



FAYETTEVILLE CITY COUNCIL
AGENDA
FEBRUARY 6, 2012
5:00 P.M.
Lafayette Room, City Hall

1.0 CALL TO ORDER

2.0 INVOCATION

3.0 APPROVAL OF AGENDA

4.0 OTHER ITEMS OF BUSINESS

4.1 Amending Chapter 6, Animals and Fowl

Presented By: Karen M. McDonald, City Attorney Rick Moorefield, County Attorney

4.2 R.A.M.P. - Rental Action Management Program

Presented By: Doug Hewett, Assistant City Manager

4.3 Recommended Fiscal Year 2013-2017 Capital Improvement Plan (CIP) and Information Technology Plan (ITP)

Presented By: Dale Iman, City Manager Rusty Thompson, Engineering and Infrastructure Director Dwayne Campbell, Chief Information Officer Lisa Smith, Chief Financial Officer

4.4 Parks and Recreation Capital Project Bond Issue Proposal

Presented By: Kristoff Bauer, Assistant City Manager, Michael Gibson, Parks and Recreation Director

4.5 Revisions to Policy 150.2 Relating To Annexation Requirements In Exchange For PWC Services Have Not Been Implemented With Complete Success. Revisions To Policies And Implementation Practices To Address Issues Will Be Presented.

Presented By: Kristoff Bauer, Asst. City Manager

4.6 Consideration of Adoption of Revisions to Chapter 23, Article III Stormwater Management Ordinance.

Presented By: Greg Caison, Stormwater Manager

4.7 Back Door Yard Waste Collection Service

Presented By: Jerry Dietzen, Environmental Services Director

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 City Council
FROM: Karen M. McDonald, City Attorney
DATE: February 6, 2012
RE: **Amending Chapter 6, Animals and Fowl**

THE QUESTION:

Whether to adopt proposed changes to County's Animal Control Ordinance within the municipal limits of Fayetteville.

RELATIONSHIP TO STRATEGIC PLAN:

More Efficient City Government

BACKGROUND:

At the City Council's November 2011 work session, the County Attorney presented proposed ordinance changes to the Animal Control Ordinance. At its January 17, 2012, meeting, the Board of Commissioners voted to have further revisions made to the ordinance and to allow the City Council the opportunity to review and consider the proposed ordinance prior to its adoption. Consistent with the City Council's direction, City staff has provided for the Council's consideration the proposed County ordinance, a comparison between the current City ordinance and the proposed County ordinance, the County Attorney's memo to the Board of Commissioners regarding the proposed ordinance, and modifications to the ordinance that would be applicable only within the City limits.

ISSUES:

Whether the Council has an interest in adopting the County's Ordinance for the municipal limits of Fayetteville.

BUDGET IMPACT:

None

OPTIONS:

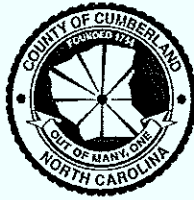
Provide feedback regarding proposed revisions to the City Code.

RECOMMENDED ACTION:

Consider the proposed ordinance changes and provide feedback and direction to staff regarding the ordinance.

ATTACHMENTS:

Memo for Board of Commissioners Agenda
Draft Animal Control Ordinance
Fayetteville Ordinance Revisions



OFFICE OF THE COUNTY ATTORNEY

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**MEMORANDUM
FOR THE AGENDA OF THE JANUARY 17, 2012 MEETING
OF THE BOARD OF COMMISSIONERS**

TO: Bd. of Commissioners; Co. Manager; Asst. Co. Manager; Dr. Lauby; Asst. City
Atty. Brian Leonard
FROM: Co. Atty. *R. Monfeld*
DATE: January 11, 2012
SUBJECT: Revision of Animal Control Ordinance

Attachments: Final Draft of Revised Ordinance

DISCUSSION:

A summary of the proposed significant changes is set out below. Overall, duplicative provisions and requirements which have not been or could not be enforced were removed. The penalty provisions were simplified and made uniform except in those areas where Dr. Lauby believed a more substantial penalty was effective and needed. About one-fourth of the existing ordinance has been eliminated. County attorney, assistant county manager and Dr. Lauby met and fully discussed this final draft on December 22, 2011.

This draft was fully discussed by the Policy Committee at its January 5, 2012 meeting. The Committee recommended approval by a 2 to 1 vote with Commissioner Keefe voting against it because of his concern that the county was foregoing an opportunity to enhance revenue for the department by not implementing the New Hanover county style of pet licensing at this time.

Assistant City Attorney Brian Leonard attended the Policy Committee meeting and commented on areas of interest to the city. Mr. Leonard has requested that the Board of Commissioners consider this draft without formally adopting it at this time to afford an opportunity for further input from the city council once the council has formally reviewed the final draft. The city council also made this request directly to the county attorney at its November work session. Since 80% of animal control calls arise in the city, the county attorney recommends that the board consider the ordinance at this meeting, direct any further changes that it deems necessary, but wait until February for final adoption so the city's issues can be fully addressed by the time of adoption.

SUMMARY:

ARTICLE I. ADMINISTRATION

Sec. 3-1 Animal Control Department established. Name of department is changed from Animal Services to Animal Control throughout ordinance.

Sec. 3-2. Animal Control Director. No significant changes.
12-29-11 Draft - Cumberland County Animal Control Ordinance

Summary of Changes

Page 1 of 5

Sec. 3-3. Functions of Animal Control Department. No significant changes.

Sec. 3-4. Animal Control Board established. No significant changes.

Sec. 3-5. Dangerous Dog Appeal Board established. This section was moved from Article III. Board consists of three members appointed by Animal Control Board from its members, rather than existing full Animal Control Board. Quorum consists of only two members. The manner in which hearings are conducted is specified with Director's case to be presented by county attorney. This is significant change.

Sec. 3-6 through Sec. 3-9. Reserved.

ARTICLE II. GENERAL PROVISIONS.

Sec. 3-10. Definitions. Terms no longer used in the ordinance have been omitted.

Sec. 3-11. Applicability of state laws to custody of animals. No significant changes.

Sec. 3-12. Injuring, poisoning or trapping animals prohibited. No significant changes.

Sec. 3-13. Diseased animals; injured or sick animals. No significant changes.

Sec. 3-14. Property owner may impound animal. No significant changes.

Sec. 3-15. Nuisance animals; complaint procedures.

Nuisance complaints, such as barking dogs, are some of the most frequent complaints and officers typically cannot verify the complaint. New ordinance provides that enforcement shall be solely by the complainant obtaining a criminal summons. These complaints have created public relations problem with citizens who are not willing to testify against their neighbors and will not accept that animal control officers cannot testify with only hearsay evidence. This is a significant change.

Sec. 3-16. Animal fighting and animal fighting paraphernalia prohibited. No significant changes.

Former Sec. 3-17 Dogs prohibited from park trails. Repealed because it has never been enforced and city provides scooper bags at the trails.

Sec. 3-17. Keeping of wild or exotic animals. New ordinance expands the definition of wild or exotic animals to include all hybrids, otherwise, same as existing ordinance.

Sec. 3-18. Inhumane or cruel treatment prohibited. No significant changes.

Sec. 3-19. Control of animals required; at large; strays; impoundment; confinement in season; penalty for biting while at large. No significant changes.

Sec. 3-20. Records; disposition of animals; adoption. No significant changes.

Sec. 3-21. Redemption of impounded animals; impoundment where no one is present to care for an animal. No significant changes.

Sec. 3-22. Spaying or neutering as condition for adoption of dogs and cats; violations. No changes other than length of post-adoption time period to obtain spay or neuter left to discretion of Director.

Sec. 3-23. Keeping of animals; mistreatment, abandonment prohibited; care; restraining of dogs; exercise area for dogs. Significant change in enforcement of anti-tethering provision which will allow Animal Control to seize a dog which has been tethered for 14 days after receiving notice of violation.

Sec. 3-24. Dead animal pickup; relinquishing animals to the shelter. No significant changes.

Sec. 3-25. Apprehension of wild dogs. Establishes that Director must determine officers have adequate training to use firearms, otherwise, no significant changes.

Sec. 3-26. Regulation of the number of dogs and cats which may be kept on certain premises. New provision which limits the number of dogs and cats which can be kept at residences with residential zoning classifications of R20 or less (less than one-half acre) and in any multi-family dwellings. No longer dependent on zoning regulations. This is a significant change.

Sec. 3-27 through Sec. 3-29. Reserved.

ARTICLE III. DANGEROUS DOGS

This Article was significantly changed by eliminating classifications of aggressive and vicious dogs which were in addition to dangerous dogs, lessening the severity of the injury required in a bite or attack to declare a dog "potentially dangerous," and increasing the liability insurance requirements for owners of dangerous dogs from \$100,000 to \$200,000.

Sec. 3-30. Definitions.

Sec. 3-31. Application of ordinance; exceptions.

Sec. 3-32. Reporting requirements.

Sec. 3-33. Determination that a dog is potentially dangerous; appeals.

Sec. 3-34. Registration required.

Sec. 3-35. Permit required.

Sec. 3-36. Regulation of dangerous dogs; security and restraint requirements.

Sec. 3-37. Impoundment of dangerous dogs.

Sec. 3-38. Violations, penalties and other remedies.

Sec. 3-39. Administrative provisions.

ARTICLE IV. RABIES CONTROL AND ANIMAL BITES
Article.

No significant changes to this

- Sec. 3-40. Rabies control.**
- Sec. 3-41. Reports of bite cases; report by veterinarian.**
- Sec. 3-42. Records.**
- Sec. 3-43. Interference.**
- Sec. 3-44 through Sec. 3-49. Reserved.**

Former **ARTICLE V. KENNELS; PET SHOPS** was repealed because it was not being enforced.

ARTICLE V. LICENSING OF DOGS AND CATS

Although there has been much discussion on going to a “pet license” approach like that in New Hanover County, the new ordinance continues the present privilege license. The only significant change is the elimination of the additional tax on keeping more than three dogs or cats. Dr. Lauby reports this additional tax was not understood and not enforced. The current ordinance language does give the Tax Administrator the flexibility to delegate some of the duties to the Animal Control Director. Animal Control has software in place which enables non-listed dogs and cats to be identified when they are vaccinated and is using this information to enforce additional listings and penalties. Dr. McNeil, the New Hanover County Director of Animal Control, reported that New Hanover’s program was so successful because 90% of the pet license fees were collected by the veterinarians. Dr. Lauby reports that level of participation by the local veterinarians is not likely at this time.

- Sec. 3-50. License for dogs and cats.**
- Sec. 3-51. Terms of license; exemption.**
- Sec. 3-52. Issuance of records.**
- Sec. 3-53. Fastening of tags to collar or harness.**
- Sec. 3-54. License fee in addition to other fees.**
- Sec. 3-55. Use of revenues collected from license fees.**
- Sec. 3-56. Transfer of cats and dogs.**
- Sec. 3-57. Non-applicability of Article.**
- Sec. 3-58 through Sec. 3-59. Reserved.**

ARTICLE VI. INJURED ANIMAL STABILIZATION FUND

No significant changes.

