APPLICATION TO THE NORTH CAROLINA DIVISION OF PARKS & RECREATION FOR THE PURPOSES OF DEVELOPING THE MEDICAL MILE GREENWAY EXTENSION TO THE ENDOR IRON TRAIL

WHEREAS, the N.C. Division of Parks & Recreation is offering matching grant assistance to North Carolina local governments through its Park and Recreation Trust Funds (PARTF) for the purpose of providing parks and recreational projects to serve the public.

WHEREAS, the application for PARTF funding requires certification by the local governing board indicating its approval; and

WHEREAS, the Sanford City Council supports said grant application for the development of the Medical Mile Greenway Extension to the Endor Iron Trail.

NOW, THEREFORE, BE IT RESOLVED, by the City of Sanford City Council:

1. That the Mayor, City Manager and appropriate staff be, and they hereby are, authorized to execute and file the application on behalf of the City of Sanford with the N.C. Division of Parks & Recreation.
2. That the City of Sanford certifies that the 50% matching funds are available or will be available within 12 months of the date of the submission of the application to pay the local share of the project cost.
3. That the City of Sanford certifies that any property acquired with PARTF assistance will be dedicated in perpetuity for public recreation uses and the proposed project will be maintained and managed for public recreation use for a minimum period of 25 years.
4. That the City of Sanford has substantially complied or will substantially comply with all Federal, State, and local laws, rules, regulations, and ordinances applicable to the project and to the grants pertaining thereto.

Adopted this, the 15th day of January, 2013 at Sanford, North Carolina.

Cornelia P. Olive, Mayor

ATTEST:

Bonnie D. White, City Clerk

APPROVED AS TO FORM:

Susan C. Patterson, City Attorney

City of Sanford PARTF Application Summary
For the Development of the Medical Mile Greenway Extension to the Endor Iron Trail from
Kiwanis Park to Central Carolina Hospital

- City Staff is recommending that the City apply for a 2012-13 Parks and Recreation Trust Fund (PARTF) grant

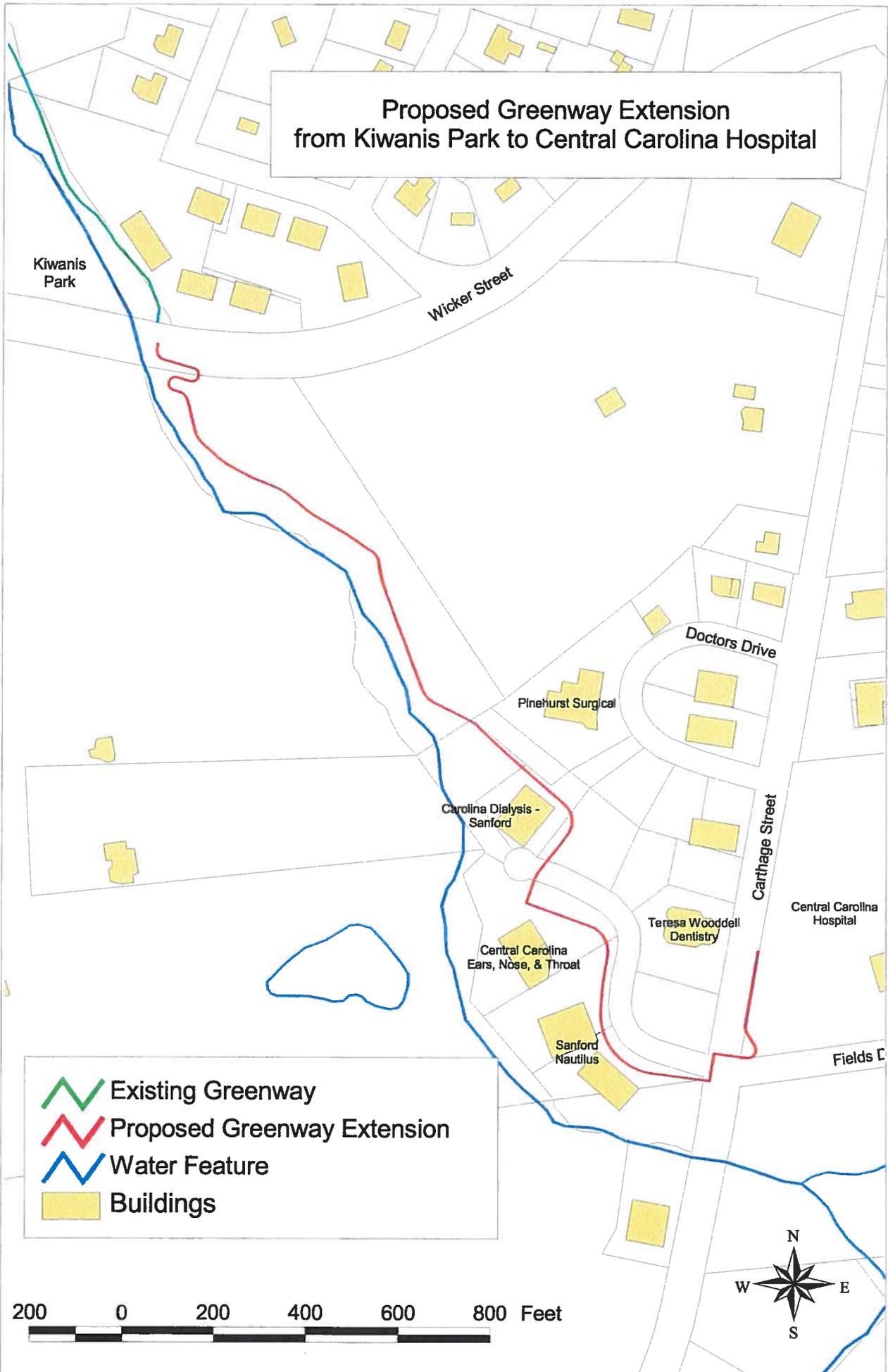
Requirements

- Established in 1994, PARTF funds can be used to acquire land and/or to develop parks and recreational projects that serve the general public.
- Property acquired with a grant from PARTF must be dedicated forever for public recreational use. Facilities built or renovated with a PARTF grant are to be used for public recreation for at least 25 years.
- Maximum of \$500,000 with each application.
- Require a 50% local match

Project

- Greenway would extend from the southern terminus of the trail in Kiwanis Park to Central Carolina Hospital
- The proposed extension is approximately 3110 linear feet, which would make the total greenway length over 2.5 miles or 5 miles roundtrip
- Build on the success of the Endor Iron Trail
- Recreational use
- Exercise
- Proximity to the Hospital, other doctor facilities, and the Nautilus, we think there may be an opportunity for therapeutic uses
- Gets the greenway to the intersection of Carthage Street and fields Drive which opens access to moderate income families that may not have other modes of transportation and opportunities for safe exercise.
- Used for numerous walking and running events
- Preliminary Budget Estimate of the greenway extension is expected to be \$505,785.
- Costs include easement acquisition, greenway development, therapeutic outdoor exercise equipment, amenities such as benches and trash cans, and construction management
- Once constructed the City of Sanford would maintain the facility in much the same manner as the Endor Iron Trail to the north of Kiwanis Park
- Lee County Parks and Recreation, in cooperation with the City would schedule parks and recreation programming for the greenway.
- Applications for PARTF Funding due January 31, 2013
- The City would get notice sometime in late spring or mid summer
- Agreement would be made in early August
- 3 years to complete the project

Proposed Greenway Extension from Kiwanis Park to Central Carolina Hospital



- Existing Greenway
- Proposed Greenway Extension
- Water Feature
- Buildings

200 0 200 400 600 800 Feet



DATE: JANUARY 8, 2013
TO: CITY COUNCIL AND HAL HEGWER, CITY MANAGER
FROM: MELISSA C. CARDINALI, FINANCIAL SERVICES DIRECTOR
RE: AWARD OF BANKING SERVICES CONTRACT

The City of Sanford recently invited all local banks to bid on the City's banking services contract. The current contract with PNC expires February 28, 2013. The new contract period will be for March 1, 2013 through February 28, 2017, with an option for an additional year.

Of the invitations to submit a proposal, four banks responded to the request. These banks include BB&T, PNC, Wells Fargo, and First Citizens Bank. After analyzing the bids it is staff recommendation that the City of Sanford award its banking services contract to First Citizens Bank based primarily on price and the ability to offer the majority of the services requested.

While price is an important component of the bid, service level is also an important factor. PNC has provided the City with excellent customer service and the best technology. However, it appears that First Citizens can provide the majority of services required and at a reasonable technological level with a price per unit that is considerably less than the other banks submitting proposals.

It should be noted that the current monthly fee will increase by approximately \$2,000 resulting in an annual increase of approximately \$24,000.

Based on the responses provided, I respectfully request that the City Council approve First Citizens Bank to provide banking services to the City of Sanford beginning March 1, 2013.

City of Sanford Banking Services Summary of RFP Responses 2013	BB&T	First Citizens	PNC	Wells Fargo
Service Requested	Pricing subject to change @ any time	Unit cost fixed for 4 years	Unit cost fixed for 4 years 30 day	Unit cost fixed for 4 years
Four year contract - fixed cost	X	X		X
Termination clause - 90 day	X	X	X	X
Account liaison	X	X	X	X
Equal opportunity employer	X	X	X	X
Next day funds availability on db/cr card settlements	X	X	X	X
Provide annual reports	X	X	X	X
Ability to separately handle commercial deposits	X	X	X	X
Establish accounts based on fed tax i.d. not personal				
social security numbers	X	X	X	X
Web based services -				
Repetitive wire transfers out	X	X	X	X
Account transfer between accounts	X	X	X	X
ACH origination	X	X	X	X
Positive pay	X	X	X	X
Remote deposit	X	X	X	X
Itemized statement by 10th day of subsequent month	X	X	X	X
Provide cancelled check imaging -				
CD ROM	X	X	X	X
Online imaging	X	X	X	X
Furnish by the 10th day, data transmission in .csv / .txt	X	X	X	X
Able to handle changes, reversal or deletion from EFT				
/ACH items prior to release of file	X	X	X	X
Present checks twice prior to debiting City account	X	X	X	X
Wire services shall be provided via web	X	X	X	X
Interest rate on checking account	0.00%	.10% TO .20%	.15% TO .20%	Recommend non-interest account
Monies deposited by end of business day shall be processed & credited for same day deposit	X	X	X	X
Web based access to (90 day min):				
Balance inquiry	X	X	X	X
Collected balances	X	X	X	X
Transactional detail	X	X	X	X
Images of all cleared items	X	X	X	X
Images of all deposited items	X	X	X	X
Check inquiry	X	X	X	X
Stop payment	X	X	X	X
Token authentication	X	X	X	X

	BB&T	First Citizens	PNC	Wells Fargo
Pooling method participant	X	X	X	X
Wire instructions accepts via telephone	X	X	X	X
Research items furnished within 48-72 hours	X	X	X	X
Furnish direct deposit for payroll checks	X	X	X	X
Provide monthly account analysis	X	X	X	X
Monthly account reconciliation	X	X	X	X
Payroll positive pay at branch level	X	X	X	X
Positive pay notification to multiple emails	X	X	X	X
Forward bank db/cr items next business day	X	X	X	X
Disposable depository bags no charge		X		X
Deposit slips - no charge		X		X
90 Day stale date control	X	No	X	X
Provide used small bill / short notice/ no cost	Set schedule / Fee appears minimal	X	X	X
Government references	X	X	X	No
Procurement Card Services				
Provide cards with no annual fee	X	Not provided	X	X
Set limits	X	Not provided	X	X
Individual monthly statements & consolidated	X	Not provided	X	X
Ability to contest charges	X	Not provided	X	X
Finance charge	Prime + 5.9%	Not provided	X	X
Liability protection from card misuse	X	Not provided	X	Requests further discussion
Provide references	X	Not provided	X	Vendor analysis available
Lockbox Services				
Available	X	X	X	X
Service through third party vendor	No	X	No	No
Same day credit	X	X	X	X
CD rom with check & coupon images	X	X	X	X
Payment file will be compatible with ERP (Munis)	X	X	X	X
Error free processing at 97% or greater	X	X	X	X
Exception items researched /resolved in 24 hours	X	X	X	X
Estimated monthly fee	\$6,311	\$3,827	\$5,577	\$5,974

MINIMUM ESTIMATED COSTS OF BRINGING AD VALOREM TAXES BACK IN-HOUSE
AS OF DECEMBER 21, 2012

ANTICIPATED ONE-TIME COSTS

Office set up	\$	5,000
Computers		4,500
Software		58,000
Additional cashier workstations (2)		2,100
Credit card machines & set up		790
Printer		1,200
Total of known anticipated one-time costs	\$	<u>71,590</u>

