



FAYETTEVILLE CITY COUNCIL
AGENDA
OCTOBER 3, 2011
5:00 P.M.
City Hall Council Chamber

1.0 CALL TO ORDER

2.0 INVOCATION

3.0 APPROVAL OF AGENDA

4.0 OTHER ITEMS OF BUSINESS

- 4.1 Traffic Stop Consent Search Policy
Presented By: Tom Bergamine, Police Chief
- 4.2 Compensation Study Update
Presented By: John Kuhls, Human Resource Development Director Elliot
Susseles, Senior Vice President - Segal
- 4.3 Sister City Approval Process
Presented By: Mayor Chavonne
- 4.4 Update on Youth Council
Presented By: Human Relations Commission Vice Chair, Vincent
Francis, Co-Chair FCHRC Youth Council AD Hc Committee
- 4.5 Privilege License Update
Presented By: Brian Leonard, Assistant City Attorney
- 4.6 Amending Sec. 2-65, Insurance Claims Review; and Sec. 2-66, Authority
To Settle Claims; of the City Code related to liability claims
administration.
Presented By: Kristoff Bauer, Asst. City Manager
- 4.7 Update on the City's Sustainability Plan
Presented By: Jerry Dietzen, Environmental Services Director
- 4.8 City Council Policy 150.2, Provision of Water and Sewer to Municipal
Influence Area
Presented By: Karen McDonald, City Attorney

4.9 Update on Probationary Rental Occupancy Permit (PROP) Program.
Presented By: Doug Hewett, Assistant City Manager

4.10 City Council Agenda Item Request
Presented By: Council Member Ted Mohn

5.0 ADJOURNMENT

CLOSING REMARKS

POLICY REGARDING NON-PUBLIC HEARING AGENDA ITEMS

Anyone desiring to address the Council on an item that is not a public hearing must present a written request to the City Manager by 10:00 a.m. on the Wednesday preceding the Monday meeting date.

POLICY REGARDING PUBLIC HEARING AGENDA ITEMS

Individuals wishing to speak at a public hearing must register in advance with the City Clerk. The Clerk's Office is located in the Executive Offices, Second Floor, City Hall, 433 Hay Street, and is open during normal business hours. Citizens may also register to speak immediately before the public hearing by signing in with the City Clerk in the Council Chamber between 6:30 p.m. and 7:00 p.m.

POLICY REGARDING CITY COUNCIL MEETING PROCEDURES SPEAKING ON A PUBLIC AND NON-PUBLIC HEARING ITEM

Individuals who have not made a written request to speak on a non-public hearing item may submit written materials to the City Council on the subject matter by providing twenty (20) copies of the written materials to the Office of the City Manager before 5:00 p.m. on the day of the Council meeting at which the item is scheduled to be discussed.

Notice Under the Americans with Disabilities Act (ADA): *The City of Fayetteville will not discriminate against qualified individuals with disabilities on the basis of disability in the City's services, programs, or activities. The City will generally, upon request, provide appropriate aids and services leading to effective communication for qualified persons with disabilities so they can participate equally in the City's programs, services, and activities. The City will make all reasonable modifications to policies and programs to ensure that people with disabilities have an equal opportunity to enjoy all City programs, services, and activities. Any person who requires an auxiliary aid or service for effective communications, or a modification of policies or procedures to participate in any City program, service, or activity, should contact the office of Ron McElrath, ADA Coordinator, at rmcelrath@ci.fay.nc.us, 910-433-1696, or the Office of the City Clerk at cityclerk@ci.fay.nc.us, 910-433-1989, as soon as possible but no later than 72 hours before the scheduled event.*

CITY COUNCIL ACTION MEMO

TO: Mayor and Members of the City Council
FROM: Tom Bergamine, Police Chief
DATE: October 3, 2011
RE: **Traffic Stop Consent Search Policy**

THE QUESTION:

Does the City Council wish to support and recommend implementation of a Traffic Stop Consent Search Form?

RELATIONSHIP TO STRATEGIC PLAN:

Goal 2 - Growing City, Livable Neighborhoods - A Great Place to Live

BACKGROUND:

Concerns have been raised in the community regarding Police Department traffic stop procedures. As a result of those concerns, the City Manager Dale Iman and Police Chief Thomas Bergamine participated in several meetings with community leaders to discuss recommendations for changes to current traffic stops and procedures. Additionally, staff requested the Department of Justice provide their review and assessment of current procedures.

Chief Bergamine participated in a community forum on March 10, 2011 where further discussion was held and community input was received. City Council requested information regarding the outcome of the community discussions and recommended changes suggested by the Police Department and Department of Justice.

Staff also requested CALEA, Commission on Accreditation for Law Enforcement Agencies, Inc, review departmental policy with regards to racial profiling, and found all in compliance.

- The Police Department hosted two training sessions for Police and community members for education purposes.
- Accelerated the installation of in-car camera systems.
- Increased the time we turn in TSR's information to SBI.
- Amended policies in regards to supervisory review of TSR's.

ISSUES:

Perception, communication and training for both community and police.
Community safety and reduction in crime.

BUDGET IMPACT:

Cost associated with the purchase and installation of additional in-car cameras and training suggested by the Department of Justice.

OPTIONS:

- Change Consent Search Policy.
- No change.
- Support other options.

RECOMMENDED ACTION:

Accept recommendations proposed in presentation.

CITY COUNCIL ACTION MEMO

TO: Mayor and Members of City Council
FROM: John Kuhls, Human Resource Development Director
DATE: October 3, 2011
RE: **Compensation Study Update**

THE QUESTION:

This is an informational item to update Council on the City's comprehensive compensation and classification study. Elliot Susseles of The Segal Company, will present information regarding the study, including the market survey variables and options for consideration.

RELATIONSHIP TO STRATEGIC PLAN:

This study is a Priority Policy Agenda item in the City's FY12 Strategic Plan. The project also Relates to Goal 3 - More Efficient City Government - Cost-Effective Service Delivery and supporting opportunities for recruiting and retaining a top quality workforce.

BACKGROUND:

The Segal Company will be conducting salary surveys on behalf of the City, while formulating fair and equitable pay structures, recommendations, and actions that enable achievement of successfully attracting, recruiting, and retaining talent for City employment.

Key factors and options for which organizations will be surveyed will be presented and discussed. It is important to use appropriate benchmark organizations when conducting salary surveys.

ISSUES:

None at this time / Not Applicable (N/A)

BUDGET IMPACT:

Funding for this study was approved by City Council as part of the FY 12 Budget. Implementation costs of study recommendations will be determined after considering the conclusions reached at the completion of the study.

OPTIONS:

Four options will be presented and discussed.

RECOMMENDED ACTION:

Council receive this information as an update regarding the study, while providing any feedback that is felt to be critical towards ensuring a successful survey phase.

CITY COUNCIL ACTION MEMO

TO: Mayor and City Council
FROM: Dale Iman, City Manager
DATE: October 3, 2011
RE: **Sister City Approval Process**

THE QUESTION:

Does the City Council wish to adopt and implement the Sister City Approval Process?

RELATIONSHIP TO STRATEGIC PLAN:

Goal 5 - Greater Community Unity - Pride in Fayetteville

BACKGROUND:

From time to time, the City of Fayetteville receives requests to adopt various cities as our Sister City. Please see the attached flow chart that outlines the proposed approval process.

ISSUES:

N/A

BUDGET IMPACT:

None known of at this time.

OPTIONS:

Adopt the proposed process.
Do not adopt the proposed process.
Request a revised process.