Sec. 3-60. Control of injured animals; stabilization fund.

Sec. 3-61 through Sec. 3-69. Reserved.

ARTICLE VII. MISCELLANEOUS. No significant changes in this Article other than addition the last section at the request of City of Fayetteville.

Sec. 3-70. Keeping chickens or rabbits - Sanitation requirements.

Sec. 3-71. Stables to be kept clean.

Sec. 3-72. Grazing animals.

Sec. 3-73. Disposition of dead animals.

Sec. 3-74. Selling live animals in public rights of way and other public property prohibited.

Sec. 3-75. Provisions only applicable within the corporate limits of any municipality in which this ordinance is applied.

Sec. 3-76 through Sec. 3-79. Reserved.

ARTICLE VIII. ENFORCEMENT No significant changes to this Article.

Sec. 3-80. Enforcement, generally.

Sec. 3-81. Penalties for violations.

Sec. 3-82. Severability.

**AN ORDINANCE OF THE CUMBERLAND COUNTY BOARD OF COMMISSIONERS
REPEALING CHAPTER 3, ANIMALS, OF THE CUMBERLAND COUNTY CODE AND
ADOPTING A REVISED CHAPTER 3, ANIMALS, OF THE CUMBERLAND COUNTY CODE**

WHEREAS, the Cumberland County Board of Commissioners adopted a revised County Animal Control Ordinance in August, 2000, and has amended it from time to time; and

WHEREAS, the Cumberland County Animal Control Ordinance has been codified as Chapter 3, Animals, of the Cumberland County Code; and

WHEREAS, the Board of Commissioners wishes to make a comprehensive revision of the Cumberland County Animal Control Ordinance by the repeal of Chapter 3, Animals, of the Cumberland County Code and the adoption of the revised Chapter 3, Animals, of the Cumberland County Code as set forth below; and

Whereas, the Board of Commissioners finds the comprehensive revision of Chapter 3, Animals, of the Cumberland County Code to be in the public interest and to promote the public health, safety and welfare,

NOW, THEREFORE, BE IT ORDAINED by the Cumberland County Board of Commissioners that:

Chapter 3, Animals, of the Cumberland County Code is hereby repealed in its entirety and a revised Chapter 3, Animals, of the Cumberland County Code is hereby adopted.

**CHAPTER 3
ANIMALS**

- Art. I. Administration**
- Art. II. General Provisions**
- Art. III. Dangerous Dogs.**
- Art. IV. Rabies Control and Animal Bites**
- Art. V. Licensing of Dogs and Cats**
- Art. VI. Injured Animal Stabilization Fund**
- Art. VII. Miscellaneous**
- Art. VIII. Enforcement**

ARTICLE I. ADMINISTRATION

Sec. 3-1. Animal Control Department established.

There is hereby established in the government of the County an Animal Control Department.

Sec. 3-2. Animal Control Director.

The Animal Control Department shall be supervised by the Animal Control Director, who shall be the director of that department, appointed by the county manager.

Sec. 3-3. Functions of Animal Control Department.

The Animal Control Department shall have and perform the duties and responsibilities set forth herein, shall enforce the provisions of this Chapter and of state law relating to animal control and animal

welfare, shall administer and enforce an animal control program within such municipalities within the county as by interlocal agreement may contract with the County for such services and apply this Chapter in their municipal jurisdictions, and shall maintain and operate the county animal shelter.

Sec. 3-4. Animal Control Board established.

- (a) There is established the Cumberland County Animal Control Board.
- (b) The Animal Control Board shall be composed of seven (7) members to be appointed by the Board of Commissioners. Of the seven members, two shall be residents of the City of Fayetteville appointed by the Board of Commissioners from among the names of four persons nominated by the Fayetteville City Council, that is, two nominations for each seat. At least one member shall be a person with knowledge and experience in dog behavior and/or handling, one member shall be ex officio the veterinarian on contract to the Animal Control Department, one member shall have an interest in promoting the goals of the Animal Protection Society or the Humane Society or another such broadly-based and representative organization interested in the care and protection of animals, and the other members shall represent the public at large. The members shall serve staggered two-year terms; four members shall have terms that expire on June 30 in even-numbered years following the year of their initial appointment and three members shall have terms that expire on June 30 of odd-numbered years.
- (c) The powers and duties of the Animal Control Board shall include:
 - (1) Appointing three (3) of its members to sit on the Dangerous Dog Appeal Board;
 - (2) Hearing any appeals provided for in this ordinance other than appeals of the Director's determinations of potentially dangerous dogs;
 - (3) Providing advice and information to the Animal Control Department;
 - (4) Upon coordination with the Animal Control Director, making recommendations to the Board of Commissioners or the Fayetteville City Council, as appropriate, for the betterment of the County's animal control program;
 - (5) In conjunction with the Animal Control Department and the County's Public Information Director, providing for a program of public education, information and outreach concerning responsible pet ownership, animal cruelty, and the County's animal control program; and
 - (6) Selecting officers of the board, including a chairperson, and adopting rules of procedure.
- (d) A majority of the members shall constitute a quorum for the Animal Control Board to conduct its meetings. The Animal Control Board shall adopt a schedule of regular meetings and post and file it with the Clerk to the Board of Commissioners and otherwise as required by the Open Meetings Law. The Animal Control Board shall schedule at least four regular quarterly meetings, at which meetings the Animal Control Director or his designee shall appear and participate. In addition, the Animal Control Board may hold such special or emergency meetings, upon the call of the chairperson or any three members, as may be appropriate in the circumstances, subject to compliance with the Open Meetings Law.

Sec. 3-5. Dangerous Dog Appeal Board established.

- (a) There is established the Dangerous Dog Appeal Board.

(b) The Dangerous Dog Appeal Board shall consist of three (3) members to be appointed by the Animal Control Board from among its members. The members shall serve staggered two-year terms. Any two (2) members of the Dangerous Dog Appeal Board shall constitute a quorum for conducting a meeting.

(c) The powers and duties of the Dangerous Dog Appeal Board shall include:

- (1) Selecting a chairperson to preside over its appeal hearings;
- (2) Hearing the appeals of the determinations of potentially dangerous dogs by the Animal Control Director (or his designee) pursuant to Article III of this ordinance or Chapter 67 of the General Statutes.

(d) The administrative assistant to the Animal Control Director shall be the Clerk to the Animal Control Board and the Dangerous Dog Appeal Board.

Sec. 3-6 through Sec. 3-9. Reserved.

ARTICLE II. GENERAL PROVISIONS

Sec. 3-10. Definitions

(a) As used in this ordinance, the following terms shall have the meanings respectively ascribed to them in this section:

"Abandon" means to cease providing for the care, control or maintenance of an animal without the transfer of ownership of such animal.

"Animal Shelter or Department's Shelter" means the premises operated by the Animal Control Department for the purposes of impounding, sheltering or caring for animals or any other premises operated by another entity with which the county contracts for such purposes.

"Animal Control Department" means the Cumberland County Animal Control Department.

"Animal Control Director" means the Director of the Animal Control Department, or his/her designee.

"Animal Control Officer" means a person employed by the Animal Control Department as its enforcement officer in the impoundment of animals, controlling of animals running at large, and as otherwise provided or required in this Chapter.

"At large" or "running at large" means any animal which is not confined on the property of its owner, the leased premises of the animal's owner, or under the actual physical control of a competent person, other than a licensed, currently privilege tax paid, hunting dog under supervision while engaged in a lawful actual or simulated hunt.

"Chapter" means the provisions of this Animal Control Ordinance as may be in effect in Cumberland County or any municipal jurisdiction located therein.

"Confinement" means to secure an animal in a locked house, run, enclosure or fenced yard within the boundaries of the owner's, leaseholder's, or keeper's property (i.e., house, fenced yard).

"County Manager" shall mean the duly appointed County Manager of the County or his/her designee.

"Cruelty" means to endanger by any act of omission or commission the life, health or safety of an animal.

"Director" means the Director of the Animal Control Department.

"Exposed to rabies" means any animal that has been bitten by or exposed in a manner proven to be able to transmit rabies, to any other animal known to have been infected with rabies or any other animal reasonably suspected of being infected with rabies that is not available for laboratory diagnosis.

"Fee Schedule" means any schedule of fees related to the administration of this ordinance, which may be adopted by the Board of Commissioners.

"Fowl" means chickens, guineas, geese, ducks, pigeons, and other avian animals.

"Harboring" means regularly feeding, sheltering or caring for an animal.

"Impoundment" means placing an animal in an animal control vehicle or unit, or holding an animal at the animal shelter, or holding an animal at any other location at the written direction of the Director of Animal Control.

"Keeper" means any person, acting in the capacity of the owner, or at the owner's request, who is responsible for the care, welfare and maintenance of the animal.

"Livestock" includes, but is not limited to, equine animals, bovine animals, sheep, goats, llamas and swine.

"Neuter" means to render a male dog or cat unable to reproduce.

"Owner" shall mean anyone taking care of or having custody of an animal, such as by providing food, water, shelter or medical care, but shall not include taking care or having custody of the animal for compensation.

"Permit" means a permit issued by the Animal Control Department or similar agency of any applicable governmental unit having jurisdiction.

"Potentially Dangerous Dog" and "Dangerous Dog" shall have the meanings set forth in Section 3-30 hereof.

"Restraint" means that an animal is actually physically controlled by leash or tether held by a competent person or within any vehicle, trailer or other conveyance being driven, pulled or parked on the street or confined within the property limits of its owner or keeper.

"Run" means an area used to confine a dog or dogs of a size that complies with any of the requirements of this Chapter.

"Sanitary" means a condition of good odor and cleanliness, which precludes the probability of disease transmission and insect breeding and which preserves the health of the public.

"Spay" means to remove the ovaries of a female dog or cat in order to render the animal unable to reproduce.

“State law” means the General Statutes of North Carolina.

"Stray" means any animal reasonably presumed not to have any owner, including but not limited to an animal running at large or not under restraint.

"Tethered" or "tethering" mean attaching an animal to a stationary object by means of a chain, cable, rope or similar device.

"Vaccination" means an injection of United States Department of Agriculture approved rabies vaccine administered by a licensed veterinarian or certified rabies vaccinator as defined in G.S. 130A-186.

"Transfer" means to convey or change ownership from one person to another with or without the exchange of money or other consideration.

(b) All other words or phrases used herein shall be defined and interpreted according to their common usage.

Sec. 3-11. Applicability of state laws to custody of animals.

No person owning or having in his custody any animal shall violate any laws, rules, or regulations of the state applicable thereto. The provisions of this Chapter shall govern where the provisions of the laws, rules and regulations of the state are less restrictive than the provisions of this Chapter.

Sec. 3-12. Injuring, poisoning or trapping animals prohibited.

(a) A person who accidentally or otherwise strikes an animal with an automobile and injures it shall promptly notify the Animal Control Department or any law enforcement agency having jurisdiction.