Construction costs for additional staff *Unknown*

ANTICIPATED ANNUAL COSTS

Personnel	\$	189,200
Billing supplies/ postage /advertising		12,560
Training / publications		2,000
Additional phone lines		1,450
Total of known anticipated annual costs	\$	<u>205,210</u>

Additonal lockbox fees *Unknown*
Attorney fees for items paralegal can't address *Unknown*

ASSUMPTIONS:

- Bill printing & mailing is outsourced
- If bill printing done in house, then additional printer & supplies needed (est \$3,000 for printer)
- Collection of delinquent assessments are not included in costs
- Costs for delinquent collection not included - i.e. bankruptcy / garnishment processing
- Delinquent collections will be primarily labor intensive versus supply intensive

Summary of Interlocal Agreements / Projects

Payments to Lee County from City

Purpose	Description / Service Provided	Fee	Terms of Contract	Notice of Termination	Origination Date	Employees	Additional Comments
Animal Control	Sheriff's department provides animal control services for the city	<ul style="list-style-type: none"> FY 12-13 City approved budget \$70,535 FY 12-13 County approved budget \$100,000 		90 days written notice		All County	City adopted county's ordinance on 8/16/2011
Strategic Information Service	Lee County provides comprehensive strategic information service to all city departments, officials and staff	FY 12-13 Budget = \$94,518	<ul style="list-style-type: none"> Renews automatically Any modifications necessary shall be submitted with supporting justification to the city before April 1 of each year Failure to agree on modifications by June 30, contract terminates but services continue for 6 months 	6 months written notice	2005	All County	<ul style="list-style-type: none"> As of 7/1/05, city transferred all equipment currently used by GIS to Lee County Termination of contract – equipment returns to city
Tax Collections	Lee County tax collector has complete responsibility for collection of current and delinquent ad valorem taxes	<ul style="list-style-type: none"> Modification #2 dated May 6, 2006: Collection fee based on prior year statewide average collection rate for population group Fee can never be less than one-half percent 	<ul style="list-style-type: none"> Contract based on actual collections, motor vehicle is billed monthly, other is quarterly at 1% of collections plus foreclosures and attachments 	Termination must occur in writing on or before December 31		All County	City Paid to Lee County <ul style="list-style-type: none"> FY 11-12 \$156,375.84 FY 10-11 \$158,075.86
Rental Agreement Makepeace Building	The City's Community Development Department and the County's Environmental Services Department are located at this facility.	\$15,288 annually			Last agreement signed in 2003		

Summary of Interlocal Agreements / Projects

Payments to City from Lee County

Purpose	Description / Service Provided	Fee	Terms of Contract	Notice of Termination	Origination Date	Employees	Additional Comments
Consolidated Planning Services	The city provides comprehensive planning services for Lee County	Lee County pays 45% of proposed budget, excluding rent FY 12-13 Budget = \$391,801	<ul style="list-style-type: none"> Renewed automatically annually if parties agree upon budget If parties cannot agree, contract shall extend for six months and county shall pay city on same basis in preceding fiscal year adjusted for inflation 	Either party may terminate upon 6 months written notice or 30 days written notice which will allow up to 6 months to close out business	May 2003	All City	
Clearwater Fire District	The city provides fire protection / suppression and rescue service to the Clearwater Drive district	\$36,000 annually	<ul style="list-style-type: none"> Automatically renew one year terms; Contract is subject to adjustment annually 	60 days written notice before the end of the term		All City	
Dispatching Services	The city provides dispatch services for rural fire emergency response, and drop down calls for service to Lee County Sheriff's office who dispatches their own personnel	FY 12-13 = \$202,678 or 19.02% of total budget	<ul style="list-style-type: none"> Lee County pays cost of maintenance, operation, repair and overhead based on percentage of calls for service in preceding calendar year No cost for sheriff-dispatches own calls 	12 months written notice		All City	Runs concurrently with 911 contract
Consolidated Inspections Services	The city provides comprehensive inspections services for Lee County	FY 12-13 Budget = \$52,187 per entity FY 11-12 Actual = \$29,556 per entity	<ul style="list-style-type: none"> Around April 1 the city will provide Lee County with budget estimate and proposed division of funding Difference between combined revenue estimate and combined operating budget City / County split difference equally 	6 months written notice	August 2002	All City	

Summary of Interlocal Agreements / Projects

Other

Purpose	Description / Service Provided	Fee	Terms of Contract	Notice of Termination	Origination Date	Employees	Additional Comments
E911 Surcharge Reimbursement	The city provides 911 service to the county. Operations are under the city's control and Lee County pays the city revenue collected from the state for just 911 eligible expenses. The city is the Primary Public Safety Answering Point (PSAP) for Lee County.	The city is totally reimbursed for these expenses. Lee County collects the 911 funds from the state on behalf of the city.	To handle county calls, the county is charged a percentage of the total department costs based on call volume. Refer to Dispatching Services.	12 months written notice		All City	
Lee County Industrial Park	City agrees to operate, maintain and provide treatment for the county sewer system at the Lee County Industrial park.		Unless sooner terminated, this agreement shall continue from the date of contract for 20 years		9/7/1999		
Airport Commission	The city and county are responsible for 50 percent of all operations of the airport.	The airport is becoming self sustaining and therefore not an ongoing expense for either party. This is mainly due to the reserve set up for the tax revenues generated from the airport.					
Economic Development Corporation	The city, Lee County, and the Town of Broadway jointly fund this outside agency.	Lee County funds 66 percent of operations, the city funds 32%, and the Town of Broadway funds 2%.					FY 12-13 city approved budget <ul style="list-style-type: none"> • For administration = \$95,562 • For tax incentives = \$134,733



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FAX: (919) 775-8205
Email: hal.hegwer@sanfordnc.net

City of Sanford

Hal Hegwer
City Manager

MEMORANDUM

TO: Mayor and Council Members

FROM: Hal Hegwer, City Manager *H.H.*

DATE: December 6, 2012

SUBJECT: Interlocal Agreements with Lee County

Lee County Manager John Crumpton has notified me of the County's intent to end a number of current interlocal agreements effective June 30, 2013. These agreements are Community Development, Planning and Zoning, Building Inspections, GIS, Tax Collection, Animal Control, and a Building Lease Agreement at the Federal Building. The Lee County Board of Commissioners is willing to renegotiate these agreements if we are interested in retaining these relationships.

We currently compensate the County for GIS, Tax Collections, a Lease Agreement at the Woodland Planning Office and Animal Control.

• GIS -	\$ 94,518
• Tax Collection	\$162,000
• Animal Control	\$ 70,535
• Lease Agreement (Woodland)	<u>\$ 17,688</u>
Total	<u>\$344,741</u>

Lee County currently compensates the City of Sanford for Community Development and Planning Services:

• Planning and CD	\$391,801
• Inspections Services	\$ 51,801
• Lease Agreement (Federal Bldg)	<u>\$ 15,000</u>
Total	<u>\$458,602</u>

There are other agreements that the City and County have in common that were not addressed in Mr. Crumpton's letter which include Dispatch Services, 911, Economic Development, Clearwater Fire District, Industrial Park Wastewater Agreement, and an Airport Agreement.

Listed below are options that the City Council can consider.

Option 1 – Negotiate agreements to the satisfaction of the County. Listed below are the requests from Lee County and the additional cost the City would realize.

- Reduction of County's share of Planning and Zoning contract from 45 percent to 30 percent - \$130,000;
- Leave the County's share at 45 percent and include additional code enforcement to the County – \$20,000 for operational increases (estimate) - no additional employees;
- Building Inspections - Calculate the County's share based off the number of permits along with the dollar amount of the permits – exposes the City to more risks in the event the expenditures exceed revenues (minor change);
- Tax Collection at a 2 percent flat charge - \$60,000;
- GIS – City would pay 50 percent of the department – increase of approximately \$86,000.
- Animal Control - a minimum of a \$30,000 increase. This would make a total compensation to the County in the amount of \$100,000. However, the County suggested last budget year that we pay for ½ of animal control at a cost of approximately \$125,000.

Option 2 – Negotiate agreements to both parties' interests. For instance, ask the County to assume animal control because they currently provide this service to unincorporated Lee County residents and the Town of Broadway for no additional fee. The Sheriff's Department provides a satisfactory level of service and we are very pleased with the quality of services we receive. The City has also adopted the County's ordinance on animal control which makes our ordinances consistent with the County. Also, the City should pay a fair and equitable amount for the collection of our taxes but it should not be more than what the County is charging to collect taxes from all of the residents regardless of where they live. All City residents are county taxpayers too and should be treated in a consistent manner. Recommend asking County to clearly allocate City's collection cost and City agree to that amount.

In summary, if we meet all of the county's demands, our cost would increase approximately \$350,000; however, we may be able to negotiate for less.

Option 3 – Ending all the agreements with the County would result in a loss of approximately \$100,000 to the City of Sanford. However, we would realize savings through the reduction in personnel and operating costs of approximately \$500,000 because we would not be providing inspections or planning services to Lee County. It is important to understand that if the tax collection agreement is cancelled, we would need a minimum of nine months, preferably twelve months, in order to acquire the necessary equipment and personnel to perform this service. We are exploring the cost to provide this service directly to our citizenry and would most likely recommend paying the County what they demand this year because of the time necessary to get personnel and software equipment in place to handle this function.

I think that it is imperative to recognize that Lee County is in control of the sales tax distribution because they can change it for their benefit every year. It is critical that we realize that this is a revenue source that we cannot depend upon to meet the needs of the services we provide. In order to continue the services we provide without this revenue, we would need to consider

alternate revenue sources, an increase in existing revenue, reduction in the level of services we provide, elimination of a service, or some combination of all these above.

One thing that appears to be getting lost in the interlocal agreement discussion is the fact that the citizens receive value by having consolidated departments. By splitting the departments, each entity may realize some incremental savings but those savings may not outweigh the negative impact to the citizens. The interlocal agreement concept originated from a study performed in 1989 by the Sanford Area Chamber of Commerce. The study examined the concept of functional consolidation between Sanford, Broadway, and Lee County. By definition, functional consolidation is a partial consolidation of functions between organizations without changing the basic governing structure of each entity. The study recommended that some functions should be consolidated such as water and sewer, tax collection, planning and zoning, and inspections, etc. The study also concluded that there may be some savings from the consolidation but that the primary purpose was to improve the quality of the services offered. The City and County acted on some of the recommendations and entered into several consolidation agreements beginning in 1995 for functions such as tax collections, geographic information services, community development/planning, building inspections, animal control, dispatching and 911 services, and fleet maintenance. The agreements have been modified several times and all remain in place today with the exception of the fleet maintenance contract which was terminated in October 2004.

In conclusion, it is imperative that I have direction quickly in order to make the necessary changes because of the potential impact on employees' jobs and next year's budget.

If you have any questions, please give me a call.

LEE COUNTY
NORTH CAROLINA

Committed Today for a Better Tomorrow

December 4, 2012

Mr. Hal Hegwer
City Manager
City of Sanford
PO Box 3729
Sanford, NC 27330

Dear Mr. Hegwer:

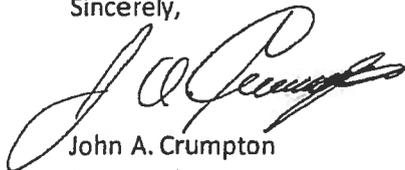
At yesterday's County Commissioners meeting, the Board voted unanimously to direct me to send the City a notice of the Board's intent to end the current interlocal agreements on Community Development, Planning and Zoning, Building Inspections, GIS, Tax Collections, Space Rental at the Federal Building, and Animal Control Services effective June 30, 2013.

The County has been trying to renegotiate these contracts for several years. The attached letter from July 13, 2011, shows our last attempt to put specific changes in place that we felt would be more equitable to the County. We never received a formal response in return from the City. Although we have met and discussed issues, and our two Boards have had representatives meeting to discuss joint issues, no movement has occurred in renegotiating these contracts. Therefore, the Board has decided it is in the County's best interests to terminate the current agreements.

The Board is willing to discuss new agreements on all interlocal agreements with the City, if the City wishes to continue any of the relationships with the County. I hope that you will discuss this with the Mayor and the City Council to see if there is a willingness to develop new contracts equitable to both parties. We are making plans to move forward with this new direction. However, we can change that direction if the City Council is willing to work on new agreements.

As we move towards June 30, 2013, we will need to continue to have a good working relationship to make the transitions smooth for both entities and our citizens. Please feel free to contact me if I can help in any way.

Sincerely,



John A. Crumpton
County Manager

cc: Lee County Board of Commissioners
County Attorney
County Clerk

OFFICE OF THE COUNTY MANAGER

P. O. Box 1968 • 106 Hillcrest Drive • Sanford NC 27331-1968
Tel 919-718-4605 • Fax 919-777-9315 • manager@leecountync.gov

LEE COUNTY
NORTH CAROLINA

Committed Today for a Better Tomorrow

July 13, 2011

Mr. Hal Hegwer
City Manager
City of Sanford
PO Box 3729
Sanford, NC 27331

Re: City/County Contracts

Dear Hal:

Lee County and the City of Sanford have forged many agreements in the past that have been beneficial to both entities and our citizens. Your assistance with the recent contract for fire services in the Clear Water Forest Area is an example of the agreements that we have forged to benefit our citizens. I thank you for your efforts with that contract.