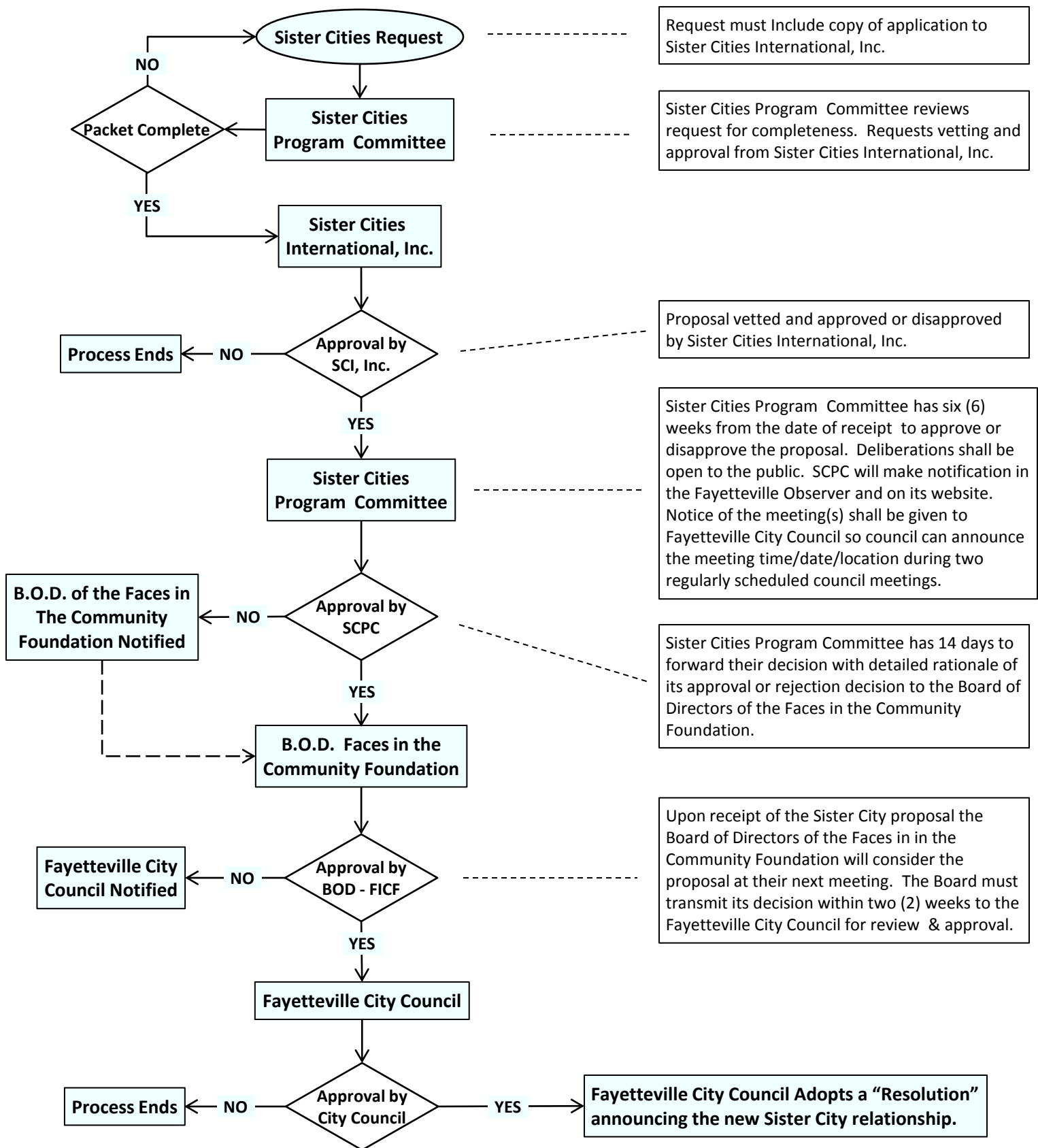
RECOMMENDED ACTION:

Adopt the proposed process.

ATTACHMENTS:

Sister City Approval Process

FAYETTEVILLE SISTER CITIES APPROVAL PROCESS



CITY COUNCIL ACTION MEMO

TO: Mayor and Members of City Council
FROM: Ron McElrath, Human Relations/ADA Director
DATE: October 3, 2011
RE: **Update on Youth Council**

THE QUESTION:

Discovering that the Chamber of Commerce has a Youth Academy that meets the interests of the Human Relations Youth Council Ad Hoc Committee, should the Human Relations Commission in an effort to avoid duplication, change its approach and join in a collaborative effort with the Chamber?

RELATIONSHIP TO STRATEGIC PLAN:

Goal 3 More Efficient City Government –Cost-Effective Service Delivery, and this item was a FY 2012 Target for Action on the City's Strategic Plan.

BACKGROUND:

The Human Relations Commission initiated an effort to involve our youth in a meaningful initiative that could promote the leadership skills and effective human relations skills that would encourage them to become engaged in the all inclusive development of our community from the social, economic, educational, business, and governmental aspects.

The commissioner who authored the strategic plan was tasked with securing committee members that included the school board and agencies serving youth. After several months, the committee developed criteria and structure to accomplish the goals it established for the Youth Council and collaborated with parks and Recreation who originally housed the city's Youth Council..

There was a turnover in leadership and the new cochairs discovered what the chamber had in place and felt that the interests of the commission could best be met by the up and running Youth Academy of the chamber. This would eliminate duplication and competition for the same youth and activities.

ISSUES:

N/A

BUDGET IMPACT:

None

OPTIONS:

Form a formal collaborative relationship or become a supporter informally.

RECOMMENDED ACTION:

Support the chamber's Youth Academy

ATTACHMENTS:

Attachment 1

ABOUT LEADERSHIP FAYETTEVILLE YOUTH ACADEMY

Leadership Fayetteville Youth Academy is a nine-month program directed by the Cumberland County Business Council in partnership with the Cumberland County School System. The Chamber recognizes that our area's youth hold the key to our future, and the program has been structured to encourage our area's youth to become leaders in our community. Each session will expose students to all aspects of the Fayetteville community. Economic Development, Health and Medicine, Government and Media are among the topics the program will explore. Students will benefit from the expertise of Fayetteville's finest business and educational leaders through interactive discussions and hands on activities.

HOW ARE PARTICIPANTS SELECTED?

Applications are sent to high school principals and guidance counselors. Students must complete the application and return it to the Chamber before the specified deadline. Depending upon the number of applications we received, students may be required to participate in an admissions interview.

REQUIREMENTS

- * High School Junior
- * Unweighted G.P.A. 3.0 or higher (must be maintained throughout the Leadership Fayetteville Youth Academy)
- * Positive attitude with a willingness to learn
- * Effective communication skills
- * Willingness and ability to complete a service project
- * Transportation to and from the designated meeting place for each Leadership Fayetteville Youth Academy Session.

COST

Because youth leadership development is an essential part of our community's future, the only cost to students is a refundable \$20 application fee. Operating funds for Leadership Fayetteville Youth Academy are obtained through generous corporate sponsorships.

HOW CAN I FIND OUT MORE INFORMATION?

Talk to your high school guidance counselor or principal, call (910) 484-4242 ext. 235, or email: tlyden@fayettevillencchamber.org

CITY COUNCIL ACTION MEMO

TO: Mayor and Members of City Council
FROM: Brian Leonard, Assistant City Attorney
DATE: October 3, 2011
RE: Privilege License Update

THE QUESTION:

Whether the City Council can waive prior year privilege license taxes, penalties and interest, and create classifications for rental management companies.

RELATIONSHIP TO STRATEGIC PLAN:

More Efficient City Government – Services Delivered in a Cost-Effective Manner

BACKGROUND:

City Council at the August work session expressed an interest in waiving prior year privilege license fees, penalties, and interest, and creating classifications for rental management companies. Section 15-62 of the City's privilege license ordinance allows the City to charge rental management companies, as well as individuals who engage in the day-to-day management of rental property, a privilege license tax. Currently, the standard fee under our ordinance is \$50.00 for gross receipts under \$500,000.00, plus an additional amount per \$1,000.00 of gross receipts over \$500,000.00. Under state law and the City's ordinance, taxpayers are subject to late penalties of 5 percent per month up to a maximum of 25 percent of gross receipts. For taxpayers with gross receipts under \$500,000.00, the maximum late penalty is \$12.50.

At the September work session, the City Council directed staff to bring back information regarding the financial impact of releasing and refunding prior year taxes and all penalties for businesses for which the City had not previously required a privilege license. Staff was also directed to bring back a draft ordinance amendment to meet the Council's interest.

I. Refund and Release of Prior Year Obligations, Interest, and Penalties

a. **Research:** The Finance Department has identified two business categories for which the City had not previously required a privilege license prior to this fiscal year, 2011-2012. Those categories are rental management and catalogue sales. The Finance Department will provide the financial information for these businesses at the work session.

b. **Recommendation:** After reviewing the City's ordinance, staff would recommend that rather than adopt an ordinance amendment, the City Council authorize the Tax Collector to change the City's privilege license tax collection business practices. This change would consist of refraining from collecting for prior year's privilege license taxes and penalties for businesses for which the City did not require a privilege license prior to the year in which the business was discovered. For Fiscal Year 2011-2012, this would apply to rental management and catalogue sales businesses. Staff would further recommend that the City's privilege license tax collection business practices also include that going forward, staff will provide the Council with an update of any new category of businesses subject to the privilege license tax as a part of the City Council's budget process prior to the beginning of each fiscal year. If these changes meet the City Council's interest, staff recommends that the City Council authorize these changes at the next regular City Council Meeting.

II. Classification of Rental Properties

a. **Research:** Under state law, cities may provide distinct classifications for the purposes of taxation, as long as there is a rational basis and the classification is reasonably related to such basis.

b. **Recommendation:** Based on the City Council's interest in creating classifications for rental management, staff proposes the attached draft ordinance amendment. This proposed amendment restricts the application of the City's privilege license for this activity to rental management companies, and individuals engaged in the day-to-day rental management of two or more residential rental properties. If the proposed ordinance meets the City Council's interest, staff recommends that the City Council adopt the attached ordinance amendment at the next regular City Council meeting.

ISSUES:

1. Whether the City Council should release rental property taxpayers from outstanding privilege license taxes, interest, and penalties for previous tax years while not releasing other categories.
2. How to develop classifications for rental property management.

BUDGET IMPACT:

The Finance Department will provide the financial information for these businesses at the work session.