(b) No person shall knowingly expose or give to any animal any poisonous substance, whether mixed with food or not. This provision, however, does not apply to the eradication or population control of certain species of rodents.

(c) No person shall set or expose an open jaw type trap, leg hold trap, or any type trap which would likely cause physical harm or injury to any animal. This provision shall not apply to persons who are licensed by the state to trap animals, to Animal Control Officers or to persons using humane live capture traps.

Sec. 3-13. Diseased animals; injured or sick animals.

(a) Every person owning or having any animal under his charge which he knows or suspects to be sick or injured shall isolate the animal from other animals, shall obtain or provide appropriate treatment for such animal within two days or may have the animal humanely euthanized.

(b) Any animal which comes into possession of the Department's shelter which is seriously injured, sick or exhibiting symptoms of contagious disease shall be humanely euthanized by the shelter personnel without waiting for the expiration of the period in which such animal may be placed for adoption. Provided, however, that before such sick, diseased or injured animal is euthanized, the shelter personnel shall contact the animal's owner, if known, to determine the disposition of such animal. If the owner indicates that the animal will be reclaimed but fails to reclaim the animal within two days of such

notification, or if the owner of such animal is not known, the sick or injured animal shall be euthanized by the shelter personnel. The shelter supervisor shall keep a record of such animal, to include breed and sex of the animal, when the animal came into possession of the shelter, the type of injury, disease or sickness of such animal, the date the animal was euthanized, and any other information relevant to the health, condition and description of such animal.

Sec. 3-14. Property owner may impound animal.

(a) Any person who finds a domesticated animal or fowl on his property to his injury or annoyance may:

- (1) Take such animal to the Animal Control shelter; or
- (2) Retain possession of such animal or fowl and, within one business day, notify the Animal Control Department of this custody, giving a description of the animal and the owner's name, if known. Any person removing the animal from the impounder's property shall remove the animal in such a manner so as not to cause injury to the animal.

(b) No person shall knowingly and intentionally harbor, feed or keep in possession by confinement or otherwise any stray animal which does not belong to him, unless he shall have within one business day from the time such animal came into his possession notified the Animal Control Department of his intention either to: (i) surrender the animal to the animal shelter, or (ii) advertise for five (5) consecutive days such stray animal in the local newspaper with the greatest average daily circulation in the community. If the person possessing such stray animal elects to so advertise and the owner thereof shall not have responded by the tenth (10th) day after the date of the first publication, the person so advertising shall be presumed the legal owner of such animal. If the advertisement of a stray animal shall not have been first published within seventy-two (72) hours after so notifying the Animal Control Department, then the animal shall be surrendered to the Animal Control Department.

Sec. 3-15. Nuisance animals; complaint procedures.

(a) For the purposes of this section, "nuisance" means the conduct or behavior resulting from any act of omission or commission by the owner or keeper of any small or large animal, fowl, cat or dog which molests passersby or passing vehicles, damages private or public property; barks, whines, howls, crows or makes other noises in an habitual or continuous fashion which annoys the comfort, repose, health or safety of the people in the community; is unconfined in season; habitually defecates on the property of someone other than the owner; or habitually eats or otherwise destroys the plants, shrubs or similar landscaping on the property of someone other than the owner.

(b) For the purposes of this section, "nuisance animal" means any animal that commits any of the acts, conduct or behaviors defined as constituting a nuisance in this section.

(c) No person shall keep any animal which is a nuisance animal or which causes a nuisance as defined in this section.

(d) A violation of this section shall constitute a criminal misdemeanor punishable by a maximum fine of \$100 for a first offense and a maximum fine of \$250 for each subsequent violation occurring within twelve months of the first violation. Each day of a continuing violation shall constitute a separate offense.

(e) Enforcement of this section shall solely be by the complainant or complainants obtaining a criminal summons or by criminal process instituted by any law enforcement officer.

Sec. 3-16. Animal fighting and animal fighting paraphernalia prohibited.

(a) No person shall permit or conduct any dog fights, cock fights, or other combat between animals, or between animal and human.

(b) It shall be unlawful for any owner or person to keep, own, possess, maintain, control, or use materials used or intended to be used in dog fighting or cock fighting. Such items shall include but are not limited to treadmills; fighting or fight training pit; wooden sticks or handles used or capable of being used to pry open jaws; magazines, photographs, film, or videotapes depicting animal fighting or animal fight training; breeding stands; jaw strengthening devices; spurs; gaffs or slasher cases; gaff or knife gauges; mounting blocks; leather wraps; scabbards and leg or wing bands; training, conditioning, or fight contracts or records; veterinary drugs; suture kits, needles; and syringes and other veterinary supplies used for the administration of veterinary treatment for wounds or injuries from animal fighting or animal fight training.

(c) Upon criminal charges being brought for violations of this section, the Animal Control Director may petition the court for the confiscation of any animals kept or involved, or materials used or intended to be used in such fighting.

Sec. 3-17. Keeping of wild or exotic animals.

(a) For the purpose of this section, a wild or exotic animal means an animal which is usually not a domestic animal and which can normally be found in the wild state, including, but not limited to alligators, apes, bats, bears, crocodiles, deer, elephants, foxes, leopards, lions, lynxes, monkeys, panthers, raccoons, rhinoceroses, wolves, poisonous snakes, skunks, tigers, and like animals. Hybrids or cross-breeds of any wild or exotic animals shall also be considered as wild or exotic animals.

(b) It is unlawful to keep, harbor, breed, sell or trade any wild or exotic animal for any purpose, except as may be licensed by the state Wildlife Resources Commission under its regulations pertaining to wildlife rehabilitators.

(c) This section shall not apply to zoological parks, zoos, educational or medical institutions, or circuses that perform in Cumberland County for not more than seven (7) days. If a circus is scheduled to be in Cumberland County for more than seven (7) days, then the circus may apply to the Animal Control Director for an extension permit for a period not to exceed an additional seven (7) days, on such terms as the Animal Control Director shall determine will protect the public health, safety and welfare.

Sec. 3-18. Inhumane or cruel treatment prohibited.

It is unlawful for any owner or person to:

- (1) Perform or carry out any inhumane or cruel treatment against any animal; or
- (2) Keep, possess, own, control, maintain, use or otherwise exercise dominion over any animal or animals which by reason of noise, odor or sanitary conditions become offensive to a reasonable and prudent person of ordinary tastes and sensibilities or which constitute or become a health hazard as determined by the Animal Control Director, the Cumberland County Inspections Director or the Cumberland County Environmental Health Supervisor, as appropriate.

Sec. 3-19. Control of animals required; at large; strays; impoundment; confinement in season; penalty for biting while at large.

(a) It is unlawful for any owner or person to permit or negligently allow any domestic animal or livestock to run at large. Any dog or cat that is not confined as provided in this Chapter, and not under the actual physical control or restraint of its owner or keeper, shall be deemed to be running at large. Any such animal found running at large shall be either:

- (1) Impounded by an Animal Control Officer at the Department's shelter subject to being reclaimed by its owner or keeper in accordance with the Department's policies; or
- (2) In the discretion of the Animal Control Officer, a dog or cat found at large which is licensed by the county and vaccinated for rabies, except a dangerous dog, as that term is defined in Article III of this ordinance, may be released to its owner, upon such terms and conditions as the Animal Control Officer deems appropriate.

(b) No impounded animal shall be returned to its owner until any applicable impoundment and boarding, vaccination, other fees or costs and any penalties are paid.

(c) Any impounded animal not claimed by its owner after a three day holding period, exclusive of Sundays and county-observed holidays, shall become the property of the county and shall be adopted or disposed of in accordance with the Department's policies.

(d) Every female dog or cat in season (heat) shall be kept confined in such a manner that such female dog or cat cannot come in contact with other animals, except for controlled breeding purposes. Female animals picked up by the Animal Control Department which are in season (heat) shall be kept separate from male animals at all times.

(e) It shall be a violation of this section for any dog or cat running at large off its owner's or keeper's property to bite any person so as to break such person's skin. A first offense shall subject the owner or keeper to a civil penalty of \$250. A second offense shall subject such owner or keeper to a civil penalty of \$500. A third or subsequent offense shall subject such owner or keeper to a civil penalty of \$1,000.

Sec. 3-20. Records; disposition of animals; adoption.

(a) An Animal Control Officer, upon receiving any animal for impoundment, shall record the description, breed, color and sex of the animal and whether or not it is licensed and the date and time of impoundment. If the animal is licensed or if the owner is known, the officer shall enter the name and address of the owner or the county license on the impoundment records. If the owner is known, the Animal Control Department shall telephone the owner or, if unsuccessful in attempting to telephone such owner, shall mail notice at the address shown on the Department's records to notify the owner, that unless reclaimed within seventy-two (72) hours after mailing of notice, Sundays and county-observed holidays excluded, the animal may be adopted or humanely disposed of by the Department's shelter. Attempts to contact the owner will be recorded on the impoundment record.

(b) After the seventy-two (72) hours of impoundment as prescribed above, animals that have not been reclaimed by the owner thereof shall be adopted or otherwise disposed of in a humane manner and as required by law. Provided, however, in the discretion of the Animal Control Director, a healthy animal may be retained for an additional period for the purpose of adoption or transferred to an approved local animal adoption or rescue agency.

(c) Before any dog or cat is released for adoption from the Department's shelter, the adopter

shall pay such fee(s) as may be prescribed therefore in any fee schedule adopted from time to time by the board of commissioners. Such dog or cat also shall be issued any required rabies vaccination and county license.

(d) Any employee of the Animal Control Department may adopt one cat and one dog in any calendar year and such number of other animals as the Animal Control Director may by written policy prescribe.

(e) There is hereby established a grace period of five (5) days beginning on the day of adoption and ending at the close of business of the fifth day thereafter (or the first business day which falls after the fifth day if such fifth day is a Sunday or legal holiday), during which period an animal adopted from the animal shelter may be returned to the animal shelter without refund for a replacement animal, conditioned solely upon the presentation of written certification of a licensed veterinarian that the adopted animal is in poor health.

Sec. 3-21. Redemption of impounded animals; impoundment where no one is present to care for an animal.

(a) An owner shall be entitled to resume possession of his impounded dog or cat or other small animal kept as a house pet, upon compliance with the vaccination provisions of this Chapter and payment of any applicable impoundment, boarding, vaccination or other fees. Such dog or cat also shall be issued any required county license, as provided for in this Chapter, if such dog or cat has not previously been licensed. Animals four (4) months old and older will be vaccinated for rabies by shelter rabies vaccinators. New owners of adopted animals less than four (4) months old shall have three (3) business days from the time that the animal reaches the age of four (4) months, in which to have the animal vaccinated against rabies and return the proof to the Department's shelter. Failure to obtain the required rabies vaccination shall constitute a violation of this section.