City and County Managers before us developed these contracts on the basis of a win/win attitude for both entities. Over time, many of these contracts are no longer a win for the County. Based on my conversations with you, the City still feels that the contracts are a win for them. With your help we can develop changes to our contracts that will help both entities. Without your help, many of our agreements will end this fiscal year.

Attached you will find spreadsheets that show the history of the cost of providing services to each government since the inception of the following contracts: Planning and Zoning, Inspections, 911, GIS and Property Tax Collections. The County has financial issues with all of these contracts except 911 which we will have to live with due to the decisions of the State 911 Board. The basic issue is that we believe the City is pricing themselves out of doing business with the County and that our increase or lack of an increase in revenues makes providing services to the City un-affordable for the County.

The City's recent decision to provide a 3 percent COLA to their employees is a great benefit for your employees. However, it is difficult to justify subsidizing this increase through our contracts when County employees are seeing reductions in their 401k,

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health insurance benefits and the elimination of their Christmas bonus. Attached you will find a sheet that compares the City's health insurance plan to the County's plan. The difference in coverage and then the ultimate cost to our employees is very large. I applaud the City's financial strength in being able to maintain these benefits. The County however cannot match these benefits. It is our belief that we should not be subsidizing your employee's benefits through our contracts. Therefore, this year we will not agree to any increase over the current year's contract amount, except on the 911 contract. We are prepared to do something else, if these terms are not agreeable to you on all other contracts where the City provides a service to the County.

As I wrote to you previously, the County does not agree with the level of City funding for Animal Control. Keeping with your position that the contractor names the price and the customer can either choose to keep the service or do something else, the cost to the City of Sanford for Animal Control services in FY 2011-12 is \$78,000. If the City chooses not to fund the service at this level we will take that as your decision to do something else effective January 1st, 2012. I am willing to negotiate a contract for Animal Control services to the City that is equitable to both parties. This new contract needs to be in place prior to October 31st, or on January 1st, the City will be responsible for enforcing their animal control ordinance.

The County is proposing the following changes to the other contracts and wants all amendments for these contracts to be in place by December 31, 2011:

- Reduce County's share of Planning and Zoning contract from 45 percent to 30 percent. We certainly do not believe that the City can do a cost benefit analysis and justify \$387,000 in expenses for this department to the County. We believe this contract should already include code enforcement at the 45 percent level. We also want changes in the contract that will require written monthly reports of all development activity in the County to be provided to the County Manager.
- Building Inspections – calculate the county's share to a percentage based off the number of permits along with the dollar amount of the permits.
- Tax Collections to the City – a flat 2.0 percent charge for all taxes collected.
- GIS – City to pay 50 percent of the operations of this department.
- As you suggested, change all contracts to eliminate the costs of capital as a basis for the cost of each service. Capital will include computers, programs, vehicles, and buildings unless otherwise negotiated between the parties.
- Lastly, the County is concerned that the City has stopped the growth in the unincorporated areas of the county by forcing annexation on developers who request water and sewer connections. The City Planning staff shall communicate to the County Manager when any developer that presents or discusses plans for development outside the city limits and where the City has told the developer that annexation is required to receive water and sewer services. The County wants to develop an agreement that provides for water and sewer extensions without annexation or with a phased approach to annexation so

development can be restarted in the County. The agreement to sell the County water system to the City should have contained an agreement on how water extensions would be made outside the City limits. We regret this omission and want to work with the City to provide an affordable solution to this issue so that growth can begin again.

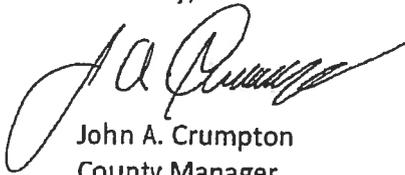
Our position on these contracts is being dictated by our financial position and the trends we see with the costs associated with the contracts. In all our departments we have cut expenditures and benefits over the last 4 years. It appears that the City is in better financial shape than we are and is therefore willing to pay more to keep their level of services in place. The County cannot operate the way the City does and therefore several of our contracts are in jeopardy of ending because we can no longer afford them. This means that the City and County have grown in different ways and one of the reasons for consolidation of services, cost savings, is no longer being realized by the County due to the growth.

The County sees the benefit in consolidated services to the citizens. Providing one stop service is import to the citizens, but it must be done in an affordable way for both entities. We hope that the City will see that financially we cannot continue in the direction we are headed and will assist us in changing our path. If the City cannot help, then the County will have to take action to maintain costs and provide affordable services without the City.

This letter is to serve as notice of our intent to negotiate the contracts that we have identified above. The timetable provided to me by the County Commissioners is relatively short so we need to begin negotiations as soon as possible. I propose that we meet the Week of July 25th to begin these discussions and set a schedule to complete new contracts. Please let me know when you are available.

Thank you and I look forward to working with you on these new contracts.

Sincerely,

A handwritten signature in black ink, appearing to read "John A. Crumpton". The signature is stylized and cursive, with a large initial "J" and "C".

John A. Crumpton
County Manager

Attachments



P.O. Box 3729
Sanford, NC 27331-3729

(919) 775-8202
FAX: (919) 775-8205
Email: hal.hegwer@sanfordnc.net

City of Sanford

Hal Hegwer
City Manager

MEMORANDUM

TO: Mayor and Council Members
FROM: Hal Hegwer, City Manager H-H
DATE: March 30, 2012
SUBJECT: City Council Special Meeting on Method of Sales Tax Distribution

I felt it was prudent to give you some information to help facilitate Monday's meeting to discuss the County's consideration for the change in sales tax distribution. As you know, the North Carolina General Assembly provides counties the authority to select from one of two methods for the distribution of sales tax. Every April, the County has the opportunity to change the method of distribution it is using. Any change will take effect July 1 of the same calendar year. In essence, if the County changes the methodology, it affects the municipality's revenue in the upcoming fiscal year.

Under the per capita distribution method, this formula takes the county's population and adds all municipal populations. The percent of each individual municipality's population, divided by the grand total, is used to allocate the sales tax revenue. The second option to distribute the sales tax is based on the ad valorem method. Under this method, the dollar amounts of ad valorem property taxes levied by the county and each municipality in the county in the preceding fiscal year are added. The proportionate share of each unit's levy to the total levy of all units in the county determines the amount of local sales tax revenue that each unit receives. Lee County currently utilizes the per capita method and receives approximately 65 percent of the sales tax revenue; the City of Sanford receives approximately 35 percent; and Broadway receives 1 percent. If the County changes to the ad valorem method, our annual distribution of sales tax would be cut by approximately \$1,340,000. Listed below are some points to consider as to why the County should continue utilizing the population distribution method.

- The revenue reduction is equivalent to 6.27 cent on the tax rate. In other words, a 6.27 cent tax rate increase on city residents would be necessary to be revenue neutral.
- Public safety expenditures make up 52.5 percent of the General Fund budget.
- A reduction in sales tax will increase the reliance on property tax in the incorporated areas of the County (Sanford and Broadway). This means Sanford and Broadway will have to rely more heavily on the property tax generated from businesses and residents as a revenue source.

- According to the last North Carolina Department of Revenue report, 82 percent of sales taxes in Lee County were collected within the City limits. Currently, the City is receiving only 35 percent of those collections. If the County changes to the ad valorem method, the City's percentage share will be reduced to 27 percent. This increased revenue disparity will place a higher burden on taxpayers within the City limits, who bear the cost related to public safety and transportation needs generated by business activities.
- A shift to the ad valorem method would impose a higher burden not only on residents but on businesses. The City is made up of significantly more businesses than the unincorporated areas of the County. Businesses are generating the bulk of the sales tax but will lose the benefit of those collections if the distribution of the revenue is weighted more heavily to the unincorporated areas.
- Changing to the ad valorem distribution method would make revenue projections more erratic and difficult for all units of government because every time the tax rate is changed by one of the units, it would have an effect on the other.
- The elimination or reduction of some services would have a resulting negative impact on the County's budget. For example, if the City eliminated a service such as bulk trash collection or disposal, the County would have to allow for City residents to pay a fee so that they could use convenience centers for bulk trash disposal. The reduction in the City service would thereby increase a demand on County services. Further analysis might reveal that this would be evident in other services.
- Almost half of the population within Lee County resides in the City of Sanford. Shifting the revenue from the City to the County would provide the unincorporated areas of the County the greatest benefit. Only half of Lee County's residents will see the benefit.

In order to offset the loss of revenue, the City of Sanford will examine all possible options including an increase in taxes, a reduction in service, or the elimination of services altogether. To give you an idea of how to make up this revenue shortfall, I am offering you some generic ideas to assist you in providing direction about service areas you might want to consider reducing or eliminating. (See attached list).

I hope this helps in the facilitation in the discussion of this matter. We need to keep in mind that each year, the board of the county commissioners could decide this issue under the authority granted by law. We will remain at risk in the future because the County has the ability to select within the available options granted by law.

If you have any questions, please give me a call.

Attachment



Law and Finance
1-9-13
Exhibit G

215 NORTH DAWSON STREET
RALEIGH, NC 27603
POST OFFICE BOX 3069 | 27602-3069
919-715-4000 | FAX: 919-733-9519
WWW.NCLM.ORG

November 30, 2012

Your Municipal Advocacy Goals Participate and Vote on January 24th

NCLM Advocacy Goals Conference
Raleigh Convention Center – Raleigh
January 24, 2012, 9:30 a.m. – 5:00 p.m.

In an effort to increase the opportunity for member input into the League's advocacy goals, your League Board of Directors changed our policy development process in 2010 to provide an entire day for consideration and adoption of the Advocacy Agenda and the Core Municipal Principles. The biennial Advocacy Goals Conference provides League members with the opportunity to thoroughly debate legislative issues and be directly involved in setting advocacy priorities. The result will be the 30 priority goals for the state's cities and towns.

In preparation for this conference, the following documents are enclosed:

- (1) A list of the 57 advocacy goal proposals recommended by the Board of Directors for consideration by the membership
- (2) The proposed Core Municipal Principles
- (3) A guide to the League's policy development process
- (4) A form for submitting additional goal proposals
- (5) The agenda for the Advocacy Goals Conference

Voting Delegates

The League Bylaws provide that each member municipality is entitled to one vote at the Advocacy Goals Conference. Each municipality sending delegates to the Advocacy Goals Conference may designate one voting delegate and also may designate one alternate voting delegate. This designation must be provided to League staff prior to the beginning of the Conference at 9:30 a.m. on January 24, 2012.

MANAGERS AND CLERKS - Municipalities that have pre-registered officials for the conference will receive a form to designate the municipality's voting and alternate voting delegate in advance. This will save time for voting delegates on January 24.

In order to facilitate vote counting over the course of the day, seating at the front of the room will be reserved for voting delegates. The room will be arranged so that other attendees from a municipality will have access to the voting delegate during the conference. Please bring a large delegation and become better informed about a range of important municipal legislative issues.

Voting delegates may pick up their voting cards at the Voting Credentials Desk located in the on-site conference registration area during registration hours from 8:00 a.m. – 11:00 a.m. on January 24, 2012.

2013-14 Proposed NCLM Advocacy Goals

Infrastructure/Utilities/Land Use/Planning

- **Seek legislation authorizing Land Banks.**
 - Land banks help local governments manage vacant, foreclosed, and abandoned property that is either severely tax delinquent or has become a chronic nuisance issue due to repeated violations of health and safety codes. Set up as a public authority or a separate corporate entity from a government, land banks provide special tax and lien foreclosure tools and the ability to manage and sell or otherwise reuse problem properties or districts within a city. While not currently authorized under N.C. law, land banks are becoming a more widely-used tool in the revitalization process around the country and are often used in public-private partnerships for the development of stable neighborhoods with widespread tax delinquency and code violation issues. Funding may initially come from a city's general fund, but over time, land banks can become self-funding.
- **Support legislation that bolsters the authority of municipalities to balance the property rights of existing development with new development, protect existing property values, enhance public safety, and increase opportunities for economic development.**
 - This goal counters a priority of the state's homebuilders' association in the past legislative session. The bill was ultimately unsuccessful, but would have restricted the ability of local governments to use zoning codes to impose design and aesthetic controls on single family residential structures in zoning districts with densities of five or fewer dwelling units per acre. Among the controls it would have prevented were exterior building color; type, color, or style of exterior cladding; style or materials of roof structures, porches, and architectural ornamentation; location or style of windows and doors (including garage doors); number and types of rooms; and interior layout of rooms. These controls are often applied to proposed new developments, to ease conflict between the developer and existing neighborhoods by improving compatibility of the new development, thereby increasing support for the project with the community and city council.