OPTIONS:

1. Make no changes to the City's tax collection business practices and Privilege License Ordinance.
2. Direct staff to revise the City's tax collection business practices and Privilege License Ordinance consistent with Council's interest.
3. Provide further direction to staff.

RECOMMENDED ACTION:

Consider the information presented and provide direction to staff.

ATTACHMENTS:

Amendment to Section 15-62

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE
AMENDING CHAPTER 15, LICENSES, OF THE CODE OF ORDINANCES OF THE
CITY OF FAYETTEVILLE, NORTH CAROLINA**

BE IT ORDAINED, by the City Council of the City of Fayetteville, North Carolina, that:

Section 1. Section 15-62, License tax schedule adopted, paragraph (1)d., applicability, is amended by alphabetically inserting the following:

Rental Management - Commercial and residential rental management companies
and individuals engaged in the day-to-day rental management activities of
two (2) or more residential rental properties.

Section 2. It is the intention of the City Council, and it is hereby ordained that the provisions of this ordinance shall become and be made part of the Code or Ordinances, City of Fayetteville, North Carolina, and the section of this ordinance may be renumbered to accomplish such intention.

ADOPTED this _____ day of _____, 2011.

CITY OF FAYETTEVILLE

ANTHONY G. CHAVONNE, Mayor

ATTEST:

PAMELA MEGILL, City Clerk

CITY COUNCIL ACTION MEMO

TO: Mayor & City Council
FROM: Kristoff Bauer, Asst. City Manager
DATE: October 3, 2011
RE: **Amending Sec. 2-65, Insurance Claims Review; and Sec. 2-66, Authority To Settle Claims; of the City Code related to liability claims administration.**

THE QUESTION:

Should the code be amended to authorize the use of a Third Party Administrator ("TPA") to administer and settle liability claims for the City.

RELATIONSHIP TO STRATEGIC PLAN:

BACKGROUND:

Currently, Sec. 2-65, Insurance Claims Review; and Sec. 2-66, Authority To Settle Claims; of the City Code proscribe the process and delegation of authority to settle liability claims on the City's behalf. Consistent with that Code, the City has responded to liability claims through the operations of the Risk Management office and the authority to settle claims is delegated to a Claims Committee composed of the Risk Manager, City Manager, and City Attorney. The City has a single adjuster position to respond to all claims and to advise the Claims Committee.

In the spring of 2010, the City contracted with the North Carolina League of Municipalities (NCLM), who serves more than 400 cities, towns, and villages across the state, to act as the Third Party Administrator for workers compensation claims. All workers compensation claims are transmitted to the League for processing, tracking, and satisfaction. This relationship has improved our level of service and is beginning to develop historical data that will assist the City in targeting its safety program.

ISSUES:

Similar to workers' compensation claims, the volume of liability claims has increased over time with the growth of City operations. The operation has struggled to respond to claims adequately and has failed to consistently track and report claims history. Further, the City's adjuster position has been vacant for almost a year as efforts to fill the position have failed to recruit qualified applicants. Staff has executed an agreement with the League to act as TPA for liability claims as well as workers compensation claims. It is necessary to provide the League some authority to settle low value simple claims in order to take full advantage of their expertise and improve service effectiveness and efficiency.

The League's standard authority delegation is up to \$25,000 for Office Adjusters, up to \$50,000 for Field Adjusters, and up to \$100,000 for the Claim Manager. Staff is proposing to delegate up to \$25,000 to League adjusters operating on the City's behalf and requiring any amount in excess of that limit to be approved by the City in advance. The attached ordinance change is required to allow staff to make this delegation.

BUDGET IMPACT:

This change in operations was anticipated during the development of the FY 12 budget.

OPTIONS:

Provide feedback regarding proposed revisions to the sections of the City code related to liability claims settlement authority.

RECOMMENDED ACTION:

No Action Required

ATTACHMENTS:

Amendment Claims Settlement Authority

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE AMENDING CHAPTER 2, ADMINISTRATION, OF THE CODE OF ORDINANCES OF THE CITY OF FAYETTEVILLE, NORTH CAROLINA

BE IT ORDAINED, by the City Council of the City of Fayetteville, North Carolina, that:

Section 1: Section 2-65 is amended by deleting the portions struck through and inserting the underlined portion:

(a) This article shall not be interpreted in any way to relieve any insurance company of its obligation under any insurance policy to protect the interests of any insured under such policy, or to reduce or eliminate the rights of any employee or officer of the city against any other party. Further, except as expressly stated in this article, this article is not to be interpreted as a waiver of any rights the city has pursuant to G.S. 160A-485, or against any party.

(b) A claims committee is appointed and composed of the city manager, the city attorney and the risk manager who are authorized to delegate their authority to the City's Liability Claims Administrator which shall be responsible for processing claims settlements within the authority so delegated: (i) under the city's insurance company procedures for self-insured retention levels wherein the insurance company has delegated to the city authority to settle claims for damage or personal injury; (ii) where the city is self-insured; or (iii) authority is delegated by any insurer to the city to settle a claim without approval of the insurer.

Section 2: Section 2-66 is amended by deleting the portions struck through and inserting the underlined portion:

(a) Any claim against the city, or its elected officials, employees or officers, while acting within the course or scope of their employment, shall be submitted to the risk manager setting forth the following:

(1) The name of the claimant;

(2) The name of the department, employee, agent or official against which the claim is asserted;

- (3) The amount of damages sought to be recovered;
- (4) The time and place where the damage occurred;
- (5) A brief statement of the facts and circumstances surrounding the injury or damage giving rise to the claim.
- (b) The claim shall be reviewed by the City's Liability Claims Administrator and if approved within the authority delegated to the City's Liability Claims Administrator, the claim shall be paid if it complies with the standards set forth in section 2-64. If the claim is in excess of the authority delegated to the City's Liability Claims Administrator, then the claim shall be processed by the claims committee, and if approved by a majority of the claims committee, paid in accordance with this section.
- (c) If the settlement is not covered by insurance or the city's self-insured retention fund and is in excess of \$1,000.00, or is against the city council either individually or collectively, it must additionally be approved by the city council.
- (d) The risk manager is hereby delegated to receive all notice of claims as required by G.S. 160A-167(c)(1).

Section 3. It is the intention of the City Council, and it is hereby ordained that the provisions of this ordinance shall become and be made part of the Code or Ordinances, City of Fayetteville, North Carolina, and the section of this ordinance may be renumbered to accomplish such intention.

ADOPTED this _____ day of _____, 2011.

CITY OF FAYETTEVILLE

ANTHONY G. CHAVONNE, Mayor

ATTEST:

PAMELA MEGILL, City Clerk

CITY COUNCIL ACTION MEMO

TO: Mayor and Members of City Council
FROM: Jerry Dietzen, Environmental Services Director
DATE: October 3, 2011
RE: **Update on the City's Sustainability Plan**

THE QUESTION:

Does the implementation of the City's Sustainability Plan meet City Council's interests?

RELATIONSHIP TO STRATEGIC PLAN:

Principal D - Beauty by Design

Goal 4 More Attractive City - Clean and Beautiful

Objective 3 - Increase green spaces throughout the city

Objective 5 - Incorporate "green buildings" concepts and LEED equivalency

BACKGROUND:

In 2009, the City hired Green Works Partners to assist in developing the City's sustainability master plan. The consultant was paid for through the Energy Efficiency and Conservation Grant funds. As part of the process, we held a number of public meetings and completed a number of stake holder interviews. Following development of the plan, a public hearing was held on October 12, 2009. At the same meeting, City Council voted unanimously to adopt the plan. When council adopted the plan, they also requested an annual report. This update will be the second annual report.

ISSUES:

None

BUDGET IMPACT:

There will be a budget impact if recommendations for energy efficiency projects are approved. The initial impact will be predicated on which projects will be selected. Most low cost efficiency projects, identified for city buildings in the energy audits, will have a very quick return on investment, usually within a year or two. If the projects are completed and as utility rates increase, the energy cost savings will also increase.

The Energy Manager position is funded by the Energy Efficiency and Conservation Block Grant until October 2012. The position's salary is approximately \$50,000 per year without the benefit package.

OPTIONS:

1. Accept the report as presented
2. Accept the report with amendments
3. Reject the report

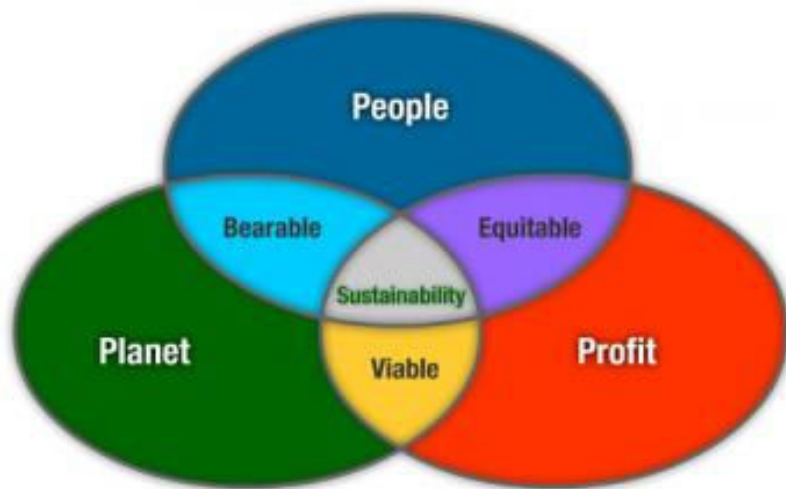
RECOMMENDED ACTION:

Staff recommends accepting the report as presented.