(b) When a law enforcement officer takes a person into custody who is in possession of an animal, and no other competent person is immediately present at the scene to take care of the animal, the animal will be impounded for its welfare. The animal will be impounded at the Department's shelter until contact can be made with the animal's owner and an appropriate disposition of the animal determined. Once an Animal Control Officer makes contact with the owner, the owner will have seventy-two (72) hours to arrange for the appropriate disposition of the animal. After the seventy-two (72) hour period expires, the animal shall become the property of the county and shall be disposed of as provided in this Chapter.

Sec. 3-22. Spaying or neutering as condition for adoption of dogs and cats; violations.

(a) No dog or cat may be adopted from the animal shelter unless the animal has been surgically spayed or neutered, or the adopting owner agrees to do have the animal surgically spayed or neutered in accordance with any time limit imposed by the Animal Control Director.

(b) The Animal Control Director shall implement procedures to enforce this section.

(c) The failure of any person adopting an impounded animal to comply with this section shall constitute a violation of this section and shall constitute the forfeiture of the animal to the Animal Control Department.

Sec. 3-23. Keeping of animals; mistreatment, abandonment prohibited; care; restraining of dogs; exercise area for dogs.

(a) All dogs, cats and other small animals kept as house pets shall be housed, fed and

protected from the weather in such a manner as not to create a nuisance.

(b) No person shall willfully or negligently:

- (1) Torture, cruelly beat, injure, maim, mutilate or without good cause destroy or kill any animal, whether wild or tame, belonging to himself or to another;
- (2) Deprive any animal of food, drink or shelter; or
- (3) Cause any other person to do any of the above acts.

(c) If an animal is found by any Animal Control Officer to be in one of the above described conditions in subsection 3-23(a) or (b), the officer shall take appropriate measures, including civil or criminal enforcement, to protect the welfare of the animal. If the Animal Control Officer determines that a confined animal's life is in immediate danger or the animal has been abandoned, the Animal Control Officer shall seize such animal if such seizure is not prohibited by applicable law and shall report the conditions to an appropriate law enforcement agency if seizure is not permitted. The Animal Control Officer shall leave a notice for the owner or keeper advising why the animal has been taken.

(d) No dog, cat or other small animal shall be confined within or on a motor vehicle under such conditions as may endanger the health or well-being of the animal, including, but not limited to, dangerous temperature or lack of adequate food or water.

(e) No person shall abandon or cause to be abandoned any dog, cat or any other type of animal.

(f) Owners and keepers of dogs, cats and other small animals shall provide food, shelter and medical attention to such animals, including but not limited to the following:

- (1) Sufficient wholesome food that is nutritious for the species;
 - (2) Fresh, potable drinking water;
 - (3) Medical attention to relieve such animals from suffering;
 - (4) Shade from the sun; and
 - (5) Shelter to allow the animal to remain dry and protected from the elements. Such shelter shall be fully enclosed on three (3) sides, roofed and have a solid floor. The entrance to the shelter shall be flexible to allow the animal's entry and exit, and sturdy enough to block entry of wind or rain. The shelter shall be small enough to retain the animal's body heat and large enough to allow the animal to stand and turn comfortably. The enclosure shall be structurally sound and in good repair.
- (g) It shall be unlawful to tether a dog except in accordance with this subsection.
- (1) No dog shall be tethered outdoors unless the keeper or owner of the dog is holding the tether.
 - (2) It shall be an affirmative defense to a violation of this subsection that the tethering is required to protect the safety or welfare of a person or the dog, provided that the keeper or owner of the dog acquires a permit from the Animal Control Director for the temporary tethering of a dog while acquiring kennels or fencing.

- (3) The provisions of this subsection (g) shall not apply to a temporary tether:
- (a) During a lawful animal event, veterinary treatment, grooming, training, or law enforcement activity; or
 - (b) To a keeper or owner walking a dog with a hand-held leash, or during lawful hunting activities if reasonably necessary for the safety of the dog, or while a dog is actively engaged in shepherding or herding livestock; or
 - (c) When meeting the requirements of a camping or recreation facility; or
 - (d) When the animal's caretaker is outside and within eyesight of the animal; or
 - (e) After taking possession of a dog that appears to be a stray dog and after having advised the Animal Control Department of the stray.
- (4) The provisions of subsections (g)(2) and (3) above shall apply only if:
- (a) The tether is not placed directly round the dog's neck and is attached to a properly fitting collar or harness of nylon or leather worn by the dog; and
 - (b) The weight of the tether does not exceed more than one-tenth of the dog's body weight; and
 - (c) The tether is unlikely to become tangled or twisted; and
 - (d) The tether is arranged to be free of any obstacles which may limit the moveable length of the tether; and
 - (e) The dog is tethered in a manner that permits access to necessary shelter and water.
- (5) Any dog that remains tethered in violation of this subsection for more than fourteen (14) days after the owner receives a notice of violation may be seized by an Animal Control Officer or law enforcement officer and impounded at the Department's shelter. If the dog's owner does not show that an adequate confinement enclosure complying with the requirements of this ordinance has been installed on the owner's property within 72 hours of the impoundment, exclusive of Sundays and county government holidays, the dog shall be deemed to have been forfeited to the county and shall be disposed of in accordance with the Department's policy.
- (h) Any dog confined within a fenced yard or run must have an adequate space for exercise. Provided, however, that where dogs are kept or housed on property without a fenced yard and such dogs are kept in an enclosure or run, such enclosure or run shall provide adequate space for exercise. Such an enclosure or run shall be constructed of chain link or similar type of materials with all four sides enclosed. The enclosure shall be of sufficient height to prevent the dog from escaping from such enclosure. The top of such enclosure shall be sufficiently covered to provide the dog with adequate shade and protection from the elements.

Sec. 3-24. Dead animal pickup; relinquishing animals to the shelter.

- (a) Dead animals may be picked up from residences by waste/ sanitation haulers as provided by the Cumberland County Solid Waste Department's policies as in effect from time to time.

(b) Owners may relinquish their animals to the Department's shelter provided the owner signs an impoundment card releasing possession of the animal to the shelter. Once the animal is released to the shelter, the animal shall become the property of the county and may be adopted or humanely disposed of in accordance with the Department's policies.

Sec. 3-25. Apprehension of wild dogs.

If the Animal Control Director shall determine that:

- (1) A dog or dogs are running wild in any area within the jurisdiction of this ordinance; such dogs are feral and do not have an owner, keeper or custodian; such dogs appear not to have been vaccinated for rabies because such dogs are not wearing current and valid rabies tags; such dogs are substantially interfering with the use and enjoyment of property or the conduct of business, or are harassing or threatening persons; and that such dogs cannot after extraordinary effort be apprehended; or
- (2) an animal or animals are running wild and appear to be rabid or terminally diseased, present an imminent threat to any person or to livestock or domestic pets, or are harassing and threatening persons, and cannot be apprehended without extraordinary effort;

then the Director shall be authorized to cause deadly force to be used to humanely euthanize said dogs or wild animals. Prior to making such a determination, in the case of wild dogs, the Director shall have documented that persistent and repeated efforts to apprehend such dogs through use of traps, baited food, and tranquilizer darts have been ineffective. After making such a determination, the Animal Control Director may:

- (1) Authorize any Animal Control Officer that has, in the discretion of the Animal Control Director, received appropriate training and certification in firearms to use deadly force; or
- (2) Request assistance from the Sheriff or from appropriate municipal police authorities in order that the application of deadly force shall be effected by a sworn law enforcement officer that has a marksman rating and/or qualification; or
- (3) Seek the services of any private business, corporation, organization or other governmental organization or agency as may be approved by the County Manager for the application of deadly force.

If such deadly force is proposed to be effected, the Animal Control Director shall take every precaution to assure the safety of persons and property in the area within which the dogs or animals are running wild.

Sec. 3-26. Regulation of the number of dogs and cats which may be kept on certain premises.

(a) No more than three (3) dogs or cats, or combination of dogs and cats, more than five (5) months of age shall be owned, possessed, kept, harbored, or maintained at any premises located in any area with a zoning classification for single-family, residential lots of 20,000 square feet or less (R20 or less density).

(b) No more than two (2) dogs or cats, or combination of dogs and cats, more than five (5) months of age shall be owned, possessed, kept, harbored, or maintained at any premises located in any area with a zoning classification for multifamily residential housing.

(c) In any area in which the applicable zoning regulations are more restrictive than the requirements of this section, the zoning regulations shall control.

(d) This section shall not be construed to limit the right of any landlord to impose more restrictive limits on the number of pets which may be possessed at any leased premises.

Sec. 3-27 through Sec. 3-29. Reserved.

ARTICLE III. DANGEROUS DOGS

Sec. 3-30. Definitions.

For the purposes of this article, the following words and phrases shall have the following meanings:

“Attack by a dog” means any behavior or action by a dog which could reasonably be expected to cause physical injury to a person or domestic animal, to include biting, felling or toppling, tearing of clothing, or provoking flight to escape attack.

“Bite by a dog” means any seizing, gripping or grasping, no matter how slight or momentary by a dog between its jaws of the body parts of a person or domestic animal, so as to cause physical injury to such person or domestic animal.

“Dangerous dog” means any of the following dogs:

- (1) A dog that without provocation has killed or inflicted severe injury on a person; or
- (2) A dog that has been determined as provided herein to be potentially dangerous; or
- (3) A dog that is owned or harbored primarily, or in part, for the purpose of dog fighting or a dog trained for dog fighting.

“Dog” means a domesticated animal (*canis familiaris*) of the Canidae family; provided that no wild specie of the Canidae family, such as a wolf, fox or coyote, shall be considered a domesticated animal, even though raised by humans in domestic surroundings.

“Guard dog” means a dog trained by a skilled trainer to recognized security industry or other reasonable standards and presently used under the control of trained handlers to protect persons and property.

“Law enforcement dog” means a dog, trained for police work to recognized law enforcement standards and presently used by and under the control of a law enforcement officer to carry out the law enforcement officer's official duties.

“Lawful hunt” means a hunt for lawful game conducted on private or public property with the consent of the owner or custodian of the property by a person with a valid license (if required) during the lawful season for the game concerned using dogs customarily employed and suitable for such game.

“Owner of a dog” or “owning a dog” means any person or legal entity that has a possessory property right in a dog, including the harbinger or keeper of a dog with the consent of the owner or of a dog that has been abandoned by or escaped the custody of its owner.

“Owner or keeper's real property” means any real property owned or leased by the owner or keeper of the dog, not including any public right-of-way or a common area of a condominium, apartment complex, or townhouse development.

“Potentially dangerous dog” means a dog that had been determined, as provided herein, to have:

- (1) Inflicted a bite on a person that required medical care more than first aid,
- (2) Killed or inflicted injury upon a domestic animal when not on the real property of the owner of the dog; or
- (3) Attacked a person or approached a person in an area of the keeper's property open and accessible to invitees, or when not on the owner's property, in a vicious or terrorizing manner in an apparent attitude of attack.

“Severe injury” means any physical injury that results in broken bones or disfiguring lacerations or requires cosmetic surgery or hospitalization.

“Territorial jurisdiction of Cumberland County” means all territory within the boundaries of the County of Cumberland, North Carolina, except the incorporated area of a municipality, unless such municipality has consented to the application and enforcement of this Chapter in its jurisdiction.