2013-14 Proposed NCLM Advocacy Goals

- **Protect local authority and localities' power to regulate hydraulic fracturing and related infrastructure in their communities.**
 - Along with writing regulations for the hydraulic fracturing industry, the N.C. Mining & Energy Commission will make recommendations on the extent to which local governments can enact local regulations on the industry. Such local regulations could include zoning ordinances, setbacks, and noise and light restrictions. This goal restates an NCLM Core Municipal Principle specifically in the context of hydraulic fracturing.
- **Seek legislation to authorize a state bond to provide low-cost loans to local governments for upgrades to water and wastewater treatment systems, expansion of stormwater programs, and assured water supplies.**
 - Grants to assist with funding water, wastewater, and stormwater infrastructure improvements are very limited, which means municipalities must borrow to finance large projects. This goal proposes increasing funds by having the state borrow funds through a general obligation bond and then loan the funds to local governments. The funds would be borrowed at the interest rate available to the state under its AAA bond rating, which would be a lower rate than is available to many cities and towns. Such an approach would not require the state to spend additional money because the debt service on the bonds would be paid by local governments through their repayment of the funds loaned to them.
- **Seek legislation to provide adequate representation for extra-territorial jurisdiction (ETJ) residents on advisory boards for land use decisions affecting ETJ areas, place reasonable limitations on the creation of new ETJ boundaries, and retain existing ETJ areas to help protect orderly development and building improvements, while facilitating economic development and protecting individual property values.**
 - In anticipation of bills being introduced to remove municipal ETJ authority, this goal seeks to preserve existing ETJ boundaries while reforming existing ETJ law to address two concerns: (1) ETJ residents claim that they do not have an opportunity to vote for the council members who make decisions affecting their property; and (2) creation of new ETJ areas.

2013-14 Proposed NCLM Advocacy Goals

- **Seek legislation to reestablish authority for city-initiated annexation of “donut holes,” areas of land that are completely surrounded by municipal territory.**
 - In the 2012 annexation reform bill, legislative leaders intended to allow cities to retain the authority to annex areas completely surrounded by municipal jurisdiction without utilizing the referendum process otherwise required for city-initiated annexations. However, this authority was not preserved in the final version of the bill. Annexation of these areas allows for a continuity of municipal services within a city’s larger sphere of jurisdiction.
- **Seek legislation to correct the constitutional issue within the annexation law requiring municipal construction of/payment for water and sewer lines across private property all the way to the home or structure.**
 - Annexation reforms in the last legislative biennium require a city that undertakes city-initiated annexation to extend water and sewer infrastructure to service a home or structure. Prior to these legislative changes, city-owned water and sewer infrastructure typically ended at the meter in the city-owned right-of-way. This new requirement may violate North Carolina’s “exclusive emoluments” constitutional provision, which disallows governments from providing benefits to private individuals.
- **Seek legislation to strengthen the law regarding municipal decision-making authority of water and sewer provisions beyond municipal limits and ensure the existing water and sewer system is given deference in order to support orderly growth.**
 - This goal responds to recent attempts by members of the General Assembly to control the municipal provision of water and sewer service to areas outside municipal jurisdiction. It also addresses situations in which competing utility systems attempt to expand into areas otherwise associated with a city’s own water and sewer service.

2013-14 Proposed NCLM Advocacy Goals

- **Seek legislation to enhance the authority of cities to own and operate broadband systems serving citizens by redefining what constitutes unserved and underserved areas, in order to promote economic development opportunities for citizens and businesses.**
 - HB 129 (Level the Playing Field/Local Govt Competition) became law in 2010. The bill, promoted by the telecommunication industry, significantly restricts the ability of cities to own and operate retail broadband systems. Limited exceptions were provided for city systems which were operating by a date certain, and for areas which were “underserved and unserved.” The definitions of underserved and unserved areas were drafted very narrowly as to prevent any significant penetration of city owned systems.

- **Seek legislation to amend land use enabling statutes to specify authority for common municipal regulations such as those for signs, greenways, design controls, and others potentially threatened by the analysis in Lanvale v Cabarrus County.**
 - In Lanvale v Cabarrus County, the NC Supreme Court invalidated the use of adequate public facilities ordinances by concluding they are not authorized by general zoning statutes, and instead require express authority from the General Assembly to be effective. And in doing so, the court now threatens other local government planning activities whose authority rest on implied authority derived from the same general zoning statutes as adequate public facilities ordinances. This goal seeks to expressly authorize a host of these activities to confirm the powers that cities historically believe to be vested in general zoning statutes (N.C.G.S. 160A-381 and 160A-383).

2013-14 Proposed NCLM Advocacy Goals

Environment/Natural Resources

- **Support legislation to develop a holistic approach to water supply that offsets potable water supply demands and includes: opportunities for increased water storage options, reclassification of reclaimed water as a resource, and expanded uses of reclaimed water such as for recycling to surface water supplies.**
 - This goal addresses three facets of ensuring a steady public drinking water supply for cities and towns. First, the goal expresses support for legislation that increases storage options for public water supplies. The last two components of the goal address reclaimed water, which is a highly treated wastewater product. To allow more uses of this water source, state law needs to be changed to classify reclaimed water as a resource rather than a waste. Other areas of the country utilize reclaimed water in many more ways than North Carolina, including safe recycling of this water back into surface drinking water supplies for further treatment to drinking water standards.

- **Seek changes to stormwater laws to provide more flexibility for mitigation in established urban areas, including restoring the option for cities and towns to create their own mitigation banks and to access the state-run mitigation bank.**
 - Mitigation for development is a tool by which any party that disturbs land compensates for the increased stormwater runoff from their development. Mitigation may be done by installing stormwater controls or paying a fee for off-site mitigation done through a mitigation bank. Since the state's earliest stormwater laws were implemented over a dozen years ago, cities and towns have pinpointed places where the laws may provide more flexibility while still protecting waters from stormwater runoff. This goal seeks those flexibilities, in addition to allowing cities to create their own mitigation banks for developers and the city itself to use.

2013-14 Proposed NCLM Advocacy Goals

- **Support legislation requiring a septic tank inspection and maintenance program as the responsibility of businesses and residences that are dependent upon septic tanks for treatment of their wastewater.**
 - Owners and operators of septic tanks systems are not required by the State to have a regular inspection and maintenance program, resulting in an increasing number of septic tank systems in some stage of failure. Failing septic tanks have severe water quality environmental consequences: the discharge of partially treated or even raw sewage to ground and surface waters, and the ultimate degradation of ground and surface water supplies. The cost of treatment is then passed on to nearby municipalities who hold permits for drinking water and wastewater operations.

- **Seek legislation to increase Clean Water Management Trust Fund appropriations and restore the fund's recurring appropriation.**
 - The Clean Water Management Trust Fund receives a direct appropriation from the N.C. General Assembly to issue grants to local governments, state agencies and conservation non-profits to help finance projects that specifically address water pollution problems. In the last state budget, legislators cut the funding level and also made the funding non-recurring.

- **Seek legislation requiring that roads being built in and around municipalities be built to municipal storm water standards, rather than NCDOT storm water standards.**
 - Storm water standards for NCDOT's NPDES Phase I permit do not rise to the level of negotiated terms of the municipal NPDES Phase I/II permits.

- **Seek legislation to include municipalities and utility authorities and commissions in the permit approval process of package wastewater treatment plants to be constructed within town boundaries or within the periphery that will negatively affect the town's infrastructure.**
 - Package wastewater treatment plants have small service areas, such as a single residential development or a school or industry. Package plants serve as an alternative wastewater disposal and treatment system to a full sewer system. Currently, the state of North Carolina issues federal wastewater permits to allow package plants.

2013-14 Proposed NCLM Advocacy Goals

- **Support legislation to provide local governments with additional flexibility in the implementation of the Jordan Lake Rules.**
 - The Jordan Lake Rules are a comprehensive nutrient management strategy for the Jordan Lake watershed in the western Triangle and eastern Piedmont Triad. Legislation was passed during the 2012 Short Session to delay the new development stormwater rules portion of the Jordan Lake Rules until 2014. The rules also have other components with their own implementation deadlines, including wastewater treatment plant upgrades, existing development stormwater, riparian buffer, agriculture, fertilizer management, and nutrient trading rules. In addition, the Falls Lake Rules were modeled on the Jordan Rules and include similar provisions.

2013-14 Proposed NCLM Advocacy Goals

- **Seek legislation authorizing cities to establish time, manner, and place restrictions on the placement of political signage in all public rights-of-way located inside a city.**
 - During the 2011 General Assembly session, legislation was introduced creating a uniform system for campaign sign regulation in the state highway rights of way, effective January 1, 2012, with an exemption for cities wishing to establish local regulations on all city streets and highways within the city limits. In the absence of a city regulatory program, the uniform state rules will apply on all roads within city limits. Given the confusion over which road is a state road and which is a local road, this has created confusion for cities and political candidates alike.

- **Support legislation to authorize city councils to relinquish easements without going through the General Statute 160A property disposal procedures.**
 - When cities and towns elect to close streets or portions of streets, their ability to retain specific easement rights is limited. G.S. 160A-299 allows municipalities to retain rights and interests in any utility improvement or easement if a street is closed, but does not allow cities to reserve rights to other types of easements or improvements. A city might determine there is no foreseeable need to construct a street on a right-of-way and might generally be agreeable to abandonment of its street improvement rights, but might nevertheless desire to retain some other, more limited and specific easement rights (such as a pedestrian access easement, a conservation easement, or a drainage easement) in all or part of the right-of-way to be abandoned.

- **Seek legislation to give municipalities the option to use electronic legal public notices in lieu of publication in a newspaper.**
 - Current law requires municipalities to use publication notice to provide public notice in many different situations. Cities and towns can supplement these state mandates through electronic notice on websites and other locations, but are not required to do so. This goal would eliminate the publication notice and authorize electronic notice as sufficient for public notice.

2013-14 Proposed NCLM Advocacy Goals

General Government/Public Safety

- **Seek legislation allowing the people to vote on an amendment to the North Carolina Constitution establishing Home Rule authority for municipal governments.**
 - North Carolina is one of six states in which the state constitution does not expressly provide “Home Rule” authority for local governments. Under current law, N.C. local governments are creatures of statute and exist at the pleasure of the NC General Assembly. Either express or implied authority must be identified in order for a local government to act, and sprinkled throughout Chapter 160A of the NC General Statutes are statements of broad authority for municipal government. Home rule potentially enables city governments to act more independently from the state.

- **Seek legislation to give municipalities the option to award contracts for goods and materials to local bidders that are not low bidders, under specified circumstances.**
 - North Carolina cities and towns do not have the authority to establish local preference programs, but must award contracts for the purchase of goods costing \$30,000 or more to the lowest responsive, responsible bidder. State government has a program under which qualified North Carolina companies whose price is within 5 percent or \$10,000 of the lowest bid, whichever is less, may be awarded a contract despite not being the low bidder. Allowing municipalities to establish local bidder preference programs could encourage the growth of local companies, but also could reduce competition for contracts and thereby increase costs.

2013-14 Proposed NCLM Advocacy Goals

- **Seek legislation to grant more flexible authority for local public safety officers to enforce ABC-related laws.**
 - In order to bolster state ABC response, this goal seeks to provide local police more authority to enforce ABC-related laws.

- **Seek legislation to strengthen the role of municipalities in the approval, renewal, and revocation of ABC permits.**
 - Under current law, the ABC Commission solicits advisory input from local governments when an application or renewal permit application is received from an establishment. This goal would convert the advisory input to a stronger authorizing power.

- **Support legislation, if internet sweepstakes operations are legalized, that would expressly protect the land use decision-making and tax-levying authority of municipalities over said operations.**
 - In the wake of the video poker ban, video sweepstakes operations proliferated across North Carolina. Cities used zoning powers to restrict where the games could be operated, and taxed the operations and machines under privilege license tax authority. In 2008, the NC General Assembly banned “server based electronic game promotions,” and in 2010 chased industry software and gaming changes by expanding the 2008 ban to machine operations which included “internet sweepstakes.” In March of 2012, the NC Court of Appeals ruled that internet sweepstakes gaming was protected as free speech, and the 2010 law was found to be unconstitutional. The NC Supreme Court will be hearing this case. Additionally, cases are pending over the extent to which cities can tax these operations. We expect a decision on the tax issues to be made sometime in mid-2013.

2013-14 Proposed NCLM Advocacy Goals

- **Support legislation to authorize cities to require outdoor advertising owners to replant non-obstructive vegetation around billboard sites where a selective vegetation removal permit has been issued within the planning jurisdiction of a city.**
 - The NC General Assembly significantly reduced the authority of local governments to control vegetation removal permitting at billboards during the 2010 session. A provision designed to require replanting by billboard owners did not materialize, and rules were established allowing clear-cutting around billboard locations. A 2012 bill to dial back some of the 2010 changes died in the House of Representatives.