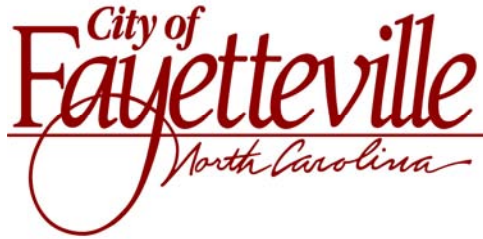
ATTACHMENTS:

Sustainability Plan Update Presentation

Sustainability Plan Annual Report



October 3, 2011



History

- June 2009 – Hired Consultant to help develop master plan
- June through September 2009 – Public input meetings, stakeholders meetings, interviews and public hearing
- October 12, 2009 - Council adopted the plan



Sustainability

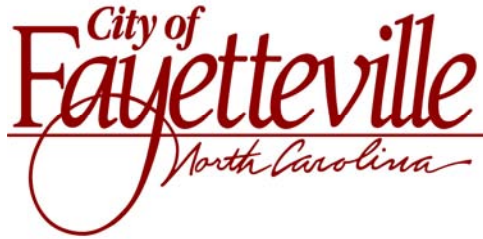
- **Definition:**

“Living today in a way that permits future generations to live the same way or better”



Air Quality

- Air quality attainment
- Hybrid vehicle/equipment
- Cleaner diesel engines
- Electric plug-in vehicle charging stations
- Idle reduction policy
- Intersection and traffic signal improvements
- Off road transportation corridors
- Green medians
- Energy efficiency projects



Energy Efficiency

- Energy efficiency interns
- Building energy audits and reports
- Utility bill/rate schedule analysis
- Energy Efficiency and Conservation Block Grant (EECBG) Projects
- Researched a number of potential projects



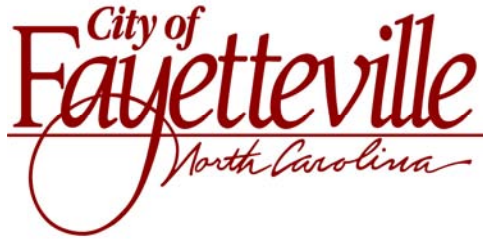
Energy Efficiency Audits

- Electric rate changes for ball field lighting yielded a savings of 12,000 per year
- Error identified in CT installation at fire station 10 yielded \$17,000 credit
- Error in gas meter addressing at Cape Fear Studios will yielded future savings
- Many retrofits under \$500 identified will have a 12 to 15 month ROI



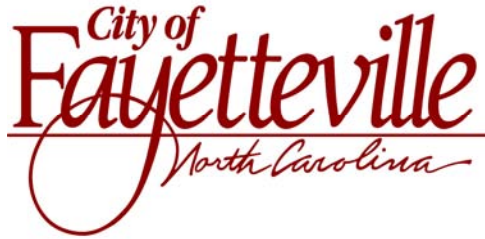
Alternative Energy

- City/PWC involved with alternative energy development proposals
 - Solar project on schools
 - Considering solar farm
 - Wood waste to diesel fuel



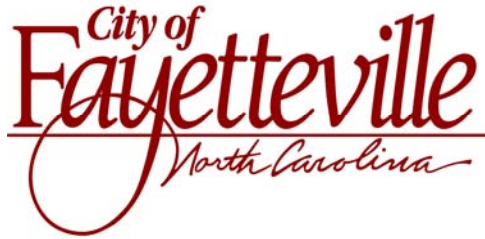
Water Quality

- Enhanced Maintenance of storm water outfalls
- Limited creek cleaning
- Field screening and follow up
- Water quality monitoring
- Public education
- Coordination with other agencies



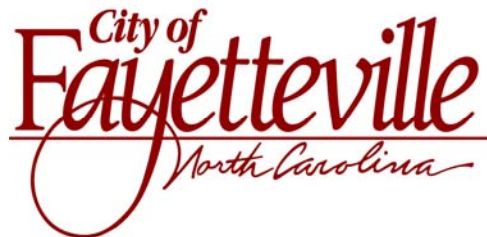
Water Efficiency

- Renovated City buildings retrofitted with Low-flow fixtures
- Odd-even water schedule for park and athletic turf
- Review of meters and accounts



Recycling

- Multifamily recycling program
- 8,730 tons recycled FY2011
- Increased recycling at Transit
- Recycling on holidays
- “Big Belly” recycling



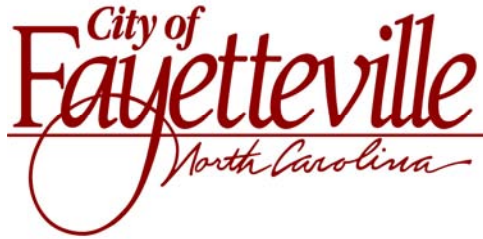
Green Building

- NC Veterans Park
- Franklin Street parking deck
- Multi-modal center
- New State building codes
- Building retrofits



Smart Growth

- Unified Development Ordinance
- School shared facility – New Century
- Hope VI project area
- Park and Recreation bond issue



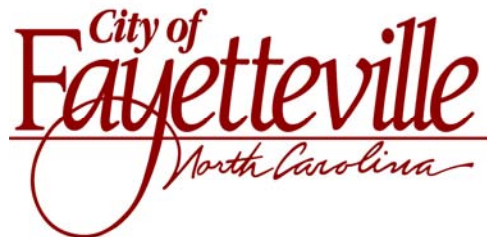
Alternative Transportation

- MPO bikeway and pedestrian connectivity plan approved
- Construction of Cross Creek Linear Park phase III
- Phase II of Cape Fear River Trail
- Blounts Creek greenway
- Beaver Creek greenway submitted for TIP
- Land banking for greenways



Sustainable Transportation

- NC Complete Streets policy adopted – July 2011
 - A vision for all users: autos, busses, pedestrians/ADA, trucks and bikes
 - Applies to FHWA or DOT funded projects
 - Applies to new and retrofit projects
 - Encourages street connectivity
 - Uses latest and best design criteria
 - Complement the context of community



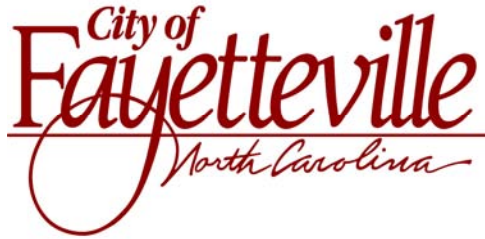
Community/Social Equity

- Expanding bus routes/times
- Community gardens expansion
- Farmers market partnership
- Sustainable and urban garden tours
- Sustainable Sandhills film series
- Energy efficiency retrofits for low income housing - FHA & HUD program
- Housing assistance - Community Development



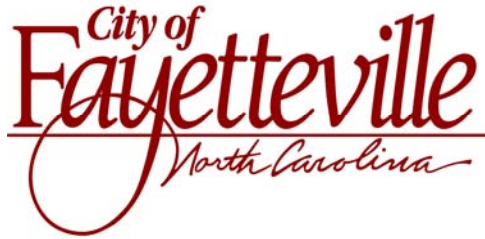
City Participation

- Sustainable Growth Management Strategy for Fort Bragg region
- Carolina Recycling Association conference speaker – N. Charleston
- Construction & demolition recycling conference
- National GREEN Business Conference - Fayetteville
- ICLEI (Local Governments for Sustainability) Washington DC: S.E. advocate for climate action
- Climate Communities: training, tools and federal lobby efforts for clean energy
- NC Sustainable Energy Assoc.: energy efficiency building codes and lobby efforts
- Electronic waste drive, rain barrel and compost bin sales
- Fayetteville Beautiful cleanups
- Special Events and community meetings education material distribution



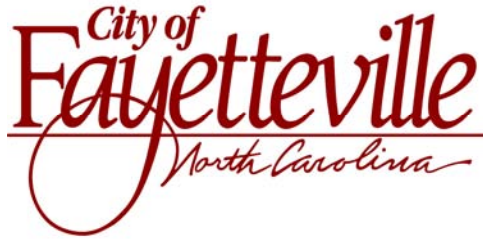
Economic Development

- Green business certifications
- DAK plastic bottle recycling plant opened
- Wood waste to bio-fuel plant
- ARRA funded projects
- PWC sustainability campus
- Expanding recycling programs