Sec. 3-31. Application of ordinance; exceptions.

The provisions of this Article do not apply to:

- (1) A law enforcement dog or guard dog being used by a law enforcement officer or a bona fide professional security guard while in the performance of official duties or professional responsibilities;
- (2) A dog being used in a lawful hunt;
- (3) A dog where the injury or damage inflicted by the dog was sustained by a domestic animal while the dog was working as a hunting dog, herding dog, or predator control dog on the property of, or under control of its owner, and the damage or injury was to a species or a type domestic animal appropriate to the work of the dog; or
- (4) A dog where the injury inflicted by the dog was sustained by a person who at the time of the injury, was tormenting, abusing, or cruelly treating the dog, or had tormented, abused, or cruelly treated the dog, or was committing or attempting to commit a crime.

Sec. 3-32. Reporting requirements.

(a) Reporting required. An owner of a dog that has attacked or bitten a person or domestic animal, a victim of an attack or biting by a dog, the owner of any domestic animal that has been attacked or bitten by a dog, any person witnessing such an attack or biting, a veterinarian treating a domestic animal for such an attack or biting, or a health care professional treating a person for such an attack or biting, shall report the following events to the Animal Control Department within three (3) business days after the event has occurred:

- (1) Any attack or biting by a dog upon any person or domestic animal; or
- (2) The transfer, gift, sale or other conveyance of ownership or possession of a dangerous or

potentially dangerous dog, its confinement in a veterinary facility, its removal from the territorial jurisdiction of the county, or its death.

(b) Report data required. The data required in the report and the format thereof shall be as set forth in administrative procedures established by the Animal Control Director.

Sec. 3-33. Determination that a dog is potentially dangerous; appeals.

(a) Generally. Upon receipt of a report submitted in accordance with subsection 3-32, or upon the receipt of any other complaint, or when he has reasonable suspicion that a dog is potentially dangerous, the Director or his designee shall make a determination whether or not such dog is a potentially dangerous dog. Any determination that a dog is potentially dangerous shall be made in a writing stating the facts relied upon by the Director to make his determination. The written declaration shall be personally delivered to the owner of the subject dog or shall be mailed by certified mail, return receipt requested, to the owner. If the determination is made that the subject dog is potentially dangerous, the written determination shall order compliance with the appropriate provisions of this Article and the Director may impose reasonable conditions to maintain the public health and safety. The Director may pursue such other civil or criminal penalties and remedies as authorized by this Chapter or state law.

(b) If, at any time after the receipt of any report or complaint made pursuant to section 3-32, the Director determines that the conditions under which the subject dog is being kept or confined do not adequately protect the public health or safety, the Director shall require that the subject dog be impounded at the Department's shelter until completion of the investigation and any appeal of the decision of the Director.

(c) Appeals from determinations.

(1) The owner of any dog determined by the Director to be potentially dangerous may appeal the decision of the Director to the Appeal Board within three (3) business days of receiving notice of the determination. Appeal to the Appeal Board may be taken by filing written objections to the Director's determination with the Clerk for the Appeal Board.

(2) The Appeal Board shall schedule and hear such appeal within ten (10) days of the filing of the written objections or at such later time as the appellant consents.

(3) The vote of the Appeal Board shall be taken, and the announcement of its decision shall be made, in an open public meeting. A written statement of the decision of the Appeal Board shall be delivered to the Director and the appellant. The notice shall be sent by certified mail, return receipt requested, and filed concurrently with the Director and the Cumberland County Attorney.

(d) An appeal hearing before the Appeal Board shall be conducted as follows:

(1) The hearing shall be subject to the Open Meetings Law, and the required notice shall be posted and given as applicable;

(2) The Chairperson of the Appeal Board shall preside at the hearing;

(3) The Director shall be represented by the County Attorney;

(4) The County Attorney shall present the Director's case;

- (5) The appellant may be represented by an attorney;
 - (6) The Director and the appellant may make any statements, present any evidence, or offer any witnesses on their behalf, on any relevant issue;
 - (7) The Chairperson of the Appeal Board shall rule on the admissibility of any evidence and on any procedural issues that might arise;
 - (8) The Director and the appellant shall be entitled to cross-examine any witnesses;
 - (9) The hearing shall be quasi-judicial in nature and all testimony shall be under oath;
 - (10) The appellant shall be entitled to obtain a transcript of the proceeding at his own cost;
 - (11) the Appeal Board shall announce its decision at an open meeting and render it in writing as expeditiously as possible at or following the hearing. Its decision shall contain findings of fact and conclusions in support of its decision.
- (e) The purpose of the hearing before the Appeal Board shall be to determine whether or not the determination of the Director is in the best interests of the public health, safety and welfare.
- (f) The function of the Appeal Board shall be to affirm, reverse, or modify the determination of the Director which has been appealed. Any conditions imposed by the Appeal Board shall be reasonable, relevant to the issues in the matter, and have the effect of promoting the public health, safety and welfare.
- (g) The hearing shall be administrative in nature and the decision of the Appeal Board shall be final

Sec. 3-34. Registration required.

(a) Generally. Any person owning a dangerous dog as defined by this Chapter or Chapter 67 of the General Statutes, shall register such dog with the Animal Control Department within five (5) days of such event which established the dog to be dangerous or may, in lieu of any hearing, register such dog voluntarily, which shall constitute an admission and final determination that the dog is dangerous.

(b) Permanent identification mark required. Each dog registered pursuant to this section shall be assigned a registration number by the Animal Control Department, which shall be affixed to the dog by permanent chip implant, at the expense of its owner. No person shall remove such identification once it is assigned and affixed.

Sec. 3-35. Permit required.

(a) Generally. After registration of a dangerous dog or after a final determination that such dog is potentially dangerous in accordance with this Chapter or Chapter 67 of the General Statutes, no person shall own such dog thereafter within the territorial jurisdiction of this Chapter without applying for and obtaining a permit from the Animal Control Department.

(b) Issuance of permit. The Animal Control Department shall issue a permit for a dangerous dog only upon submission of a complete, verified application, payment of the permit fee and a finding by the Director or his designee that:

- (1) The required conditions for keeping and housing the dog and other public health and

safety protective measures are in effect, and

- (2) The dog for which a permit is issued does not pose an unreasonable threat to the public health, safety and general welfare if the owner shall comply with the provisions of this Article and the conditions of the permit.

(c) Issuance of a permit shall be conditioned on continued compliance with the provisions of this Article and other provisions of state law, on continued compliance with and maintenance of the conditions for housing the dog and public safety set forth in the permit, and any special conditions the Director may deem reasonably necessary to protect the public health, safety and welfare in view of the particular circumstances and history of the dog for which the permit is issued.

(d) Temporary permits. Following the registration of a dangerous dog or the impoundment of a dog declared to be potentially dangerous, upon application therefore and for good cause, the Director may issue a temporary permit allowing the owner of a registered dangerous dog or a dog declared to be potentially dangerous to retain possession of such dog or to confine such dog at a veterinary facility or kennel approved by the Director. The Director may also issue a temporary permit to allow the transport of a dangerous or potentially dangerous dog from the territorial jurisdiction of this Chapter. A temporary permit shall be issued subject to the same conditions to which a regular permit is subject and to any other conditions the Director may deem necessary to protect the public health, safety and welfare consistent with the provisions of this Article. A temporary permit shall be valid only until the earlier of its expiration, revocation or the issuance or denial of a permit under the provisions of this section.

(e) Term of permits and renewal thereof. No permit shall be issued under this section for a term of more than three (3) years but may, in the Director's discretion, be issued for a shorter period. Permits must be renewed, subject to the same terms and conditions required for initial permits.

(f) Revocation of permits. The Director may, upon notice and hearing and for good cause shown, revoke any permit or modify any terms, conditions or provisions thereof. If the Director deems it necessary to protect the public health or safety from any imminent threat or danger thereto, he may, without hearing, suspend any permit or any portion thereof for not more than thirty (30) days. Good cause for revocation or modification of a permit shall include, without limitation, violation of or failure to comply with any provision of this Article or with any term, condition or provision of a permit.

(g) Inspections. The Director shall cause periodic inspections to be made of the premises of the owner of a permitted dangerous or potentially dangerous dog to assure compliance with the provisions of this Article and the applicable permit.

(h) Insurance. Every person owning a dangerous dog, as determined in accordance with this Article or Chapter 67 of the General Statutes, shall purchase and maintain a policy of liability insurance covering any injury or property damage caused by the dog. Minimum policy limits shall be Two Hundred Thousand Dollars (\$200,000.00) for personal injury or property damage, per occurrence. Such owner shall cause a certificate or declaration of insurance to be furnished to the Director annually. Every

calendar day that the required insurance is not in full force and effect shall constitute a violation of this Article.

Sec. 3-36. Regulation of dangerous dogs; security and restraint requirements.

No person shall own a dangerous dog except in compliance with all provisions of this Article, including the following regulations:

- (1) While on the real property of its owner, such dog shall be kept, secured and restrained as

follows:

- (a) In a building with doors, windows and other exits securely fastened shut and under the supervision and control of a responsible, capable adult person; or
 - (b) Securely kept in a locked enclosure which has secure sides, top and bottom and is constructed out of materials and in a manner which will preclude escape by the dog and prevent entry by small children; or
 - (c) While outside a building or enclosure described above, securely leashed with a leash no longer than four (4) feet in length in the hands of and under the control of a responsible competent person capable of such control and muzzled by a muzzling device sufficient to prevent such dog from biting persons or other animals.
- (2) Such dog shall only be removed from the real property of its owner as follows:
- (a) For transportation to and from a veterinarian or the Department's shelter; or
 - (b) For its permanent removal from the territorial jurisdiction of this Chapter; or
 - (c) To provide bona fide exercise necessary for its continued good health.
- (3) While off its owner's real property such dog shall be securely leashed with a leash no longer than four (4) feet in length in the hands of and under the control of a responsible competent person capable of such control and muzzled by a muzzling device sufficient to prevent such dog from biting persons or other animals.
- (4) Notwithstanding the foregoing, no person shall own a dangerous dog that has killed a person, except in the care and custody of a veterinarian for the purposes of treatment or quarantine; or in the custody of the Department's shelter pending disposition in accordance with the provisions of this Chapter, the Department's policies, or the order of any court.
- (5) Signage. The owner of a dangerous dog shall erect a sign with dimensions of at least 2' x 2' on the enclosure housing such dog which shall read:

BEWARE OF DOG
THIS DOG IS DANGEROUS
STAY AWAY!

Sec. 3-37. Impoundment of dangerous dogs.

(a) Apprehension and surrender. Upon an initial determination of a dog as potentially dangerous or upon registration of a dog to be dangerous, or if the Director has reasonable suspicion to believe that a dangerous, or potentially dangerous dog is being kept or harbored within the territorial jurisdiction of this Chapter in violation of it or of a permit issued hereunder, Animal Control Officers and law enforcement officers of Cumberland County and of any municipality subject to this Chapter shall impound such dog. It shall be a violation of this Article to fail or refuse to surrender such dog to such officers upon their lawful demand. The officer impounding such a dog shall deliver the same to the Department's shelter.