- **Support legislation to automatically remove records of arrest in cases where charges are dismissed, and reduce the waiting period for expungement from 15 years to 7 years in General Statute 15A-145.**
 - N.C. Gen. Stat. 15A-146 entitles a person to the expungement of charges that were either dismissed or for which there were findings of not guilty entered. The person cannot have any felony convictions on their record, either before or since the charge that the petitioner is attempting to expunge. The statute does NOT allow expungement if the person has previously been granted an expungement under 15A-145, 15A-145.1, 15A-145.2, 15A-145.3, or 15A-146. There is no filing fee assessed for filing a petition for an expungement under 15A-146.

- **Support legislation to continue to fully fund Workforce Development Programs that Support Summer Youth employment.**
 - Youth employment and summer jobs provide employment training and summer jobs to eligible youth. Most eligible youth include low-income youth with at least one of the following barriers to employment: deficient in basic literacy skills, school dropout, homeless, runaway or foster child, pregnant or parenting, ex-offender, youth with a disability, or youth who require additional assistance to complete an educational program or to secure and hold employment. In N.C. funding for these programs from the Department of Commerce totaled \$21.5 million in 2012-13.

2013-14 Proposed NCLM Advocacy Goals

- **Support legislation to fully fund the Smart Start and NC Pre-Kindergarten programs.**
 - The State's two primary early childhood development programs are Smart Start and NC Pre-Kindergarten (formerly known as "More At Four"). Smart Start partners with locally governed organizations across the state to invest in quality child care providers. NC Pre-Kindergarten attempts to increase the number of 4-year-olds in quality pre-K programs across the state. Since 2000, funding for Smart Start has been cut by \$49 million across the state.

- **Support legislation to permit a governmental entity to seek an order of abatement where a property may have some legitimate use, but is also the source of regular criminal nuisance activity.**
 - Recent case law (NC Court of Appeals: Salisbury v. Campbell) restricted the ability of city governments to utilize the nuisance abatement laws under Chapter 19, Article 1 of the NC General Statutes to abate nuisances of ancillary uses of building and structures. This goal would reinstate that authority.

- **Support legislation to restore state funding for the treatment and care of the mentally ill.**
 - A lack of state funding for treatment and facilities for the mentally ill has left many unable to receive the care that they need. The presence of mentally ill individuals, who are often homeless, places an increased burden on local public safety officers, who are not in a position to care for such individuals.

2013-14 Proposed NCLM Advocacy Goals

- **Support legislation which defends the fiscal integrity of the Local Government Employees' Retirement System and its defined benefit structure, promotes reasonable pension reforms that are prospective in nature, and meets the needs of local employees, employers, and retirees.**
 - Despite being 99.8% funded, pressure is building to convert the LGERS to a traditional 401(k) style pension system, in the wake of anti-public employee sentiment and public pension systems in other states which have not been well managed or funded. While reforms are needed, a complete overhaul is not warranted in North Carolina.

2013-14 Proposed NCLM Advocacy Goals

Tax and Finance

- **Seek legislation to modernize the local tax system by:**
 - a) Giving municipalities the authority to levy a sales tax that applies within their corporate limits and is solely a municipal revenue;
 - b) Expanding the sales tax base to include more services, provided that any accompanying change in the local sales tax rate includes a perpetual hold harmless provision for individual cities and towns;
 - c) Reducing the complexity and inequity of the privilege license tax while maintaining the tax as a locally controlled source of revenue that supports services to businesses and consumers;
 - d) Allowing all municipalities to adopt occupancy taxes that are available to fund municipal service and infrastructure costs in order to support travel and tourism;
 - e) Providing all municipalities with additional local option tax revenue sources;
 - f) Requiring a one-year delay in implementation when a county changes its method of distributing sales tax revenue.
 - The 2 percent local sales tax brings over \$2 billion in annual revenue to local governments in North Carolina. Even though over three-quarters of sales take place within municipalities, the current system of sales tax distribution results in municipalities receiving only 34 percent of the sales tax revenue. Also, with city-initiated annexation severely restricted by recent changes in the law, cities have very limited ability to bring nearby residents into the structure of revenue that supports the services and infrastructure needed for a prosperous urban area. Allowing cities to levy sales taxes, the revenue from which would go to the levying city, would address both of these situations.
 - Expanding the North Carolina sales tax to include more services would create a general consumption tax that does not favor some types of businesses over others. Expansion of the base would provide more revenue stability, but would likely lead the General Assembly to decrease the local rate to avoid a tax windfall. It is expected that urban counties would gain more revenue from service taxation than they might lose from a rate reduction, while rural counties likely would lose revenue. As a result, it is essential that any rate reduction be accompanied by a perpetual hold harmless provision for individual cities and towns.

2013-14 Proposed NCLM Advocacy Goals

- The privilege license tax is an important source of municipal revenue. It provides over \$62 million to 303 cities and towns. It is the only significant tax, other than the property tax, over which cities and towns have control of the tax rate. Unfortunately, the state law governing privilege taxes has created a structure that is difficult for cities and towns to administer and that raises concerns for taxpayers. Because of caps and exemptions in state law, some businesses pay little or no tax, while others pay thousands of dollars if the local tax is based on gross receipts. If the tax is not reformed it could easily be eliminated. Any reform must allow cities and towns to continue raising similar amounts of revenue from the tax in order to fund their services.
- Currently, 81 cities and towns are authorized to levy occupancy taxes, which generate over \$25 million in revenue each year. The authorizing legislation for these taxes generally requires that the funds go to a tourism development authority. Municipalities provide basic services, such as police and fire, to visitors. They also must spend funds on capital projects to protect natural resources that draw visitors to the community, such as beach nourishment, and on the facilities used by visitors, such as roads. The dedication of some portion of occupancy taxes to pay municipal operating and capital expenses would reduce the property tax burden on destination communities.
- In order to provide cities and towns with more flexibility in funding their services, all municipalities should be given the authority to adopt local option revenues such as, but not limited to, the prepared food and beverage tax.
- Every April, each county has the opportunity to change the method of sales tax distribution it is using. Any change takes effect on July 1 of the same calendar year. This creates an incentive for counties to change methods to solve budgetary problems and causes immediate budgetary shortfalls for their cities. A one-year delay in implementation of the change would reduce the incentive to counties and give cities and towns time to plan how to respond to a change.

2013-14 Proposed NCLM Advocacy Goals

- **Seek the temporary extension of the transitional hold harmless payments to cities and towns for a period of time that will allow the local option sales tax revenue to grow to the point where the loss of the promised payment can be absorbed by the local government.**
 - In 2002, the General Assembly eliminated over \$300 million in reimbursements to local governments and provided counties with the authority to levy a third ¼ percent local option sales tax (Article 44) to make up the lost revenue for cities and counties. For those local governments whose estimated revenue from the sales tax was less than the value of their repealed reimbursements, the legislation included an annual Transitional Hold Harmless payment to make up the difference. It was expected that sales tax revenues would grow sufficiently by 2012 so that few local governments would still be receiving payments, and that any remaining payments would be small. Payments did fall over time as sales tax revenue grew, but the Great Recession dramatically reduced local sales tax revenues, making cities more dependent on the Transitional Hold Harmless now than was expected when the 2012 expiration for the payments was established. If the Transitional Hold Harmless is not extended, 122 municipalities will lose a total of \$10.1 million.
- **Ensure that municipalities can provide critical services by protecting state-collected municipal revenues.**
 - While state law currently prevents the Governor from withholding distributions of state-collected local revenues to balance the state budget, the General Assembly can change the law providing cities and towns with those revenues at any time. Opposition to a legislative reduction of these local revenues is covered by the Core Municipal Principles, but their protection is of sufficient importance to merit an Advocacy Goal as well.
- **Seek legislation to allow all municipalities to adopt impact fees to pay for growth-related infrastructure and services.**
 - Impact fees are one-time public charges applied to new construction that are levied by local governments to pay for the off-site costs associated with the new development. These fees are needed to ensure that developers pay for the full public costs that development imposes on communities. Several studies have shown the local public sector costs of development exceed the local tax revenues derived from the development.

2013-14 Proposed NCLM Advocacy Goals

- **Seek legislation to tighten the property tax exemption for non-profit hospitals and link it to provision of well-defined community benefits.**
 - Non-profit hospital corporations own over \$5 billion worth of tax-exempt property in North Carolina. In some cities and towns, these hospitals are among the largest employers, yet they provide no tax revenue to support the services provided to their properties. The cost of public services to hospitals can be significant, including public safety response and capital costs of public infrastructure that supports hospital facilities. Other major private employers also create such costs for cities, but do pay property taxes. The definition of a charitable hospital used to qualify for a property tax exemption is very broad, and includes no requirement that hospitals provide any level of benefit to the community. Other states are increasingly placing such requirements on their hospitals.

- **Support legislation to ensure that assessed property values more accurately reflect market values between property revaluations.**
 - North Carolina counties must conduct a countywide revaluation of all real property within the county at least every eight years, but almost half use a shorter period. The long revaluation cycle in North Carolina keeps property tax revenue steady in times when values are declining, but also keeps revenue from growing during times of rising values. A long cycle also can create “sticker shock” for property owners when the revaluation takes place. Although state law requires a new revaluation of real property in larger counties where the ratio of sales values are 15 percent higher or lower than assessed values, no counties actually have been affected by the requirement. The population threshold and wide range of variation allowed reduce the effectiveness of the trigger provision at keeping assessed values close to market values.

2013-14 Proposed NCLM Advocacy Goals

- **Support legislation to remove the sunset date on the use of film credit.**
 - The film production expense credit is designed to make North Carolina competitive with other states as a site for film and television productions. The money spent by production companies during filming is considered to be a boost to the local economy. Every \$1,000,000 of film tax credit is estimated to generate \$230,000 of local sales tax statewide. The credit sunsets as of January 1, 2015.

2013-14 Proposed NCLM Advocacy Goals

Transportation

- **Seek legislation to authorize municipalities to direct the Division of Motor Vehicles to block the registration of motor vehicles to which an unpaid municipal parking citation is attached.**
 - Unpaid parking tickets continue to plague cash starved cities looking to bolster parking finances, and cities only collect 70-75 percent of parking tickets issued. Like other DMV block programs, cities can expect to see parking ticket collection rates improve dramatically to upwards of 90 percent with this authority. Fourteen other states provide this authority for cities.

- **Seek legislation to provide relief for municipal governments who are forced to pay the costs of municipal utility relocation related to NCDOT projects by doing the following: requiring non-municipal units of governments to pay the costs of utility relocations; raising the existing municipal population threshold for the requirement for reimbursement; and limiting reimbursement requirements to the widening of existing rights of way by NCDOT.**
 - Like nonprofit water or sewer associations/corporations, water and sewer authorities, county rural water public enterprise systems, sanitary districts, and municipalities of greater than 5,500 population to which a water and sewer authority's system was sold/transferred, municipalities with a population of 5,500 or less are not required to pay the relocation costs of city-owned underground utilities that are required to be moved as part of an NCDOT project. However, cities with populations over 5,500 are required to pay the relocation costs for underground utilities, if needed. Towns "borrow" the costs of relocation and are given four years to pay the relocation debt interest-free. Cities are then charged interest (prime plus 1%) on the outstanding balance, and Powell Bill funds are withheld and contributed towards satisfying the debt.

2013-14 Proposed NCLM Advocacy Goals

- **Support legislation to reform the state and local transportation funding system by providing flexible local revenue options and additional authority for municipalities.**
 - In many jurisdictions, city governments are voluntarily enhancing and/or maintaining state roads within city limits with local revenue sources (property and sales tax) – what one might describe as “transfer by neglect.” This goal attempts to provide additional authority for local governments who are willing to take on additional financial responsibilities in the area of transportation maintenance and enhancements.
- **Seek legislation to increase the existing municipal vehicle fee for public transportation from \$5 to a maximum of \$20, and allow it to also be used for pedestrian and bicycle projects.**
 - All municipalities may levy a \$5 fee on each vehicle within their corporate limits. For some municipalities, local legislation has increased this amount. In addition, each municipality that operates a public transportation system may levy a \$5 fee to be used for public transportation funding. This second \$5 fee is not a funding option for towns that are too small or widely dispersed to operate a viable public transportation system. These towns still may have mobility issues that could be addressed with additional funding.
- **Seek legislation to allow Powell Bill funds to be used for sidewalks and walking paths that are adjacent to, but not located within, the right-of-way of state-maintained roads.**
 - Current law enables cities to spend Powell Bill funds for certain authorized purposes. This goal expands the list of authorized purposes to include sidewalks and walking paths adjacent to state-maintained roads.