City Efficiency Projects

- Energy Efficiency projects on City buildings not associated with EECBG:
 - Amtrack Depot - thermostat replacement
 - Bragg Blvd. - LED street lighting
 - Building Maintenance - lighting retrofits
 - Cape Fear Studios – thermostat replacement
 - City Hall – water source heat pump retrofit
 - Clark Park – water heater replacement
 - Fascinate U – lighting retrofits
 - Fire Station 7 lighting retrofits
 - Station 3,6 & 7 thermostat replacement
 - Fire Station 9 replacement windows
 - 455 Grove St - cool roof
 - Massey Hill Recreation Center – HVAC replacement
 - Reid Ross restrooms – lighting retrofits
 - Senior Center - heat pump replacement
 - Sign Shop – gas pack replacement
 - Smith Recreation Center – lighting retrofits



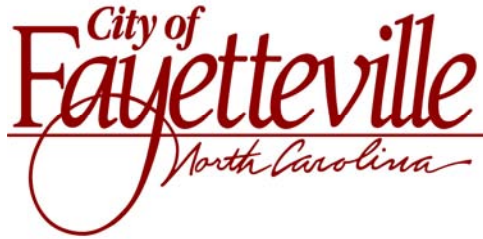
PWC

- Promoting smart metering
- Partnering with New Century Schools to install solar panels
- Actively involved in negotiations for swine/poultry waste-to-energy generation
- Studying the feasibility of LED, induction and volt/variable reduction street lighting



The Year Ahead

- Complete EECBG building retrofit projects
- Complete energy audits and energy plans
- Continue retrofits with general fund financing
- Install additional electric car charging stations
- Design Multimodal center to LEED silver standard



Questions?

-
- Sustainability Master Plan available on the City Website
 - City Website:
www.cityoffayetteville.nc.us

Go to **Departments** then to
Environmental Services

CITY COUNCIL ACTION MEMO

TO: Mayor and Members of Council
FROM: Karen McDonald, City Attorney
DATE: October 3, 2011
RE: **City Council Policy 150.2, Provision of Water and Sewer to Municipal Influence Area**

THE QUESTION:

Does the City Council wish to change its policy regarding the provision of water and sewer in the Municipal Influence Area (MIA).

RELATIONSHIP TO STRATEGIC PLAN:

Goal 2 - Growing City, Livable Neighborhoods, and Great Place to Live

BACKGROUND:

City Council Policy 150.2 requires an annexation petition to be submitted for the provision of water and sewer in the Municipal Influence Area. The policy does not specify when the petition must be submitted. The attached revision is intended to clarify not only must the petition be submitted but the City Council must take action regarding the petition prior to the provision of water and sewer. Since the provision of water and sewer allows development at higher densities, the proposed revision also requires the property to be developed consistent with the City's development regulations.

ISSUES:

Whether the proposed policy meets Council's interest.

BUDGET IMPACT:

Staff is not aware of any budget impact.

OPTIONS:

1. Adopt the proposed revision.
2. Not adopt the proposed revision.
3. Provide additional direction to staff.

RECOMMENDED ACTION:

Provide direction to staff.

ATTACHMENTS:

Proposed Policy 150.2

PROPOSED POLICY

SUBJECT – PUBLIC WORKS COMMISSION Provision of Water and Sewer to Municipal Influence Area	Number 150.2	Revised 12-14-09	Effective Date 12-14-09	Page 1 of 1
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Unless specifically exempted by action of the City Council, all property within the City of Fayetteville’s Municipal Influence Area (“MIA”) established by interlocal agreement with Cumberland County on June 9, 2008, that meet the statutory requirements for annexation must be annexed into the ~~file a petition for voluntary annexation with the~~ City of Fayetteville before water or sewer service will be provided or expanded. Further, all property to be served by PWC water and/or sewer service must be developed consistent with the City’s development regulations in place at the time service is requested.

The requirement ~~to petition~~ for annexation does not apply to single-family residential homeowners requesting service ~~on~~ from an existing water and/or sanitary sewer mains when their lot is ~~that are~~ not contiguous to a corporate boundary of the City of Fayetteville.

CITY COUNCIL ACTION MEMO

TO: Mayor and Members of City Council
FROM: Doug Hewett, Assistant City Manager
DATE: October 3, 2011
RE: **Update on Probationary Rental Occupancy Permit (PROP) Program.**

THE QUESTION:

Does the following update meet City Council's interest for the development of a Probationary Rental Occupancy Permit Program compliant with revised State Law?

RELATIONSHIP TO STRATEGIC PLAN:

Supports city goal #2: Growing City, Livable Neighborhoods – A Great Place to Live, and this issue was a Target for Action on last fiscal year's City strategic plan.

BACKGROUND:

On April 26, 2011, the City Council adopted a Probationary Rental Occupancy Permit (PROP) program. This program is designed to allow the City to more closely monitor and regulate rental properties that are the site of repeated or severe code violations or that are the site of certain criminal acts. The program would require those rental property owners whose property is the site of such violations or crimes to be placed into PROP and as a condition for renting the offending property again, the owner would be required to obtain a permit from the City. This would allow the City greater oversight of problem rental properties. The program was to be implemented July 1, 2011.

On June 18, 2011, Senate Bill 683 was ratified by the Legislature. The purpose of this Bill was to limit the level of local regulation of rental properties as well as limit the use of periodic inspections. Specifically, it prohibits cities from enforcing an ordinance that requires permitting of rental properties unless the property is the site of more than three violations in a 12-month period or is identified as being in the top 10 percent of properties with crime or disorder problems as set forth in a local ordinance. The language regarding the top 10 percent of properties with crime or disorder problems is based on a program currently utilized in Charlotte. This Bill has a direct impact on the functionality and substance of the PROP program.

On August 1, 2011, staff provided an update to City Council that stated with the adoption of Senate Bill 684, the PROP ordinance was no longer enforceable as drafted. Only one of the ten PROP eligible conditions could possibly be enforced as intended and it would still have to be revised. Furthermore, the ability of the City to charge a permit fee for PROP eligible properties under that the PROP ordinance was doubtful.

Given the substantial changes needed to make the City's PROP ordinance compliant with NC Law, staff recommended, and City Council approved rescission/repeal of the PROP ordinance on August 8, 2011. City Council directed staff to revise the PROP program, consistent with state law, and bring back program alternatives as soon as possible. Staff provided the attached schedule at that time.

Since August 8, 2011, staff met with counterparts in Charlotte regarding their program and continued our local efforts to create program for City Council to consider.

ISSUES:

Staff has modified Charlotte's model to address some of the concerns they expressed with how their current program works. Namely:

1. The addition of officer initiated calls for service rather than just citizen calls.

2. A provision for revocation of rental registration if the owner fails to pay the registration fee.
3. Separation of crimes into an appendix that will allow us to specify which violent and property crimes are included as well as disorder related activity.
4. Changing the review time line for the disorder threshold from one year to 6 months.
5. Changing the number of reviews from three (6 months apart) to two, to allow revocation after the second meeting.
6. A change in the categorization of number of rental units, limited to only 4 categories.
7. Added housing/code enforcement complaints to model our previous program.

There is still work needed before staff can recommend a program design or the attached draft ordinance for the City Council's consideration.

At present staff needs to work through what constitutes Disorder Activity Count for the Residential Rental Property that is at the 90th percentile within each of the four proposed housing categories and translate that into workable points system that would be described in the appendices of the ordinance. Charlotte's approach may require computer software modifications to our current records management system to accurately and efficiently track the Disorder Activity Count by residential rental properties. Lastly, staff also needs to flow chart the entire program to evaluate the staffing and resource needs of a recommended program.

BUDGET IMPACT:

City Council approved approximately \$132,500 in the FY 2012 budget to fund our earlier version of PROP. Given the uncertainty of the program and the rescission/repeal of the PROP ordinance, staff has delayed expensing those funds or hiring the budgeted 2.5 staff positions (1 full-time housing inspector, 1 paralegal/crime analyst, and .5 office assistant.)

Currently staff is unsure what resources will be needed to operate the revised PROP program, as we are still working on program design issues. However, the FY 2012 funds are still available pending action by City Council.

OPTIONS:

As this is an update, no action is required.

RECOMMENDED ACTION:

As this is an update, no action is required.

ATTACHMENTS:

Prop II - August 2011

Revised PROP Ordinance

PROP: Probationary Rental Occupancy Permit

August 8, 2011

On April 26, 2011, the City Council adopted a Probationary Rental Occupancy Permit (PROP) program. This program is designed to allow the City to more closely monitor and regulate rental properties that are the site of repeated or severe code violations or that are the site of certain criminal acts. The program would require those rental property owners whose property is the site of such violations or crimes to be placed into PROP and as a condition for renting the offending property again, the owner would be required to obtain a permit from the City. This would allow the City greater oversight of problem rental properties. The program was to be implemented July 1, 2011.

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Upon adoption of Senate Bill 684, the PROP ordinance is no longer enforceable as drafted. Only one of the ten PROP eligible conditions could possibly be enforced as intended and it would still have to be revised. Furthermore, the ability of the City to charge a permit fee for PROP eligible properties under the current ordinance is doubtful.

Given the need for the program, City Council directed staff to revise PROP, consistent with state law, and bring back program alternatives as soon as possible.