- (b) Surrender. Hiding, removing or failing to surrender a dangerous or potentially dangerous

dog, or impeding any investigation concerning the same shall be a violation of this Article.

(c) **Confinement.** A dog impounded by or surrendered to an Animal Control Officer or law enforcement officer as provided herein shall be confined in the Department's shelter or, upon request of the owner hereunder, and at such person's expense, at a private veterinary facility or kennel approved by the Director, subject to the following conditions:

- (1) **Costs of impoundment.** Impoundment shall be at the expense of the owner of the dog. Costs of impoundment at the Department's shelter shall be paid by the person liable therefore at the daily rate. The costs of impoundment at a veterinary facility or kennel shall be paid by the person liable therefore pursuant to the terms of the agreement between such person and the proprietor of such facility or kennel. In no event shall Cumberland County or any municipality subject to this Chapter be liable for or pay for impoundment at such private facility or kennel.
- (2) **Release from impoundment.** No such dog shall be released from impoundment as provided herein except upon registration of such dog and issuance of a permit or temporary permit allowing such release. No such dog shall be released from the Department's shelter until costs of confinement of such dog, any registration and permit fees for such dog, and any civil penalties assessed in connection with such dog have been paid in full.
- (3) **Disposition of unclaimed or abandoned dogs.** The following dogs impounded at the Department's shelter pursuant to this Article shall be deemed abandoned and shall be disposed of in accordance with the provisions of this Chapter and the rules and regulations of the Department:
 - (a) Any dog which remains unclaimed by its owner for a period more than ten (10) days or a period of lawful quarantine, whichever is longer; and
 - (b) Any dog claimed by its owner which is confined for a period in excess of ten (10) days, or a period of lawful quarantine, whichever is longer, during which no application has been made for a permit or temporary permit; provided, however, the Director shall extend such time upon a showing of justifiable delay in such action by the owner.

Sec. 3-38. Violations, penalties and other remedies.

(a) **Violations.** Each act or conduct prohibited by this Article and each failure to comply with a mandatory provision hereby and each day's continuing failure to comply shall constitute a separate and distinct offense.

- (b) **State law violations.**
 - (1) Nothing in this Chapter shall be constructed to prevent an Animal Control Officer or any other person from pursuing remedies under Chapter 67, Article 1A, of the North Carolina General Statutes.
 - (2) The Director or his designee is designated as the person responsible for making the determination required under Section 67-4.1(c) of the North Carolina General Statutes. In making such determinations, the Director or his designee shall follow the procedure set forth in this Article.

- (3) The Dangerous Dog Appeal Board is designated as the appellate board to hear appeals of determinations made pursuant to N.C.G.S., Section 67-4.1(c).

Sec. 3-39. Administrative provisions.

(a) Responsibility. The Director shall administer and enforce this Article and shall promulgate rules and regulations for such administration and enforcement as may be necessary or desirable to such end.

(b) Authority to enter upon premises. Animal Control Officers shall have authority to enter into and inspect any premises, dwellings, rooming units, barns and other outbuildings, any part of the curtilage thereof, or any yard or other enclosure to:

- (1) Conduct any investigation of a dog alleged or suspected of being potentially dangerous or dangerous, or
- (2) Apprehend a dog determined to be potentially dangerous or dangerous or as to which there is reasonable suspicion to believe is potentially dangerous or dangerous, or
- (3) Investigate any violation of this Article, or
- (4) Serve a citation upon a person for violation of this Article.

(c) Notwithstanding the foregoing, an Animal Control Officer shall only make such entry upon consent, pursuant to an administrative search warrant under G.S. 15-27.2, or otherwise as authorized by law.

(d) Authority to immobilize or kill a dangerous or potentially dangerous dog.

- (1) If in the course of investigating, apprehending or otherwise taking custody of a potentially dangerous or dangerous dog, or a dog as to which there is reasonable suspicion to believe is potentially dangerous or dangerous, such dog is not securely restrained and an Animal Control Officer or a law enforcement officer has reasonable cause to believe the dog poses an imminent risk of serious physical injury or death to any person or domestic animal, said officer shall have authority to render such dog immobile by means of tranquilizers or other safe drugs or, if that is not safely or timely possible under the circumstances, then the officer may humanely dispose of said dog.
- (2) If a potentially dangerous or dangerous dog impounded in the Department's shelter cannot be cared for or handled without risk of serious physical injury or death to persons caring for or handling such dog or to other animals, the Department shall render such dog immobile by means of tranquilizers or other safe drugs or, if that is not safely or timely possible under the circumstances, then the Department may humanely dispose of said dog.
- (3) The Animal Control Department may humanely dispose of any dog being investigated under the provisions of this Article at the request of or with the consent of its owner.

ARTICLE IV. RABIES CONTROL AND ANIMAL BITES

Sec. 3-40. Rabies control.

- (a) Enforcement authority. The Animal Control Director and the Cumberland County Health Director are authorized to enforce the rabies control provisions in Part 6 of Chapter 130A of the North Carolina General Statutes and are further authorized to implement any reasonable administrative procedures necessary to enforce this state law locally.
- (b) Impoundment term. The impoundment period for animals held pursuant to this section shall be seventy-two (72) hours, excluding Sundays and legal holidays.
- (c) Compliance with rabies law. It shall be unlawful for any animal owner or other person to fail to comply with the state laws relating to the control of rabies.
- (d) Provisions supplementary to state law. It is the purpose of this section to supplement the state laws by providing a procedure for the enforcement of state laws relating to rabies control, in addition to the criminal penalties provided by the state law.
- (e) Vaccination required. It shall be unlawful for an owner or keeper to fail to provide current vaccination against rabies (hydrophobia) for any dog or cat four (4) months of age or older. Should the County Health Director deem it necessary that other pets be vaccinated in order to prevent a threatened rabies epidemic or control an existing rabies epidemic, it shall be unlawful for an owner or keeper to fail to provide vaccination for that pet.
- (f) Vaccination schedule. A rabies vaccination shall be deemed current for a dog or cat if the first two (2) doses of vaccine are administered twelve (12) months apart and each subsequent booster dose of vaccine is administered according to the manufacturer's recommended schedule.
- (g) Persons to administer. All rabies vaccines shall be administered by a licensed veterinarian or a certified rabies vaccinator.
- (h) Owner or keeper to be issued rabies tag. Upon vaccination pursuant to this section, the owner or keeper of the dog or cat that has been vaccinated shall be issued a rabies tag stamped with a number and the yard for which issued and a rabies vaccination certificate.
- (i) Unlawful for dog or cat not to wear rabies tag. It shall be unlawful for any dog or cat owner or keeper to fail to provide the dog or cat with a collar or harness to which a current rabies tag issued under this section is securely attached. The collar or harness, with the attached tag, must be worn at all times the animal is off its owner's property.
- (j) Untagged dog or cat subject to impoundment. In addition to all other penalties prescribed by law, a dog or cat may immediately be impounded in accordance with the provisions of this section if it is found off its owner's or keeper's property not wearing a currently valid rabies tag.
- (k) Unlawful to switch rabies tag. It shall be unlawful for any person to use for any animal a rabies vaccination tag issued for an animal other than the one assigned the tag.
- (l) Dogs or cats brought into County. All dogs or cats shipped or otherwise brought into the territorial jurisdiction of this Chapter, except for exhibition purposes where the dogs or cats are confined and not permitted to run at large, shall be securely confined and vaccinated within one (1) week after entry, and shall remain confined for two (2) additional weeks after vaccination, unless accompanied by a certificate issued by a licensed veterinarian showing the dog or cat is apparently free from rabies and has

not been exposed to rabies and that the dog or cat has received a proper dose of rabies vaccine not more than six (6) months prior to the date of issuing the certificate.

(m) Animals exposed to rabies.

(1) If the Animal Control Director determines that an animal has not been vaccinated against rabies at least twenty-eight (28) days prior to being exposed to rabies from a suspected rabid animal, the animal shall be immediately euthanized unless the owner or keeper agrees to strict isolation of the animal at a veterinary hospital for a period of six (6) months at the owner's or keeper's expense.

(2) If the Animal Control Director determines that an animal with a current rabies vaccination has been exposed to rabies from a suspected rabid animal, it shall be revaccinated and returned to the owner or keeper who shall be responsible for the cost of the rabies vaccination.

(n) Health Director may declare quarantine. When reports indicate a positive diagnosis of rabies, to the extent that the lives of persons are endangered, the County Health Director may declare a county-wide quarantine for such period of time as he deems necessary. Once such emergency quarantine is declared, no dog or cat may be taken or shipped from the county without written permission of the County Health Director. During such quarantine, the County Health Director, the Animal Control Director, law enforcement officers, or other persons duly authorized by the County Health Director or Animal Control Director may seize and impound any dog or cat running at large in the county. During the quarantine period the County Health Director shall be empowered to provide for a program of mass immunization by the establishment of temporary emergency rabies vaccination facilities strategically located throughout the county. If additional confirmed cases of rabies occur during the quarantine period, the County Health Director in his discretion may extend the quarantine period.

(o) Carcass to be surrendered to Health Department. The carcass of any animal suspected of dying of rabies, or dying while under observation for rabies, shall be submitted to the County Health Department for the implementation of appropriate diagnostic procedures

(p) Unlawful to kill or release animal under observation. It shall be unlawful for any person to kill or release any animal under observation for rabies, any animal under observation for biting a human, or to remove such animal from the county without written permission from the County Health Director, provided that a licensed veterinarian or the County Health Director or other person duly authorized by the County Health Director, may authorize any animal to be killed for rabies diagnosis.

(q) Unlawful to fail to surrender animal. It shall be unlawful for any person to fail or refuse to surrender any animal for confinement or destruction as required in this Article, when demand is made therefore by the County Health Director, the Animal Control Director or any law enforcement officer.

(r) Unlawful to fail to provide proof of vaccination. It shall be unlawful for any person to fail or refuse to provide proof of rabies vaccination for any animal that they own or control when request is made therefore by the Animal Control Director or his designee, the County Health Director or his designee, or any sworn law enforcement officer.

(s) Animals subject to impoundment. Any animal which appears to be lost, stray, unwanted, not wearing a currently valid tax tag or a currently valid rabies vaccination tag as required by state law or this section, or not under restraint in violation of this Chapter, may be seized, impounded and confined in a humane manner in the Department's shelter. Any dog or cat that has bitten or scratched a human must be quarantined for ten (10) days, either at the home of its owner or keeper, if an Animal Control Officer determines that the public health and safety shall be reasonably maintained by such quarantine, or

otherwise in the Department's shelter or in a veterinary hospital at such owner's or keeper's expense. If such dog or cat is quarantined at the home of its owner or keeper and escapes, any Animal Control Officer shall impound such dog or cat at the Department's shelter for ten (10) days.