2013-14 Proposed NCLM Advocacy Goals

- **Support legislation requiring owners of mopeds to maintain a minimum level of liability insurance and register their mopeds.**
 - Mopeds are currently not required to be registered or inspected but drive on the highway just like any other motor vehicle. The current law also doesn't require the operator to have a license, but they are held to the same driving regulations as other drivers. With the increasing use of mopeds and scooters for transportation, cities are experiencing issues with untrained operators, at fault moped operator created accidents, and theft.

- **Seek legislation authorizing the NCDOT to permit dining and entertainment business activities along state-owned sidewalks within municipal limits.**
 - As a number of cities are promoting downtown outdoor dining and entertainment activities on sidewalks along state roads, the NCDOT will not permit these business activities. This goal would authorize the state to do so.

- **Seek legislation to ensure significant municipal decision-making authority and respect for local ordinances in the design of transportation projects across all NCDOT divisions by requiring the NCDOT to confer with a municipality when designing or altering state transportation projects within the planning jurisdiction of a municipality, regardless of the city's financial participation in a project.**
 - This goal seeks to bolster city involvement in DOT decision-making on new projects on state roads, without requiring a city to participate financially in the project.

2013-14 Proposed NCLM Advocacy Goals

- **Support legislation to study the effective interface of the ports system, rail, streets and other transportation methods used to distribute goods in North Carolina.**
 - There are efficiencies of moving people and materials that are not realized because the different types of transportation do not communicate in a way that the consumer is provided with the most effective transport product at the lowest price. Efficient ports and excellent rail and highway access to ports is increasingly important in worldwide commerce. North Carolina needs to develop this modern infrastructure to meet the shift in marine traffic that will result from an expanded Panama Canal.
- **Seek legislation requiring NCDOT to establish standards for greenway construction so that greenways are not required to be built to the same standard as roads.**
 - On paved greenway projects involving state or federal funding, the default rule is that the greenway project be built to similar standards/materials of other North Carolina roads – primarily roadbed depth, curvature, asphalt type, etc. In many situations, these requirements are not practical and result in significantly redesigned and expensive greenway projects. The NCDOT has not yet created separate requirements for these projects to provide local flexibility in designing and building greenway projects.
- **Support legislation to improve the quality and condition of the state transportation system by bolstering state transportation resources, including, but not limited to, increasing the Highway Use Tax and existing DMV fees, establishing registration fee add-ons for hybrids and electric cars, and promoting the use of tolls on interstate highways.**
 - Even before our state began experiencing reduced federal and state gas tax revenues due to tax caps and reduced consumption, increasing material and labor costs, and diminishing Highway Use Tax revenues due to declining auto sales and prices, North Carolina had a significant transportation funding deficit. Significant pressure is mounting on DOT budgets, and its ability to build and maintain an adequate transportation system for today and the future is compromised. Accordingly, DOT maintenance schedules are thinning, and the condition of transportation infrastructure is edging downward.

Regulatory Action Committee Proposed Advocacy Goals

- Support solutions addressing nutrient impairment in waters that: are based on site-specific data and analysis, demonstrate use impairment, assign responsibility proportionate to the source of impairment, and include measures to equitably hold accountable all contributors to the impairment.
 - The N.C. Division of Water Quality has for years stated its intention to implement numeric nutrient criteria for all N.C. waters. Because the science behind numeric nutrient criteria is not settled, and because there are examples of many other different approaches in other states that EPA has endorsed, this goal lists other factors to consider when addressing nutrient impairment of waters on a statewide level.
- Support legislation that expands the priority accorded to public water supply among various users, protects authorized public water supply withdrawals, allows for future growth, includes all withdrawers and accounts for all downstream uses.
 - This language is based on the goal approved by the NCLM membership for inclusion in the 2011-2012 Municipal Advocacy Goals package. It addresses the topic of water allocation and prioritizes preservation of existing municipal withdrawals, while also recognizing that public water supplies need an allocation to accommodate future growth in consumption. The goal also recognizes the need to make sure there's enough water left for downstream users.
- Seek policies that provide flexibility when implementing programs guided by water quality standards adopted through the triennial review process.
 - After adoption of surface water quality standards through the federally-mandated "triennial review" process, states must then implement those standards by translating the limits into wastewater permits. The policies followed by the state when implementing these standards produce results that are extremely conservative and are outliers among southeastern states. Revisions to these policies would reduce the financial impact of the revised water quality standards, while still protecting aquatic life in the receiving streams. Revisions would also allow municipalities more flexibility in recruiting industries that may discharge pretreated wastewater into the municipal system.

- Seek updated regulatory procedures that would provide more openness, transparency, and flexibility for development of the impaired waters list and the system of rating water bodies.
 - Every water quality regulation stems from the way a water body is rated. This goal advocates for more sunshine and site-specific analysis to be brought to two regulatory actions now undertaken by the state: (1) development of the 303(d) impaired waters list, and (2) use support rating of water bodies. Both actions characterize the water quality of streams across the state, and as a result, they have the potential to greatly increase costs for both wastewater treatment and stormwater programs.
- Support legislation to create a system of water use allocation that recognizes public water supply as a riparian use.
 - This goal addresses one aspect of the water allocation debate: legal rights of water. Traditionally, North Carolina has operated under a “riparian rights” legal framework. Simply, this framework allowed every riparian owner – those who owned land touching a water body – to make reasonable use of the water. Under this framework, judges made the determinations of who had riparian rights to the use of water. Longstanding judicial precedent stated that public water supplies generally did NOT have a riparian right to water. This goal seeks to change that judicial precedent through legislation.
- Seek legislation that would implement mechanisms requiring state agencies to repeal unnecessary, unduly burdensome, or inconsistent rules.
 - The Regulatory Reform Act of 2011 requires state agencies to review existing rules and identify those that are unnecessary, unduly burdensome, or inconsistent with other rules or laws. The reform does not, however, actually require the agencies to repeal those rules. This goal would push for a legislative change to require repeal of these agency-identified rules.

- Support legislation that would limit regulation of land application of biosolids to the state and federal governments.
 - Biosolids are produced during the wastewater treatment process, and the state encourages communities to dispose of biosolids by “land applying” them to agricultural fields. Biosolids then become fertilizer for crops grown on the fields. The goal responds to a local situation in Orange and Alamance counties where the county commissioners have pursued the authority to regulate/prohibit the land application of biosolids in the county’s jurisdiction. The counties have been successful in making this goal statewide and placing it on the statewide agenda of the N.C. County Commissioners Association. If achieved, this county-supported policy goal could drastically increase the land application/biosolids disposal costs of affected wastewater systems.

NCLM Core Municipal Principles 2011-2012

The following principles provide a foundation for advocacy and strategic planning to ensure excellence in municipal government as our North Carolina cities and towns serve their citizens and promote a "hometown" quality of life unique to North Carolina communities:

Adequate Municipal Authority

Municipalities need a broad grant of authority and flexibility to allow elected officials to make decisions that effectively and efficiently meet the ~~ever-expanding~~ needs of their citizens.

Voters elect municipal officials to decide significant issues in the public interest, which varies within the unique context of each municipality. Accordingly, the League stands opposed to legislation preempting municipal authority and to measures designed to otherwise erode local control of significant municipal issues. Municipal grants of authority should be broadly construed to include supplemental powers reasonably necessary to carry out the functions.

Municipal Revenues

Sound municipal government requires both the preservation and enhancement of the existing local tax structure and revenue structure streams.

The property tax, state-collected local taxes and revenues, and various local option revenue sources are all integral components of a stable, reliable and balanced revenue stream for municipalities. State-collected revenues should be distributed reasonably and equitably, providing local elected officials autonomy to best determine their use. New revenues, including those that may be obtained through local option revenue sources, are essential to meet the future needs of municipal citizens, to provide the infrastructure necessary for vital public services, and to fairly apportion the costs of growth. It is also imperative that any lost or repealed revenues be replaced, retroactively if necessary.

Municipal Expenditures

Fiscal integrity and sound financial management require flexibility to borrow, invest and expend funds for public-purposes.

Cities are challenged to use the funds entrusted to them in the most efficient and responsible manner possible. Flexibility in financing options and expansion of municipal investment authority provide basic tools to help meet that challenge. The capacity to determine the nature and amount of an expenditure, based upon the totality of factors involved within the unique context of each city, is essential to economic efficiency and management. Cities need discretion to fund investments in infrastructure and local improvements such as affordable housing, redevelopment projects, and business and economic incentives.

Mandates

The state and federal governments should not enact burdensome and expensive mandates without adequate local authority, flexibility and additional financial resources for implementation and continuation.

Mandates to perform functions or activities placed upon cities by the state or federal governments, either directly or through agency or administrative action, should be accompanied by funds for their implementation and continuation. Cities should not be required to appropriate funds for particular programs or functions, or to contract with private companies for public services. Management and human resources decisions must remain in the sound discretion of the municipal governing body. The League opposes any

changes to the current law, which prohibits local governments in North Carolina from entering into collective bargaining agreements with public employees.

Open Government and Ethical Conduct

All levels of government should adhere to principles of responsible open government and ethical conduct.

The League supports the principle of openness in government and endorses the concept that meetings of governmental bodies should be open to the public. There are reasonable exceptions that should permit closed sessions when such limitations are in the public interest. Public records should also be available to the public with reasonable exceptions for protection of confidentiality that are in the public interest. Elected and appointed officials should adhere to standards of conduct that promote public confidence in our system of governance. Additional requirements regarding openness, access to records, conflicts of interest and ethical conduct should not be applied to local governments only.

Municipal Liability

Fundamental rules pertaining to the liability of governmental entities should apply across all levels of government.

Municipalities continually seek to provide a wide range of services to meet the needs of their citizens in furtherance of the public health, safety, and welfare. Accordingly, the League stands opposed to proposals placing burdensome liability upon municipalities, including measures that seek to erode well-established principles of immunity or other defenses, and to proposals unfairly imposing cost-shifting upon municipal taxpayers.

Municipal Growth

Healthy municipal centers are essential to the economic viability of the state. Municipalities must maintain the ability to expand grow and provide the higher level of services demanded by the citizens.

Cities and towns are the economic engines of the state and must be permitted to grow in an orderly and reasonable manner that supports the continued economic development of the state. New growth in and around existing municipalities should utilize existing infrastructure for the most efficient use of public revenue. Annexation ensures that all those who benefit from a municipality through use of the infrastructure, municipal amenities, proximity to jobs, commerce, and cultural resources, bear a fair share of the cost of providing those services. The legislature should not permit a new incorporation whose primary purpose is to prevent a proposed annexation without evidence of its ability to provide the necessary services. Municipalities are encouraged to enter into agreements to foster inter-local cooperation and long-range planning.

Municipal Services

Municipalities require adequate authority and flexibility to finance, operate and manage essential services to protect public safety, promote sanitation, health and welfare, and improve the quality of life.

In order to serve growing urban populations with water, sewer, transportation, police protection, fire protection, solid waste, stormwater, electricity, parks and recreation, public housing, and other services, municipalities need the autonomy to make appropriate management, human resources, financial, and operational decisions. With regard to enterprise services, municipalities must be free to determine appropriate rates and service areas, and free to determine when it is appropriate to enter into regional or multi-jurisdictional arrangements. State taxes or fees should not be imposed on municipal enterprise services. Furthermore, the power of eminent domain must be preserved as a means of acquiring property to provide municipal infrastructure, facilities, and services for the public benefit.

Planning and Land Use

Municipal planning authority must be maintained for sound growth, long-range planning and growth management.

Long range municipal planning is an essential aspect of municipal health and economic viability. Vibrant, well-planned cities are the economic engines of the state, attracting new businesses and industries, while providing the quality of life expected by residents in and around municipalities. Public participation and private property rights are key elements of growth management. For this reason, the government closest to the people is the best venue for making land use decisions. Municipal authority must be maintained and enhanced to allow for more flexibility and options. Necessary tools for planning include the ability to zone, to review and approve buildings and new development, exercise extraterritorial jurisdiction, urban redevelopment, and economic development strategies. Municipalities must have the capability to protect and plan for infrastructure, as well as ensure that the public health, safety and welfare of the citizens are preserved.

Environmental Protection

For municipalities to be successful partners in environmental protection, environmental laws, practices and regulations must be science-based, feasible, and equitable, with flexibility to comply in the most cost-effective manner.

Local governments are partners with state and federal agencies in protecting the environment and quality of life for our citizens, serving as both regulators and members of the regulated community. As such, cities and towns support sufficient state and federal agency allocation of personnel and funding to provide environmental data collection and analysis for evaluation of existing, revised, and new regulations. In turn, as regulators, municipalities need adequate authority to set standards, enforce requirements, and perform inspections. The discretion to impose more stringent requirements than the state when necessary to protect public health or the environment must not be impaired, and delegation of any state regulatory programs must be voluntary. The state should continue to provide technical assistance to local governments as well as its share of financial resources for the implementation of environmental programs. In supporting environmental programs, local governments as well as the state should maintain the ability to make reasonable, equitable, and justifiable adjustments in permitting and compliance fees to help recover the costs of regulatory programs.