This target supports city goal #2: Growing City, Livable Neighborhoods – A Great Place to Live

- Measure of success: Revise PROP to be compliant with state law and workable in Fayetteville.

Staff Liaison: Doug Hewett, Assistant City Manager

Email Address: dhewett@ci.fay.nc.us | Phone Number: 910-433-1990

Team: Development Services, Information Technology, Police and City Attorney's Office

<u>Action Plan</u>	<u>Estimated Completion</u>
Update City Council on the NCGA's action and impact on PROP	August 1, 2011
Update City Council and recommend rescission of PROP while staff researches alternatives using the Charlotte Model	August 8, 2011
Research & develop recommendations	August-September 2011
Update to City Council with program alternatives & program design options	October 3, 2011
Community Meetings with stakeholders	October 2011
Recommendations to City Council	November 2011
If adopted, revised PROP implemented	January 2012

Please note the following is not the entire chapter. A new article V is being created as follows.

Chapter 14

HOUSING, DWELLINGS AND BUILDINGS

ORDINANCE NUMBER: _____

AMENDING CHAPTER 14

WHEREAS, the City of Fayetteville has a significant governmental interest in protecting the health, safety, and welfare of the general public and preserving the public order; and

WHEREAS, G.S. 160A-174 allows a city by ordinance to define, prohibit, regulate, or abate acts, omissions, or conditions, detrimental to the health, safety, or welfare of the public, and the peace and dignity of the city; and

WHEREAS, there are residential rental properties in the City of Fayetteville that have become a haven for various criminal or disruptive activities that cause disorder in our community; and

WHEREAS, the City Council desires to minimize and control the adverse effects caused by illegal activities occurring on and in these properties and thereby protect the health, safety, and welfare of the citizens, preserve the quality of life and property values and the character of neighborhoods and businesses, and deter the spread of urban blight; and

WHEREAS, the City Council recognizes that it is necessary for the City to apply its limited police and other municipal resources in accordance with the needs of the community at large, and to adjust the application of those resources as necessary to address activity that is injurious to the health, safety and welfare of the public; and

WHEREAS, the City Council recognizes that deterring crime in residential rental properties is a dynamic partnership between police, property owners, property managers, residents, and neighbors, each with responsibilities in cooperation with the other; and

WHEREAS, the City Council desires to implement a registration requirement for those residential rental property owners whose rental property has an unacceptable level of disorder activity occurring on or in the property; and

WHEREAS, there is a significant and demonstrative need to implement a program designed to assist residential rental property owners and managers who have experienced excessive levels of criminal activity and disorder; and

WHEREAS, the City Council desires to enact a remedial residential rental action program for residential rental property owners in order to implement recommended measures to curb excessive levels of criminal activity and disorder at rental properties; and

WHEREAS, the City Council, finds that a residential rental property owner's failure or refusal to successfully complete the remedial action program is injurious to the public's health, safety and welfare.

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

Section 1. Chapter 14 "Housing, Buildings and Dwellings" of the Fayetteville City Code is amended by creating Article V entitled "Residential Rental Remedial Action Program", to read as follows:

"ARTICLE XII. Residential Rental Remedial Action Program.

Section 14-63. Purpose.

The purpose of this article is to establish a requirement that Owners of Residential Rental Property whose property is within the Disorder Risk Threshold as established by this ordinance or in repeated violation of the Fayetteville City Code as defined and established by this ordinance must register with the City sufficient identification information so that the City may expeditiously identify and contact the Owner when excessive levels of disorder activity or code violations have occurred on or in the property. In addition, the City desires to establish a method to hold Owners of Residential Rental Property accountable for failing to use effective methods to reduce Disorder Activity and code violations on their property. It is not the intent of this article to determine the rights and liabilities of persons under agreements to which the City is not a party. This article shall not be construed to alter the terms of any lease or other agreement between a landlord and a tenant or others relating to property that is the subject of this Article; provided that no provision of any lease or other agreement shall be construed to excuse compliance with this article. Additionally, a violation of this article shall not in and of itself create a negligence per se standard or otherwise expand existing liability in tort for either a landlord or a tenant.

Section 14-64. Definitions.

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

Development Services Official: A person designated by the Development Services Director of the City of Fayetteville who is primarily responsible for the administration of this Article.

Disorder Activity: Activity occurring on or in a Residential Rental Property categorized as either reported violent crimes as listed in this ordinance entitled “Appendix A-Violent Crimes”, reported property crimes as listed in this ordinance entitled “Appendix B – Property Crimes”, and certain types of disorder-related, person or officer-initiated requests for police service only as listed in the appendix of this ordinance entitled “Appendix C – Disorder Activity.” A domestic violence call for service is not a Disorder Activity.

Disorder Activity Count: A number assigned to a Residential Rental Property that represents the amount of Disorder Activity occurring within a specified time period in or on the Property. For purposes of determining a Disorder Activity Count, the number of violent crimes is multiplied by 1, the number of property crimes is multiplied by 0.25, and the number of disorder calls for service is multiplied by 0.10.

Disorder Risk Threshold: For each Residential Rental Property Category, the Disorder Activity Count for the Residential Rental Property that is at the 90th percentile of Residential Rental Properties within the Residential Rental Property Category.

In Need of Remedial Action: (INRA): A designation by the Police Official that a Residential Rental Property has been identified for enforcement action under this ordinance.

Manager: The person, persons or legal entity appointed or hired by the Owner to be responsible for the daily operation of the Residential Rental Property.

Owner: The person, persons or legal entity that holds legal title to a Residential Rental Property.

Police Official: A person designated by the Chief of Police who is primarily responsible for the administration of this Article.

Registered Agent: The person identified by the Owner of the Residential Rental Property in the registration filed pursuant to this Article who is authorized to receive legal process and/or notice required or provided for in this Article.

Remedial Action Plan: A written plan agreed upon and signed by both the Police Official and Owner whereby the Owner agrees to implement remedial measures on a Residential Rental Property whose Disorder Activity Count exceeds the Disorder Risk Threshold for its Residential Rental Property Category.

Remedial Measures: Mandatory and voluntary measures as stated within the Remedial Action Plan Manual, a copy of which is on file at the City Clerk's Office.

Residential Rental Property: Property that contains a single-family rental dwelling unit or multi-family rental dwelling units for use by residential tenants including but not limited to the following: mobile homes, mobile home spaces, townhomes, and condominium unit(s).

Residential Rental Property Category: Residential Rental Properties will be categorized by the number of residential units contained in the property as follows:

- Category 1 – 1 unit or single family home
- Category 2 – 2 to 10 units
- Category 3 – 11 to 100 units
- Category 4 – 100 units or more

Residential Rental Property Review Board: The Board created pursuant to this Article.

Verified Violation. A violation of the Fayetteville City Code of Ordinances as determined by the Development Services Official.

Section 14-65. Registration of Residential Rental Property Due to Verified Violations.

(a) Each Owner of Residential Rental Property that has been found with three (3) or more verified violations in the previous twelve (12) month period, whether those violations have been resolved by corrective action or not, shall register that property by providing the following information to the Development Services Official:

- (1) The address(es) for the Residential Rental Property which shall include the street name(s), number(s) and zip code;

- (2) The name(s), business or personal address, telephone number, and email address of the Owner;
- a. If the property is owned by multiple natural persons, then the required information shall be that of one person who has legal authority to act on behalf of the other Owners.
 - b. If the property is owned by a corporation, whether foreign or domestic, then the required information shall be that of a Registered Agent and of an officer who has authority to act on behalf of the corporation.
 - c. If the property is owned by a partnership, then the required information shall be that of the managing partner and one alternate who have legal authority to act on behalf of the partnership.
 - d. If the property is owned by an unincorporated association or any other legal entity not mentioned above, then the required information shall be that of a person who has legal authority to act on behalf of that association or entity.
- (3) The number of units located on the residential property.

(b) The address(s) required in subsection (a) (2) shall not be a public or private post office box or other similar address.

(c) An Owner that is required to register under this ordinance who sells the property shall notify the Development Services Official of all purchaser information within thirty (30) days from the date of change of ownership. Purchaser information shall include the name, address, phone number and e-mail address for the purchaser.

(d) An Owner that is required to register under this ordinance shall post proof of registration as provided by the City in the business office of the property or in a common area or other conspicuous place accessible at all times to the tenant(s).

(e) Each residential rental property parcel shall be registered separately.

(f) The Owner of Residential Rental Property that is the site of three (3) verified violations in the previous twelve (12) month period shall be sent a

notice by certified mail to the name and address listed with the Cumberland County's Office of Tax Assessor.

- (g) The notice shall include the following information:
 - (1) A description of the verified violations of the Fayetteville City Code that have occurred at the property in the past twelve (12) months as well as the dates of said violations; and
 - (2) The amount of the registration fee.

Section 14-66. Grounds for Revocation of Rental Registration as Required by Section 14-65.

- (a) Each Owner of Residential Rental Property that has been found with four (4) or more verified violations in the previous twelve (12) month period, whether those violations have been resolved by corrective action or not, shall have the rental registration for that property revoked by the Development Services Official.
- (b) Each Owner of Residential Rental Property that is required by this ordinance to register his or her property and either fails to do so or fails to pay the required registration fee shall have the rental registration revoked by the Development Services Official.