(t) Owner liable. Impoundment of such animal shall not relieve the owner/keeper thereof from any penalty which may be imposed for violation of this section.

(u) The County Health Director shall direct the disposition of any animal found to be infected with rabies.

Sec. 3-41. Reports of bite cases; report by veterinarian.

(a) Every physician, veterinarian or health care provider shall report to the Animal Control Director the names and addresses of persons treated for bites and scratches inflicted by animals that break the skin, together with such other information as will be helpful in rabies control.

(b) Every licensed veterinarian shall report to the Animal Control Director his diagnosis of any animal observed by him to be a suspect rabid animal.

Sec. 3-42. Records.

The Animal Control Director shall keep or cause to be kept:

- (1) an accurate and detailed record of the licensing, impounding and disposition of all live animals, fowl and domestic birds coming into his custody and any dead dogs or cats picked up that possess rabies tags or county license; and
- (2) an accurate and detailed record of all bite cases reported to him, with a complete report of the investigation or disposition of each case.

Sec. 3-43 Interference.

No person shall interfere with, hinder, delay or obstruct any Animal Control Officer or authorized representative of the county in the performance of any duty under this Article or seek to release any animal in the custody of the Animal Control Department or its shelter impounded pursuant to this Article, except as provided by law.

Sec. 3-44 through Sec. 3-49. Reserved.

ARTICLE V. LICENSING OF DOGS AND CATS

Sec. 3-50. License for dogs and cats.

It shall be unlawful for any person to own, possess or have under his control any dogs or cats, or any combination thereof, over four (4) months of age, without obtaining an annual privilege license for each such animal from the Cumberland County Tax Administrator. Every person owning, possessing or having under their control any dog or cat shall properly list such dog or cat annually with the Cumberland County Tax Administrator during the month of January to obtain a county license. Failure to list as provided herein shall be a violation of this Article and shall subject the offender to a civil penalty in the amount of \$100.00 per dog or cat not listed annually as provided herein. Each privilege license issued shall be for a calendar year. The Tax Administrator may delegate authority to issue such licenses to the

Animal Control Department or to licensed veterinarians within the County duly registered for such purpose with the Tax Administrator upon such terms and conditions, including payment of a processing fee, as he deems advisable.

Sec. 3-51. Terms of license; exemption.

- (a) The license issued under this Article shall be renewed every year, upon proof of rabies vaccination.
- (b) County residents who are sixty-five (65) years of age or older may obtain a permanent license for up to three cats or dogs, or any combination thereof, at no cost. County residents may obtain a permanent license at no cost for a bona fide seeing-eye or aid dog.

Sec. 3-52. Issuance of records.

- (a) Upon issuance of a license, a tag shall be issued for each dog and cat so licensed. The tag shall be of durable material and shall be designed to be easily fastened or riveted to the animal's collar or harness. The tag shall bear a number registered with the Tax Administrator or the Animal Control Department.
- (b) The Tax Administrator shall maintain records of licensed dogs and cats and such records shall be open to public inspection.

Sec. 3-53. Fastening of tags to collar or harness.

Each person who owns or maintains a dog or cat that is primarily kept, kenneled or otherwise located in the county shall affix to such dog or cat the following identification:

- (1) a durable tag securely affixed to a collar or harness which is securely buckled or otherwise securely joined so that it cannot be removed unless unbuckled; the tag shall contain the name and address of the owner of the dog or cat or a number registered with the Animal Control Department; or
- (2) an implanted computer chip capable of being scanned by a chip reader.

Sec. 3-54. License fee in addition to other fees.

The privilege license fee shall be in addition to any fee in the fee schedule under this Chapter.

Sec. 3-55. Use of revenues collected from license fees.

The revenues collected for the licensing or adoption of dogs and cats shall be specifically expended for physical improvements to the animal shelter or the equipment of the Animal Control Department, for the cost of administration and enforcement of this Chapter, and for costs associated with public education programs and activities.

Sec. 3-56. Transfer of cats and dogs.

- (a) When ownership of a dog or cat is transferred within the county's jurisdiction, the new owner will have thirty days to obtain a new privilege license for the animal.
- (b) When ownership of a dog which has been declared dangerous or potentially dangerous under Article III of this Chapter is transferred within the county's jurisdiction, the previous owner shall

within three (3) business days notify the Animal Control Department and provide the name and address of the new owner. The new owner shall:

- (1) Immediately register the dog with the Animal Control Department; and
- (2) Insure that the requirements of this Chapter for maintaining a dangerous or potentially dangerous dog are complied with prior to the dog being relocated to the new owner's property.

Sec. 3-57. Non-applicability of Article.

The provisions of this Article shall not apply to cats or dogs in the custody of a veterinarian, or whose owners are non-residents visiting in the county for a period not exceeding thirty (30) consecutive days.

Sec. 3-58 - 3-59. Reserved.

ARTICLE VI. INJURED ANIMAL STABILIZATION FUND

Sec. 3-60. Control of injured animals; stabilization fund.

(a) Any Animal Control Officer or law enforcement officer is authorized to take possession of any seriously injured dog, cat, wildlife, livestock, bird or other animal which has suffered a painful and potentially mortal injury and which is found in any location open or accessible to the public, any public or private vehicular right of way, or apparently off the property of its owner. Any such animal which does not have a current rabies tag or identification tag shall be conclusively presumed abandoned for purposes of this Article.

(b) Any Animal Control Officer or law enforcement officer finding any such animal shall make reasonable efforts to locate the owner of any such animal. If the owner is promptly located, the owner shall immediately seek veterinary care of the animal or shall authorize such officer to humanely euthanize such animal. If the owner cannot be promptly located or contacted, the Animal Control Officer or law enforcement officer is authorized, in his or her discretion, to humanely euthanize such animal in an emergency situation where safe, humane transport of the animal is not possible, or promptly transport such animal to a veterinarian participating in the Injured Animal Stabilization Fund for stabilization of such animal's injuries. Every owner of any animal so found shall conclusively be presumed to have irrevocably appointed any such officer, or veterinarian participating in the Injured Animal Stabilization Fund, his or her authorized agent for any purposes under this Article. Every such owner also shall be deemed to have released any officer, or veterinarian participating in the Injured Animal Stabilization Fund, from any cause of action or claim arising out of or related to any action such officer or veterinarian may take under this Article, except for actions which constitute gross negligence.

(c) Each Animal Control Officer or law enforcement officer acting under this Article shall within a reasonable time report to the Animal Control Director the nature and extent of the injuries of each such animal and the disposition thereof. The Animal Control Department shall maintain a record of the nature and extent of each such animal's injuries and of the disposition thereof.

(d) There is hereby established the Cumberland County Injured Animal Stabilization Fund, to which contributions, grants, donations, or restitution may be made for the purpose of reimbursing veterinarians agreeing to participate with the Fund in stabilizing the injuries of injured animals transported to them for stabilization under this Article. The Director may solicit or raise funds for the

Fund. The Fund shall be administered by a committee which shall include the Cumberland County Finance Officer or his or her designee and a veterinarian designated by the Cumberland County Animal Control Board. Funds shall be disbursed from the Fund by the Finance Officer under guidelines established by the committee.

(e) Any Animal Control Officer or law enforcement officer, or any veterinarian to which an injured animal may be transported under this Article for stabilization of injuries, shall be deemed to be an authorized agent of and acting on behalf of Cumberland County and its Animal Control Department pursuant to the authority of this Article. Any such officer or veterinarian acting pursuant to this Article shall be entitled to all the defenses, immunities and rights afforded by law or available to Cumberland County and its officers, employees or agents.

(f) If any owner of an animal transported under this section to a veterinarian participating in the Injured Animal Stabilization Fund shall subsequently be identified by the Animal Control Department, he or she shall make restitution to the Fund of the amount disbursed by it to the participating veterinarian.

Sec. 3-61 through Sec. 3-69. Reserved.

ARTICLE VII. MISCELLANEOUS.

Sec. 3-70. Keeping chickens or rabbits - Sanitation requirements.

It shall be unlawful to keep, house or pen chickens or rabbits on premises which fail to meet sanitary standards established by the Cumberland County Board of Health.

Sec. 3-71. Stables to be kept clean.

Every stable or other place where cattle, horses or animals are kept shall be maintained at all times in a clean and healthful condition.

Sec. 3-72. Grazing animals.

It shall be unlawful for any owner or keeper to stake or graze any cow, horse or other animal in any park, cemetery or other public place or near any public sidewalk. This section shall not apply to horses used by any law enforcement agency for mounted patrol.

Sec. 3-73. Disposition of dead animals.

The owner of any animal dying from any cause within the jurisdiction of the county shall cause the same to promptly be buried in a sanitary manner within 24 hours after such owner has knowledge of such death.

Sec. 3-74. Selling live animals in public rights of way and other public property prohibited.

It is unlawful to sell, auction, trade, barter, and display for commercial purposes or give away any live animal within the right of way of any public highway, public vehicular area, public sidewalk, public property or street within Cumberland County. The Animal Control Department may immediately take custody of and impound any live animals found being sold in violation of this section. This section shall not apply to any animal welfare organization or humane society qualified under Section 501(c)(3) of the Internal Revenue Code acting pursuant to a permit issued by the Animal Control Director, which

permit may be conditioned on reasonable conditions to assure the health, welfare and safety of the animals being sold, auctioned, traded, bartered, displayed or given away.

Sec. 3-75. Provisions only applicable within the corporate limits of any municipality in which this ordinance is applied.

(a) No hogs shall be kept within the corporate limits of any municipality in which this ordinance is applied.

(b) No horse, mule, pony, cow or goat shall be stabled or housed within one hundred (100) feet of any dwelling house, school, church or eating establishment within the corporate limits of any municipality in which this ordinance is applied.

(c) No more than ten (10) chickens or rabbits shall be kept, housed or penned at a dwelling or on the lot on which such dwelling is located within the corporate limits of any municipality in which this ordinance is applied.

(e) No cow, horse or other animal shall be tethered or permitted to graze or stand within thirty (30) feet of any wall, or within fifty (50) feet of the front door, of any residence within the corporate limits of any municipality in which this ordinance is applied. This subsection shall not apply to horses used by any law enforcement agency for mounted patrol.

Sec. 3-76 through Sec. 3-79. Reserved.

ARTICLE VIII. ENFORCEMENT.

Sec. 3-80. Enforcement, generally.

(a) The primary responsibility for the enforcement of this Chapter shall be vested in the Animal Control Department.

(b) Any person authorized to enforce this Chapter may do so by issuing a notice of violation or civil penalty citation, or by applying to the General Court of Justice for a temporary restraining order, a preliminary injunction, a permanent injunction or an order to abate a nuisance, as may be appropriate in the circumstances.

(c) Upon information made known to or complaint lodged with the Animal Control Department that any owner, possessor, or custodian of any dog or animal is in violation of this Chapter, an Animal Control Officer may investigate the complaint to determine whether to issue a notice of violation (civil citation) requiring the owner, possessor or custodian of the dog or animal to pay the stated civil penalty and abate the nuisance specified or whether to take such other enforcement action as may be authorized under this Chapter.