As members of the regulated community, municipalities must be allowed full participation in the development of new environmental laws and regulations. Environmental laws, practices and regulations should allow localized solutions, account for compliance costs, eliminate duplicative regulations, and avoid layering with safety factors and conservative assumptions that are not based on a reasonable risk management approach. Regulatory actions should also maximize available resources by targeting the highest-priority environmental concerns, based on comparative environmental risk as well as social and economic impacts. In addition, they should be based on sound science, be technologically and economically feasible, apply equitably to all contributors of pollution, allow the flexibility to attain standards using those practices best suited to the topographical, hydrological, atmospheric, and other characteristics of the jurisdiction, and provide incentives that recognize existing environmental programs. In particular, stormwater regulations should account for the challenges posed by pre-regulation development and allow implementation flexibility, adhere to the maximum extent practicable standard, and avoid requirements exceeding applicable federal and state laws. The state and federal governments should fully analyze costs associated with environmental requirements before adopting them.

Transportation

State support for all modes of transportation in urban, suburban and rural areas must be enhanced to improve our economic competitiveness.

The health of the economy of our State is dependent upon a transportation system that includes all modes of transportation, including highways, transit, aviation, ports, passenger rail, freight, bike and pedestrian. When businesses are looking to expand or relocate their operations in North Carolina, the ability of their employees to get to work and the company to distribute its products via highways, rail, and air are factors that inform their siting decisions. When cities and towns examine redevelopment of their downtowns or business corridors for the long term (50 years), the interaction of highways, transit, bike and pedestrian facilities is a critical factor in such redevelopment decisions. The State has had a long-standing partnership with cities and towns that enables municipalities to maintain their local streets and roads using State-provided Powell Bill funds. The State also provides capital and operational funding for transit, which improves air quality and removes traffic from our highways. The State has also been a leader in providing intra-State passenger rail along the NCRRA-owned corridor in conjunction with AMTRAK, and in implementing public-private partnerships where local support is provided. It is vitally important that the State enhance support for a comprehensive transportation system. Such a system will be a factor that ensures our economic competitiveness in the future.

This League endorses and supports the current National Municipal Policy and will actively support NLC efforts with respect to federal legislation and issues unless there is a clear conflict with the adopted policies of this League.

Policy Development Process

The policy development process leading up to the 2013 Advocacy Goals Conference began in January 2012, when the League's three Legislative Action Committees and the Regulatory Action Committee met a number of times to develop policy positions for the NCLM Board of Directors and membership to consider in preparation for the 2013-2014 General Assembly Session. The policy development process ran as follows throughout the balance of 2012:

January – May	Legislative Action Committees (LACs) met to identify impediments to municipal success, receive information about possible legislative solutions, and identify goals to implement those solutions.
June – August	The League solicited member input about possible advocacy goals.
September – October	The Legislative Action Committees met four times each, and Regulatory Action Committee met twice to consider 169 goal proposals submitted by members, and 40 committee developed goals – 209 goals in all. The LACs adopted a total of 74 proposed goals, and the RAC adopted 14 goals for consideration by the Board of Directors.
November	The Board of Directors debated, amended, and reduced the advocacy goals list to 50 legislative goals, and 7 regulatory goals for submission to the membership for consideration at the Advocacy Goals Conference. At that meeting, the Board also approved the attached changes to the Core Municipal Principles for submission to the membership at the Advocacy Goals Conference.

Opportunity to Submit Additional Goals

In addition to the 50 legislative goals and 7 regulatory goals submitted by the Board, member cities may submit other goals for consideration at the Advocacy Goals Conference. A form for submitting additional goals is enclosed. Proposals must be approved by the governing body of a municipality by resolution, and can be submitted by any municipal official. It is not sufficient to simply submit a copy of the municipality's goals for the 2013 session.

Proposals received in the League office by close of business on January 14, 2013 will go through a screening process in order to be considered at the Advocacy Goals Conference. At a meeting on January 18, 2013, the Goals Review Committee (NCLM Executive Committee, plus the 2012 policy committee chairs) will review the additional proposals received from the membership and determine which proposals to submit to the Conference. Once forwarded for consideration by the Goals Review Committee, goals may be approved for inclusion in the NCLM Advocacy Agenda by the same majority vote process as the original 57 goals included with this package.

Long-Term NCLM Policy Development

(even-numbered years)

Source of Ideas

LAC/RAC Visioning
January-October

NCLM Members
June-August

Narrow Down Ideas

LAC/RAC vote
September-November

- Debate
- Reject/Add
- Amend

Recommend Ideas

Board recommends advocacy goals proposals

Mid-November

- Debate
- Reject/Add
- Amend

Member review
November-January

Finalize Ideas

**Next Conference
January 24, 2013

Advocacy Goals Conference

(January, odd-numbered years)

- Entire membership considers proposals
- Debate
- Reject/Add
- Amend

Advocacy Goal Submission Form

In addition to the 57 goals that have come through the complete policy development process, additional goals are eligible for consideration by the Goals Review Committee (NCLM Executive Committee, plus 2012 policy committee chairs), and voting delegates at the conference. A form for submitting additional goals is enclosed. Additional goals will only be accepted for consideration if they are approved by resolution by the governing body of a municipality. Resolutions must explicitly state that the governing body is proposing an additional goal for consideration at the Advocacy Goals Conference. It is not sufficient to simply submit a copy of the municipality's legislative goals for the 2013 session.

Proposals for additional goals will be presented to the Goals Review Committee, which will determine whether the goal should be considered at the Advocacy Goals Conference. If you wish to submit an additional goal for consideration at the Conference, please return this form along with a copy of the adopted resolution to the address, fax number, or email below:

Karl Knapp
Director of Research and Policy Analysis
NCLM
215 N. Dawson Street
Raleigh, NC 27603

Fax: (919) 301-1109
Email: kknapp@nclm.org

Proposals must be received in the League office no later than close of business, January 14, 2013.

PROPOSED GOAL

The League will seek / support* legislation to _____

EXPLANATION

Please explain the intent of the goal and why the League should adopt it:

* Please circle either seek or support to indicate whether you wish the League to actively seek legislation to implement this goal, or merely to support legislation if it is offered by others.

Name: _____

Title: _____

Municipality: _____

Email: _____ Phone: _____

Advocacy Goals Conference Agenda

TENTATIVE

The League's Board of Directors has submitted 50 legislative goals and 7 regulatory goals for consideration by the League membership. These goals, plus any additional member-submitted goals that have been approved for consideration at the conference, will be reduced during the conference to the 25 legislative goals and 5 regulatory goals on the League's Advocacy Agenda for 2012-13. These goals will be selected through a process of debate, amendment, voting, and ranking of goals, as set forth in the following schedule:

9:30-9:40	Welcome and Introductions
9:40-11:00	Staff explanation of proposed legislative goals
11:00-11:15	Break
11:15-11:45	Goal Setting: Environment/Natural Resources
11:45-12:15	Goal Setting: General Government/Public Safety
12:15-1:15	Lunch (Key legislative leaders invited to speak)
1:15-1:45	Goal Setting: Infrastructure/Utilities/Land Use/Planning
1:45-2:15	Goal Setting: Tax & Finance
2:15-2:45	Goal Setting: Transportation
2:45-3:00	Break
3:00-3:30	Legislative goal prioritization
3:30-3:50	Staff explanation of proposed regulatory goals
3:50-4:05	Regulatory goal setting & prioritization
4:05-4:15	Adoption of Core Municipal Principles
4:15-4:30	Adoption of Municipal Advocacy Goals

Staff Explanation of Proposed Legislative Goals (9:40-11:00)

League Staff will briefly describe each of the goals, including the additional member-submitted goals that are under consideration, and will explain the rationale for each goal. If time permits, staff will answer questions about the goals. Questions also may be asked of staff during the Goal Setting sessions.

Legislative Goal Setting (11:15-2:45)

During the Goal Setting sessions, all attendees will be given the opportunity to express support or opposition for the proposed goals in the category. All attendees may ask questions or debate the merits of proposed goals, but only voting delegates may offer amendments to any of the goals. Additional goals may not be offered. The President will determine whether an amendment is germane to the goal that it seeks to amend or is actually a new goal. Voting delegates may make a motion and second to remove a goal from further consideration. A simple majority of those voting delegates present and voting is required to amend a goal or remove it from further consideration. If a

goal is not removed at this stage of the process, the goal moves forward to be part of the Final Goal Prioritization.

Legislative Goal Prioritization (3:00-3:30)

Upon completion of the Goal Setting sessions, if more than 25 legislative goals remain, the voting delegates will use an electronic voting process to narrow the remaining goals to the 25 that will ultimately be approved. Staff will finalize the results while the delegates consider regulatory goal proposals and the Core Municipal Principles.

Regulatory Goal Setting & Prioritization (3:30-4:05)

Following the prioritization of the legislative goal proposals, League Staff will explain the 7 regulatory goal proposals the Board submitted to the membership. Attendees will then have an opportunity to ask questions, debate the merits, or amend any of the regulatory goal proposals. Following this opportunity, voting delegates will use the same electronic voting method used during legislative goal prioritization to prioritize the 7 goal proposals. Staff will finalize the results during consideration of the Core Municipal Principles, and the 5 regulatory goals receiving the most votes will be part of the League's Municipal Advocacy Goals for 2013-14.

Adoption of the Core Municipal Principles (4:05-4:15)

The Core Municipal Principles represent the bedrock policy statements that will guide the overall advocacy process and decisions. They generally are statements of fundamental municipal policy that the League members believe should guide the General Assembly in making decisions that affect our municipalities. The delegates will be asked to approve the Principles in whole, as submitted by the Board. Amendments may be offered and seconded by any attendee, but only voting delegates may vote. During the adoption of the Principles, any attendee may ask questions or debate the merits of the Principles or an amendment.

Adoption of the Advocacy Agenda (4:15-4:30)

After staff tallies the results of the goal prioritizations, the 25 legislative goals and the 5 regulatory goals receiving the most votes will then be placed before the membership as a group for a final vote of approval by the voting delegates. No amendments will be allowed at this point in the process.



MEMORANDUM

TO: City Council
Hal Hegwer, City Manager
Bob Bridwell, Planning and Development Director

FROM: Marshall Downey, Assistant Director

DATE: Dec. 19, 2012

REF: City of Sanford Board of Adjustment decision regarding an appeal of a free-standing ice vending unit.

The purpose of this memo is to inform the Council about the possible ramifications of a recent decision of the City's Board of Adjustment (BOA). On the evening of December 11th an appeal was brought to the BOA regarding staff's decision/interpretation of the UDO as applied to a proposed free-standing ice vending unit.

A free-standing ice vending unit is a relatively new land use. These units are coin-operated commercial units that are typically placed in parking lots of/or adjacent to an existing retail site for the purposes of dispensing ice by the bag (in various size amounts) to the general public. Unlike traditional ice vending, wherein a buyer would typically make the purchase in a store (convenience store, market, etc.) and then go grab a bag of ice from a freezer (inside or outside of store), these units are self-contained so that the purchase and receipt of goods are conducted at the unit.

Back in 2007, Planning staff was first approached by a company known as Twice the Ice about placement of the first free-standing ice vending unit in Sanford. At the time, the standard unit was 8' x 24' and staff determined that the UDO did not have an existing land use category that matched this unit. A text amendment was needed, so in October 2007 the item was placed on the Joint Planning Commissions' agenda for discussion. The Commission directed staff to draft new guidelines for these units that essentially require them to have exterior appearance features similar to that already required for new non-residential structures that are built along our corridors. The draft rules were presented in early 2008 and ultimately adopted as an amendment to the UDO by all three jurisdictions. The current rules are found in Section 5.37 of the UDO (see attachment 1).

We currently have two such units in Sanford – at 1109 S. Horner Blvd (in front of San-Lee Builders' offices) and at 111 Perkinson Road (off US 15-501/Hawksins Ave. near Northview Fire Station). (See attachments 2 and 3 for photos of these units) The unit at 1109 S. Horner was permitted in March 2010 while the unit at Perkinson Road was permitted in December

2011. Both of these units are based on the 8' x 24' model as manufactured by Twice the Ice Corporation.

In October of 2012, Staff was approached by Mr. Carlos Cockman regarding a desire to place a free-standing ice vending unit on his property at 3201 Tramway Road. The unit would be placed alongside the existing Scrubbing Board Laundromat (see attachment 4 – site plan). Note that the unit Mr. Cockman wants to place is approximately 7' x 10' (see attachment 5 - illustrations). After discussion with Mr. Cockman about the UDO rules, he expressed that the exterior design requirements of Section 5.37.4 were too cumbersome as this unit was more or less a vending machine. We talked about options for a text amendment to the UDO or an appeal to the Board of Adjustment. Due to certain time constraints, Mr. Cockman decided to appeal to the BOA. More specifically, Mr. Cockman made the argument that staff wrongly applied the standards of Section 5.37 to his proposed ice unit under the premise that the 7' x 10' unit is a vending machine and should not be held to the design standards as set forth in the UDO.