Section 14-67. Notice of Revocation.

A notice of revocation shall be sent by certified mail or delivered in person to the address listed on the rental registration.

Section 14-68. Period of Revocation.

Revocation of an Owner's rental registration shall remain in place for a period of one (1) year. If an Owner fails to register his or her property as required by this ordinance then that property shall be ineligible for registration for a period of one (1) year.

Section 14-69. Registration of Residential Rental Property Due to Disorder Activity.

- (a) Each Owner of Residential Rental Property that falls at or above the Disorder Risk Threshold for its Residential Rental Property Category shall register by providing the following information at the initial mandatory meeting:

- (1) The address(s) for the Residential Rental Property which shall include the street name(s), number(s) and zip code;
- (2) The name(s), business or personal address, telephone number, and email address of the Owner;
 - a. If the property is owned by multiple natural persons, then the required information shall be that of one person who has legal authority to act on behalf of the other Owners.
 - b. If the property is owned by a corporation, whether foreign or domestic, then the required information shall be that of a Registered Agent and of an officer who has authority to act on behalf of the corporation.
 - c. If the property is owned by a partnership, then the required information shall be that of the managing partner and one alternate who have legal authority to act on behalf of the partnership.
 - d. If the property is owned by an unincorporated association or any other legal entity not mentioned above, then the required information shall be that of a person who has legal authority to act on behalf of that association or entity.
- (3) The number of units located on the residential property.

(b) The address(s) required in subsection (a) (2) shall not be a public or private post office box or other similar address.

(c) An Owner that is required to register under this ordinance who sells the property shall notify the Police Official of all purchaser information within thirty (30) days from the date of change of ownership. Purchaser information shall include the name, address, phone number and e-mail address for the purchaser.

(d) An Owner that is required to register under this ordinance shall post proof of registration as provided by the City in the business office of the property or in a common area or other conspicuous place accessible at all times to the tenant(s).

(e) Each residential rental property parcel shall be registered separately.

Section 14-70 Disorder Risk Threshold and Disorder Activity Count.

The Police Official shall determine the Disorder Activity Count for each Residential Rental Property and the Disorder Risk Threshold for each Residential Rental Property Category on a semi-annual basis, by January 1 of each calendar year and by June 1 of each calendar. These determinations shall be made using Disorder Activity during the previous six month period .

Section 14-71. Notification of Mandatory Meeting.

(a) The Owner of Residential Rental Property that falls at or above the Disorder Risk Threshold shall be sent a notice by certified mail to the name and address listed with the Cumberland County's Office of Tax Assessor.

(b) The notice shall include the following information:

- (1) The date, time and location for the mandatory initial meeting between the Police Official and the Owner; and
- (2) The Disorder Activity Count for the Residential Rental Property; and
- (3) A statement that the Owner may provide additional evidence at the initial mandatory meeting to be considered by the Police Official; and
- (4) A detailed summary of the Disorder Activity that has occurred on or in the property.
- (5) The amount of the registration fee.

Section 14-72. Mandatory Initial Meeting.

(a) Unless otherwise agreed to by the Owner and Police Official, within thirty (30) days after notice has been provided to the Owner that a property falls at or above the Disorder Risk Threshold, a mandatory initial meeting shall be held between the owner and the Police Official. The initial meeting may be held in person or by telephone. In the event there are multiple property Owners, the Owner attending the initial meeting must have power of attorney to execute the remedial action plan on behalf of the other Owners.

(b) At the mandatory initial meeting, the Police Official and the Owner shall, at a minimum, review the following:

- (1) The data that established the Disorder Activity Count for that property; and
- (2) Any relevant evidence provided by the Owner that may establish that the property does not fall at or above the Disorder Risk Threshold.

(c) After reviewing all the evidence, any previously identified Disorder Activity that is found to either not have occurred on or in the property or does not clearly meet the definition of a Disorder Activity shall be discounted and an adjusted Disorder Activity Count shall be determined. In the event that the adjusted Disorder Activity Count for the property falls at or above the Disorder Risk Threshold, then the Owner and Police Official shall develop and sign a Remedial Action Plan and the property will be set for a six (6) month review date pursuant to section 14-73. In the event the adjusted Disorder Activity Count is below the Disorder Risk Threshold, then no further action shall be taken by the Police Official.

(d) In the event the Owner fails to attend the initial meeting without just cause, the Police Official shall review all the evidence concerning the property pursuant to Subsections (b) and (c) of this Section. Upon a finding that the adjusted Disorder Activity Count for the property is at or above the Disorder Risk Threshold, the Police Official shall refer the property to the City Attorney's Office for determination of whether a public nuisance action or any other legal or equitable remedy is warranted.

(e) The Owner of Residential Rental Property that is required to register under this ordinance shall pay a registration fee on or before the Mandatory Meeting in the amount established pursuant to the fee schedule adopted by City Council.

Section 14-73. Remedial Action Plan and Review.

(a) At the first six (6) month review, the Owner and Police Official shall review the Disorder Activity in or on the property since the date of the Remedial Action Plan and determine the Disorder Activity Count for the property during that time period. If the Disorder Activity Count is no longer at or above the Disorder Risk Threshold, then no further action will be taken and the Owner of the property will not be required to continue to pay for registration the following year unless at that time the property is again at or above the Disorder Risk Threshold. If the Disorder Activity count continues to fall at or above the Disorder Risk Threshold, then the property will be designated In Need of Remedial Action (INRA) and the Police Official and the Owner shall amend and sign the Remedial Action Plan and a second six (6) month review date will be set.

(b) At the second six (6) month review, the Owner and Police Official shall review the Disorder Activity in or on the property since the date of the amended Remedial Action Plan and determine the Disorder Activity Count for the property during that time period. If the Disorder Activity Count is no longer at or above the Disorder Risk Threshold, then no further action will be taken. If the Disorder Activity Count continues to fall at or above the Disorder Risk Threshold, then the Police Official shall revoke the rental registration for the property unless it is determined that the Owner has complied in good faith with the remedial action plans.

- (1) In determining whether the Owner has acted in good faith, the Police Official shall weigh the following factors:
 - a. Whether the Owner has regularly met with the Police Official; and
 - b. Whether the Owner has exhausted all resources reasonably available to the Owner in order to comply with the terms of the Remedial Action Plans; and
 - c. Whether the Owner has intentionally ignored a term of a Remedial Action Plan; and
 - d. Whether the Disorder Activity on the property constitutes a public nuisance.
- (2) If the Owner has been found to have acted in good faith, then the Police Official may remove the designation of INRA and continue to work with the Owner. A property that continues to fall at or above the Disorder Risk Threshold for a second year will be referred to the City Attorney's Office for determination as to whether a public nuisance action or any other legal or equitable remedy is warranted.

(d) All Remedial Action Plans will be based on the procedures and practices set forth in the Fayetteville Police Department *Remedial Action Plan Manual; A Guide to Managing Rental Properties to Prevent Crime*.

Section 14-74. Additional Grounds for Revocation of Rental Registration.

In addition to the grounds stated in Section 14-73(b), the Police Official may revoke the Owner's rental registration based on a determination that:

(a) The Owner provided materially false or misleading information during the registration process; or

(b) The Owner refused to meet with the Police Official and/or develop a Remedial Action Plan as required under Section 14-73 without just cause; or

(c) The Owner failed to pay the required registration fee on or before the date of the Mandatory Initial Meeting as required under Section 14-72(e).

Section 14-75. Notice of Revocation.

A notice of revocation shall be sent by certified mail or delivered in person to the address listed on the rental registration.

Section 14-76. Period of Revocation.

Revocation of an Owner's rental registration shall remain in place for a period of one (1) year. If an Owner fails to register his or her property as required by this ordinance then that property shall be ineligible for registration for a period of one (1) year.

Section 14-77. Transition Plan and Notification of Tenants.

Upon revoking a rental registration, the Police Official or Development Services Official shall develop a transition plan for the Owner's lawful disengagement from the operation and management of the rental property. The transition plan may include a referral to the City Attorney for the evaluation of the property as a public nuisance or for any other legal or equitable remedy available under law necessary to fairly assist in the disengagement process. Upon revocation and issuance of a transition plan, the Police Official or Development Services Official shall take reasonable steps to notify the residents of the property.

Section 14-78. Residential Rental Property Review Board.

(a) A Residential Rental Property Review Board (hereinafter "Board") is hereby established, to be composed of seven members: four members to be appointed by the City Council, two members to be appointed by the mayor and one to be appointed by the City Manager. The appointing authorities shall ensure that the members of the Board are representative of the residential rental, tenant and homeowner community.

(b) One member from the Fayetteville Police Department who has obtained the rank of captain or above and one employee of the City's Development Services Department who has the authority to investigate code violations will sit on the Board as advisors only.

(c) Individuals with a felony conviction within the last ten (10) years shall not be eligible to serve on the Board. Further, conviction of or a plea of *nolo contendere* to a felony during the term of office shall automatically terminate membership on the Board, irrespective of any appeals. Board members charged with a felony during a term of office shall be automatically suspended until disposition of the charge, and a quorum shall be established from the remaining membership.

(d) Board members shall keep all information about criminal investigations confidential.

(e) The Board shall elect a chairperson and vice-chairperson from its membership.

(f) All members of the Board serve without compensation.

(g) The terms of office shall be for two (2) years with no member serving more than two consecutive full terms. The terms of one-third of the Board shall expire each year. If a vacancy occurs, the original appointing authority shall appoint a person to serve for the unexpired term of the vacant position.

(h) Five voting members shall constitute a quorum. Members are required to attend all business meetings and hearings in accordance with the attendance policies promulgated by the City Council. Vacancies resulting from a member's failure to attend the required number of meetings shall be filled as provided in this section.

(i) Members shall be subject to removal from the Board with or without cause by the appointing authority.

Section 14-79. Duties and Responsibilities of the Residential Rental Property Review Board.

The Board shall hear appeals from an Owner of Residential Rental Property whose registration has been revoked.

Section 14-80. Notice of Appeal of Revocation.

A Residential Rental Property owner may appeal a notice of revocation of rental registration to the Board. All revocation appeals to the Board must be filed in writing with the City Clerk's office within ten (10) calendar days of the date the notice of revocation is served on the Owner. The Owner shall provide a valid current address for the purpose of all notifications required to be made pursuant to this ordinance. The request must state the reason for the appeal.

Section 14-81. Hearing Procedure and Appeal of Board's Findings.

(a) The City Clerk shall forward an appeal of revocation of rental registration to the Police Official, Development Services Official and to the Chair of the Board. The Police Official or Development Services Official shall prepare a summary of the case, including all relevant data. The summary shall be provided to the Board and the Owner at least five working days before the hearing.

(b) Unless a quorum cannot be obtained or as otherwise agreed to by the Owner and Police Official or Development Services Official, the Board shall hold a hearing within thirty (30) calendar days of the date the appeal is received by the City Clerk. Should the Owner or the Police Official or Development Services Official desire a hearing date other than that set by the Board, the Owner or the Police Official or Development Services Official shall submit a written request for a change of the hearing date, stating the reason for the request. The Chair shall approve or disapprove such request, provided that such request is received by the Board at least seven (7) calendar days prior to the date of the hearing. For good cause, the Chair may continue the hearing from time to time. The hearing shall be conducted with at least five (5) voting members of the Board present.

(c) The Owner shall appear at the hearing in person and shall have the right to representation by a person of his or her choice. The North Carolina Rules of Evidence, G.S. Chapter 8C, shall not strictly apply to the hearing, but all parties shall have an opportunity to offer evidence, cross-examine witnesses, and inspect documents. Only sworn testimony shall be accepted. The Chair of the Board, as well as any Board member designated by the Chair, shall have the authority to administer the oath as set forth for witnesses in a civil matter by G.S. § 11-11. All hearings before the Board shall be *de novo* and recorded. The Board has the authority to develop rules and regulations consistent with this ordinance to facilitate the hearing process.

(d) The City shall have the burden of proof and must establish by the preponderance of the evidence that the Owner's property is In Need of Remedial Action and the owner has failed to act in good faith to comply with the Remedial Action Plan. After reviewing the evidence and hearing testimony from the witnesses, the Board shall issue findings of fact and conclusions of law and issue an order either affirming or reversing the decision of the Police Official or Development Services Official.

(e) An Owner has the right to appeal the Board's decision to the City Council by filing a notice of appeal with the City Clerk within (10) ten days after the Board issues its written decision. When feasible, the matter will be set for review by the City Council at the next regularly scheduled business meeting. The City Council shall make its decision based on the record below, and no additional evidence will be considered. A majority vote by the City Council in favor of the Board's decision is required to uphold the Board's decision to revoke the Owner's registration. An appeal to City Council will stay the proceedings until it completes its review.

(f) If the City Council upholds the Board's decision, the Owner shall have the right to seek judicial review of the Board's decision in a proceeding in the nature of certiorari instituted in the Superior Court of the county within 30 days after the City Council votes to uphold the Board's decision. Judicial review shall not automatically stay the revocation.

Section 14-82. INRA Designation Binding on Subsequent Owner.

The designation of a property as INRA and the application of the procedures set forth in this article shall be binding upon all subsequent Owners or other transferees of an ownership interest in the Rental Residential Property. However, the revocation may be stayed during the implementation of a transition plan.

Section 14-83. Enforcement, Remedies and Penalties.

(a) The remedies provided herein are not exclusive and may be exercised singly, simultaneously, or cumulatively. In addition, the remedies provided herein may be combined with any other remedies authorized by law and exercised in any order. This ordinance may be enforced by an appropriate equitable remedy issuing from a court of competent jurisdiction.

(b) It shall be a civil violation of this ordinance for any Owner of Residential Rental Property or person or entity on behalf of that Owner to commit any of the following acts:

- (1) Lease or rent Residential Rental Property to another person or entity when the rental registration for that property has either been revoked or never obtained as required by this ordinance, except pursuant to a transition plan as set forth in Section 14-77 of this ordinance.
- (2) Lease or rent Residential Rental Property to another person or entity after the Owner has been served with notice of the

mandatory meeting and fails to attend the meeting without just cause as set forth in Section 14-72 of this ordinance.

- (3) Lease or rent Residential Rental Property to another person or entity after the Owner has been served with notice of the mandatory meeting and fails to pay the required registration fee prior to or on the date of the mandatory meeting as set forth in Section 14-72(e) of this section.

(c) Notwithstanding that the Owner's property registration has been revoked or the Owner has failed to attend the mandatory meeting as set forth in Section 14-72 of this ordinance, the owner shall not commit the following acts:

- (1) Refuse or fail to comply with any order of the City to repair a dwelling pursuant to Chapter 14 of the Fayetteville City Code, or
- (2) Terminate the utility services of any occupants or otherwise violate the rights of residential tenants under Article 2A, Article 5, or Article 6 Chapter 42 of the General Statutes.

(d) Notwithstanding that the Owner's property registration has been revoked, the Owner's compliance with its obligations in subsection (c)(1) and (2) hereinabove shall not be deemed as offenses under subsection (e) below.

(e) Failure to comply with the provisions of this section shall subject the offender to a civil penalty of fifty dollars (\$50.00) a day for the first 30 days, one hundred dollars (\$100.00) a day for the next thirty days, and five hundred dollars (\$500.00) a day for each subsequent day.

(f) A civil penalty that is assessed under this ordinance may be recovered by the City in a civil action in the nature of a debt if the owner does not pay the penalty fee within thirty (30) days after a notice of the penalty is issued by the Police Official or the Development Services Official.

Section 14-84. Adoption of Remedial Action Plan Manual.

The Remedial Action Plan Manual, a copy of which is on file in the Office of the City Clerk, is hereby adopted. The City Council hereby finds and determines the remediation strategies set out therein to be reasonable and appropriate to address the public health, safety and welfare issues addressed by this article entitled the "Remedial Action Plan Manual; a Guide to Managing

Rental Properties to Prevent Crime”. The Chief of Police or his designee is hereby authorized to amend the Remedial Action Plan Manual.

CITY COUNCIL ACTION MEMO

TO: Mayor and City Council
FROM: Dale Iman, City Manager
DATE: October 3, 2011
RE: **City Council Agenda Item Request**

THE QUESTION:
See attachment

RELATIONSHIP TO STRATEGIC PLAN:
See attachment

BACKGROUND:
See attachment

ISSUES:
See attachment

BUDGET IMPACT:
Not known at this time

OPTIONS:
N/A

RECOMMENDED ACTION:
N/A

ATTACHMENTS:
Ted Mohn City Council Agenda Item Request



City Council Agenda Item Request

Date of Request: 20 September 2011

Name of Requester: Council Member Ted Mohn - District 8

Agenda Item Title: Signed Consent Search Forms for Traffic Stop Consent Searches

What do you want to accomplish with this item?

Determine if City Council wants to adopt a Council Policy requiring our Police Department to obtain a "signed consent search form" from drivers prior to our City's Police Officers are allowed to conduct a consent search on vehicles they've stopped.

Determine if any council member can tell the City Manager to direct the Chief-of-Police to direct his police officers to use such signed consent to search forms if the majority of council has not formally adopted a policy on this item.

How does this item connect to the City's Strategic Plan?

Desirable Neighborhoods - Neighborhoods where people are safe and secure.

Growing City, Livable Neighborhoods – A Great Place to Live.

Inclusive Community with Diverse Cultures and Rich Heritage - Learning from past barriers that divided our community.

Comments:

Traffic stops and consent searches have been a topic of community discussion for a good year now. Consent searches after traffic stops is a viable tool for our police department in keeping our citizens safe.

I was lead to believe this subject would come to council for discussion and a vote. See attached e-mail(s) related to this item.

Also see attached Police Department Media Release, dated 20 September 2011.