Mr. Cockman delivered his testimony and evidence on the evening on December 11, 2012. After some discussion, the Board of Adjustment voted 5-1 to overturn the decision of the staff and agree with Mr. Cockman's view that his unit is essentially a vending machine and not subject to the rules of Section 5.37. The BOA, in making this ruling, clarified that free-standing ice vending units that: (a) are 2,500 lbs or less in capacity and (b) are 84.5" x 117.375" (7.04' x 9.78') or less in size and (c) 129" (10.75') or less in height shall not be subject to the design standard of Section 5.37 of the UDO.

This decision effectively means that all future free-standing ice vending units that are the size of Mr. Cockman's unit (or smaller) shall have no rules regarding appearance applied to them. Note that this decision can be appealed to Superior Court, but must be filed within 30 days of the final decision of the BOA.

5.37 Free-standing Ice Vending Units

5.37.1 APPLICABILITY.

5.37.1.1 This section applies to any person, corporation or other organization desiring to operate a free-standing ice vending unit within the zoning jurisdiction of the County. Free-standing ice vending units or “ice houses” shall be defined as self-contained ice vending units that are typically placed in commercial zones for the purpose of dispensing on-demand bags of ice.

5.37.2 LOCATION.

5.37.2.1 Free-standing ice vending units shall be permitted by right in the C-2, HC, LI and HI zoning districts subject to the design standards as set forth within this section.

5.37.3 STANDARDS.

5.37.3.1 Written approval from the property owner indicating permission to locate vending unit on-site.

5.37.3.2 Vending units shall conform to the minimum setbacks as set forth in Table 4.7-1 of this Ordinance.

5.37.3.3 Each vending unit shall be limited to the amount of wall signage as set forth in Article 11, except however, in no case shall such vending unit be allowed to have more than two (2) wall signs.

5.37.3.4 Vending units shall not be required any landscaping or vegetative screening unless such unit is to be placed within 100 feet of a residentially zoned or developed lot. If such unit is located within 100 feet, a class “C” buffer as set forth in Article 7 of this Ordinance shall be required.

5.37.3.5 If a vending unit is to be placed within an existing parking lot serving an existing business(es), then an analysis should be conducted to ensure that the loss of any parking spaces shall not result in the loss of any required minimum parking for the existing business(es). If such placement will result in the loss of (or further reduction of) required parking, then the free-standing vending unit shall not be permitted at that location. In the event that the placement of such a vending unit would be located within an existing parking area that is substandard in

terms of not being paved (graveled lots), the placement of such vending unit shall not require the existing lot to be paved.

5.37.3.6 If a vending unit is to be placed on a vacant tract or as a stand alone use on an undeveloped portion of a larger tract, such units shall be required to construct and maintain a paved vehicular access drive and a minimum of two off-street parking spaces, including a minimum of handicap accessible space.

5.37.3.7 Bollards, if used, are to be limited to one (1) per each corner of ice vending unit (maximum of four bollards) and shall be of a color to match the trim color of the vending unit.

5.37.3.8 All vending units, including all signs, awnings and other exterior elements, shall be kept in good condition. Such units and sites shall be maintained in a “like new” condition, free from substantial deterioration.

5.37.4 BUILDING DESIGN STANDARDS

5.37.4.1 Facade colors shall consist of low reflectance, subtle, neutral or Earth Tone colors. Bright colors shall be limited to use as accent elements, such as door and window frames and architectural details. Use of neon tubing and/or fluorescent colors is prohibited.

5.37.4.2 Exterior building facades shall include one or more of the following elements: brick, wood, stucco, sandstone or other native stone. Use of a faux brick veneer is an acceptable option. Use of concrete block, smooth-faced tilt-up, vinyl, or pre-fabricated steel panels shall be avoided.

5.37.4.3 The roof shall be designed such that all above roof mechanical equipment shall be screened as much as possible by use of a wrap or parapet design. However, in no case shall mechanical equipment extend more than six (6) inches above the top of the roof/wrap.

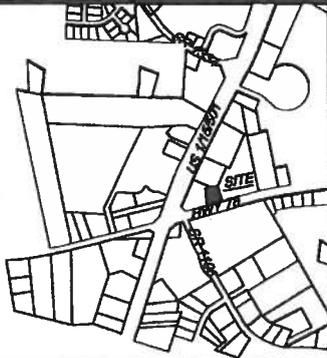
5.37.4.4 Each vending unit shall include, as a minimum, a curtain wall that may be composed of real or faux brick that extends around the entire foundation of the unit.

5.37.4.5 Exterior steps shall be composed of concrete with railings that comply with applicable building code(s).



19/12/2012





VICINITY MAP - NTS

THE SCRUBBING BOARD ICE MACHINE

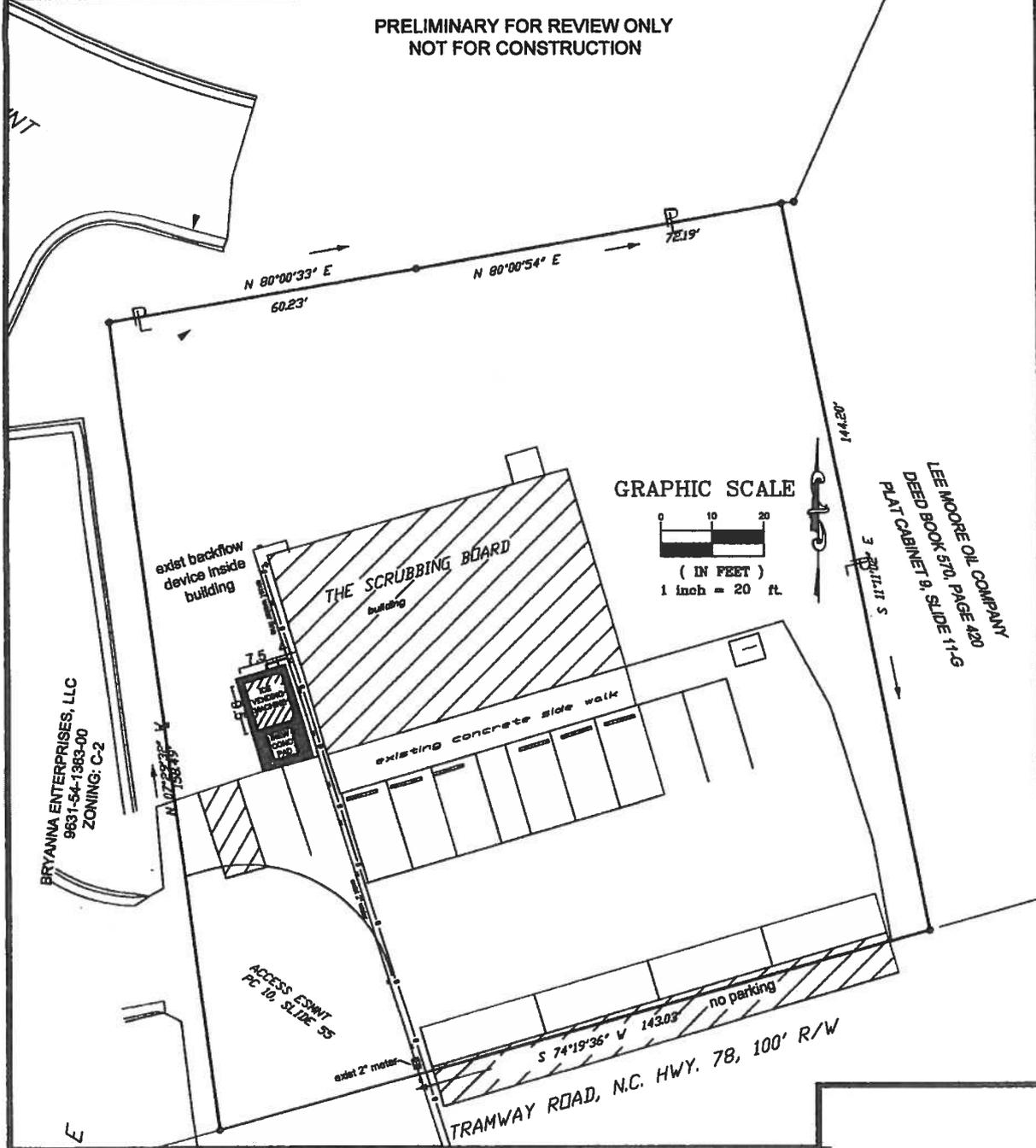
3210 TRAMWAY RD
 POCKET TOWNSHIP
 LEE COUNTY NORTH CAROLINA
 NOVEMBER 5, 2012

OWNER
 CARLOS COCKMAN
 800 PINEFOREST DR. SOUTH
 SILER CITY, NC 27344
 919-663-3335

PIN #: 9631-54-3334-00
REFERENCE:
 DB 944 P.366
 PC 10 SLIDE 55

1) PROPERTY LINE AND SITE FEATURES FROM SURVEY BY MITCHELL COLE, PLS.

PRELIMINARY FOR REVIEW ONLY
 NOT FOR CONSTRUCTION



KEN BRIGHT ASSOCIATES PLLC
 LICENSE: P-0781
 CONSULTING ENGINEERS
 P.O. BOX 553 2305 CARTHAGE ST.
 SANFORD, NC 27331
 PHONE: (919) 776-3444 FAX: (919) 776-5335
 e-mail: kbwbright@windstream.net

THE SCRUBBING BOARD ICE MACHINE
 3210 TRAMWAY RD.
 SANFORD, NC
 NOVEMBER 5, 2012

SHEET: 1 OF 1

Kooler **ICE** | IM2500

fresh and ready when you are®

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Ice and Water Vending Machine**



**NAMA
LISTED**

RESOLUTION SUPPORTING AND SEEKING LEGISLATION AUTHORIZING A MANDATORY
TEN (10) YEAR ACTIVE SENTENCE UPON CONVICTION OF A FELONY USING A
FIREARM IN THE COMMISSION OF THE CRIME

WHEREAS, North Carolina law defines serious crimes as felonies under Chapter 14 of the North Carolina General Statutes; and

WHEREAS, those crimes cause great harm to their victims; and

WHEREAS, when a firearm is utilized, there is a greater likelihood of victims, bystanders, law enforcement and others being killed; and

WHEREAS, many perpetrators of felonies utilizing a firearm are repeat offenders who have previously been convicted of a crime involving a firearm; and

WHEREAS, an additional non-discretionary mandatory active sentence imposed upon conviction of a felony when a firearm is used in the commission of the crime may result in fewer deaths, fewer crimes occurring or deter criminals from utilizing a firearm; and

WHEREAS, such legislation would improve the safety of citizens, law enforcement and the public.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Sanford that;

1. The Sanford City Council supports legislation that would impose a mandatory ten (10) year active sentence on anyone upon conviction of a felony using a firearm in the commission of the crime.
2. Said legislation would require the sentencing for use of the firearm to run consecutively to any sentence imposed for the crime itself.
3. The Sanford City Council directs the city manager and city attorney to seek legislation in the 2013 legislative year by contacting their representatives in the North Carolina legislature to request such a law.
4. The Sanford City Council believes such legislation will deter crime and make the State safer for all the citizens.

This ___ day of _____, 2013.

Cornelia P. Olive, Mayor

Attest:

Bonnie D. White, City Clerk

DRAFT

BILL #
A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE A MANDATORY ACTIVE SENTENCE IF CONVICTED OF A FELONY USING A FIREARM

The General Assembly of North Carolina enacts:

Section 1. Mandatory sentence. Any person who is convicted in any court in this State of a felony if the person utilized a firearm during the commission of the felony, shall be sentenced to a ten (10) year active sentence of confinement to run consecutively to any other sentence imposed for the crime committed. Said ten (10) year sentence shall be mandatory and non-discretionary. Such persons shall not be eligible for parole, probation, work release or furlough.

Section 2. Proof at sentencing. Provisions of this section shall not be an element of the crime and notice thereof to the defendant shall not be required prior to conviction but reasonable notice of the State's intention to proceed under this section shall be provided after conviction and before sentencing.

Section 3. Authority of court in sentencing. There is no authority in any court to impose on an offender to which this section is applicable any lesser sentence or to place such offender on probation or to suspend sentence. Sentencing guidelines shall not supersede the mandatory sentences provided in this section.

This act is effective when it becomes law and is applicable to any sentencing hearings held on or after that date. All laws in conflict with this provision shall be amended to conform with this legislation.

In the General Assembly read three times and ratified this the ____ day of _____, 2013.

Dan Forest
President of the Senate

Thom Tillis
Speaker of the House of Representatives