(d) If the owner, possessor or custodian of any dog or animal is not known and the dog or animal is upon the public streets, alleys, sidewalks, school grounds or other public places or premises, or another's property without that property owner's permission, in violation of this Chapter, the dog or animal shall be impounded in the animal shelter.

(e) Any decision of the Animal Control Director or his designee to seize or impound any animal, other than a decision made pursuant to the provisions of Article III, may be appealed to the Animal Control Board for review and final decision upon the owner or keeper of such seized or

impounded animal giving written notice of appeal within three business days of receiving notice of the Director's decision. The Animal Control Board shall afford the opportunity for a hearing to any person giving notice of appeal and shall conduct the hearing for the purpose of either affirming, reversing, or modifying the decision of the Director.

Sec. 3-81. Penalties for violations.

(a) Any violation of this Chapter shall subject the offender to a civil penalty to be recovered by the Animal Control Department in a civil action in the nature of a debt, to include the cost of abating a public nuisance. Any costs of abatement and civil penalties shall be paid within seven days of issuance of a notice of violation. Each day's continuing violation shall be a separate and distinct offense.

(b) A notice of violation shall specify the nature of the violation and the sections of this Chapter violated, and further notify the offender that the civil penalty specified therein shall be paid to the Animal Control Director at the animal shelter within seven days.

(c) Unless otherwise provided in this Chapter, the civil penalty for a violation of this Chapter, shall be \$100 for a first violation or for a violation more than 12 months after a previous violation. For subsequent violations within twelve (12) months of a previous violation, the penalty shall be \$200 for a second violation and \$300 for a third or subsequent violation within a twelve-month period of the first violation.

(d) In addition to the civil penalties prescribed in this section, any violation of this Chapter, also designated as Chapter 3 of the Cumberland County Code, shall also constitute a Class 3 misdemeanor punishable by a fine of not more than \$100 and imprisonment of not more than 20 days.

Sec. 3-82. Severability.

(a) If any section, sentence, clause or phase of this Chapter is, for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Chapter.

(b) The Board of Commissioners intends, and it hereby ordains, that the provisions of this ordinance shall become and be made part of the Code of Ordinances of Cumberland County, North Carolina, and the sections may be renumbered to accomplish such intention.

(c) This ordinance shall become effective upon final adoption as by law provided.

Ordinance adopted at the regular meeting of the Board of Commissioners held
_____, 2012.

Sec. 3-75 Provisions only applicable within the corporate limits of any municipality in which this ordinance is applied.

- (a) No hogs, pigs, swine, or animals of the porcine family shall be kept within the corporate limits of any municipality in which this ordinance is applied.
- (b) No horse, mule, pony, cow, or goat shall be stabled or housed within one hundred (100) feet of any dwelling house, school, church, or eating establishment within the corporate limits of any municipality in which this ordinance is applied.
- (c) No more than ten (10) chickens or rabbits shall be kept, housed, or penned at a dwelling or on the lot on which such dwelling is located within the corporate limits of any municipality in which this ordinance is applied.
- (e) No cow, horse, or other animal shall be tethered or permitted to graze or stand within thirty (30) feet of any wall, or within fifty (50) feet of the front door, of any residence within the corporate limits of any municipality in which this ordinance is applied. This subsection shall not apply to horses used by any law enforcement agency for mounted patrol.
- (f) For the purpose of Sec. 3-15 of this ordinance, “nuisance” also includes the habitual accumulation of animal feces on the owner’s property in locations or amounts that produce odors that can be perceived from adjoining properties, within the corporate limits of any municipality in which this ordinance is applied.
- (g) No more than three (3) un-spayed or un-neutered dogs or cats or combination of dogs or cats more than five (5) months of age may be owned, possessed, kept, harbored, or maintained at any premises within the corporate limits of any municipality in which this ordinance is applied.
- (h) For the purpose of Sec. 3-36(5) of this ordinance, the owner of a dangerous dog shall erect a sign with the dimensions provided in that section, unless municipal sign regulations provide more stringent requirements for such warning signs in terms of size, height, and placement, within the corporate limits of any municipality in which this ordinance is applied.
- (i) For the purpose of Sec. 3-70 of this ordinance, it shall be unlawful to keep, house, or pen chickens or rabbits on premises which fail to meet sanitary standards established by the Cumberland County Board of Health or the code enforcement department of any municipality within the corporate limits in which this ordinance is applied.

CITY COUNCIL ACTION MEMO

TO: Mayor & Members of City Council
FROM: Doug Hewett, Assistant City Manager
DATE: February 6, 2012
RE: **R.A.M.P. - Rental Action Management Program**

THE QUESTION:

Do the modifications to the RAMP ordinance and program meet City Council's interest to better regulate problem residential rental properties?

RELATIONSHIP TO STRATEGIC PLAN:

Supports city goal #2: Growing City, Livable Neighborhoods - A great place to live. This issue was also a target for action in last fiscal year's strategic plan.

BACKGROUND:

On April 26, 2011, the City Council adopted a Probationary Rental Occupancy Permit (PROP) program. This program was 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 have required 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 have allowed 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 had 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 an update on October 3 with a draft ordinance for PROP II, now titled RAMP (Rental Action Management Program). In developing the draft ordinance and program overview, staff met several times with counterparts in Charlotte regarding their program to determine how to replicate it in Fayetteville. Additionally, staff conducted 5 stakeholder meetings to explain RAMP and solicit feedback.

Staff provided another update to City Council on November 7 with a recommendation that a public hearing be held on Monday, December 12 to allow interested stakeholders an opportunity to

address Council directly.

City Council conducted the public hearing on December 12, 2011 to receive feedback directly from interested stakeholders. A total of 19 speakers addressed City Council on the ordinance and program design.

On January 9, 2012 staff presented a finalized version of RAMP to the City Council for consideration. City Council deferred action and requested staff research several options to address stakeholder concerns.

The attached revisions to the RAMP ordinance address several stakeholder concerns while still providing a comprehensive approach to deal with problem residential property in Fayetteville.

ISSUES:

Proposed RAMP Ordinance and Program Modifications

Based upon feedback from City Council and stakeholders, staff proposes the following modifications to the original RAMP ordinance:

1. Add a definition for Apartment house/Apartment Complex.
2. Changed the definition of "Residential Rental Property" to include single family homes, duplexes and triplexes but specifically exempt apartments.
3. Added Section 14-78, which gives Council the ability to add a property to the RAMP program by ordinance. Problem apartments complexes could be added to RAMP following Council action.
4. Removed the property categories and references to the same.
5. Added provision specifying that if a property is determined not to meet the Disorder Threshold, registration is not required. Also added that the registration fee will not be deposited for ten days (the appeal period) or longer if it is actually appealed.
6. Changed the appellate process to allow for appeals of the Police Official's decision to require the property to register as well as any decision to revoke registration. This appeal addresses the Police decision but not the code violation decision. There is an appellate process already in place for code violations so it seemed unnecessary to allow an appeal of a decision to include a property in RAMP due to code violations. The right to appeal does however still exist for those properties that have their registration revoked due to an additional code violation. Also included is a standard required showing that must be met in order for the Board to uphold the decision of the staff.

Resource Needs by Department and Implementation Schedule

Code Violations – Development Services

- 1.0 code enforcement officer
- 0.5 office assistant

Months 1-9

1. Data collection and observation
2. June 2012 begin hiring process for code enforcement officer, effective date of hire July 1, 2012.
3. Run 1st batch of reports to determine if any properties have 3+ code enforcement violations in October 2012 – (July-September 2012).
4. Run 2nd batch of reports to determine if any properties have 3+ code enforcement violations in January 2013– (October-December 2012).

Months 9-12

1. January 2013 begin hiring process for .5 office assistant
2. Run 3rd batch of reports to determine if any properties have 3+ code enforcement violations in April 2013 – (January-March 2013).
3. Run 4th batch of reports to determine if any properties have 3+ code enforcement violations in July 2013 – (April-June 2013).

Crime – Police

- 1 sworn officer
- 2 crime analysts

Months 1-6:

1. June 2012 begin hiring process for all staff.
2. Identification of residential rental properties
3. Identification of tracking software to be used for monitoring properties in RAMP
4. Development of the Remedial Action Manual

Months 7-12:

1. January 2013 ,official tally of data gathered thus far to identify the top 10% residential rental properties eligible for entry into the program – focusing on the top 8% primarily
2. Set up the mandatory meetings with those in the top 8% to enroll them in RAMP
3. Send out courtesy warning letters to those property owners that have been identified as being in the top 8%-10% that won't be enrolled in RAMP

BUDGET IMPACT:

Given the modifications proposed for the RAMP Ordinance and program, staff believes that one of the sworn police positions can be eliminated. Once up and running, staff may request an additional position based upon work load.

OPTIONS:

As this is a work session, no action is required. Based upon the direction of City Council, staff will ready RAMP for possible Council adoption at the February 27 City Council meeting.

RECOMMENDED ACTION:

Provide direction to staff.

ATTACHMENTS:

RAMP Ordinance 06Feb2012

Top 10% Calculations

RAMPbudget_06Feb2012

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 residential rental action management 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 "Rental Action Management Program", to read as follows:

"ARTICLE V. Rental Action Management 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 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:

Apartment House or Apartment Complex: Any dwelling containing three (3) or more *dwelling units*, as defined by Chapter 14, Section 14-5 of the Fayetteville Code of Ordinances.

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: Incidents of criminal activity occurring on or in a Residential Rental Property as categorized in this Ordinance entitled "Appendix A."

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 incidents is multiplied by an assigned number as designated in Appendix A of this Ordinance.

Disorder Risk Threshold: The Disorder Activity Count for the Residential Rental Property that is at the 90th percentile of Residential Rental Properties.

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.

Incident: The occurrence of a criminal activity on or in a Residential Rental Property as categorized in this Ordinance for which a police report is generated.

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 for use by residential tenants including but not limited to the following: single-family stand alone homes, duplexes, triplexes, mobile homes, mobile home spaces, townhomes, and condominium unit(s). A single-family rental dwelling unit is hereby defined to include those units available for rent that are currently vacant. The following establishments are exempt from this ordinance unless added to the Rental Action Management program pursuant to an ordinance adopted by the City Council: Bed & Breakfast Inns, Hotels, Motels, Rest Homes, Rooming Houses, Lodging Houses, and Apartment Houses or Apartment Complexes.

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

Verified Violation. A violation of any ordinance of the Fayetteville City Code of Ordinances as designated in "Appendix B" of this ordinance and 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.
 - (3) The deadline for completing the registration process.

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 July 1 of each calendar year. 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
 - (4) 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 the owner of the Residential Rental Property shall not be required to register the

property or pay the registration fee and 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 his 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. This payment shall not be deposited by the City until ten (10) days after the Mandatory Initial Meeting, unless the Police Official's decision to require registration is appealed, in which event the payment will not be deposited until the conclusion of the appeals process.

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. Registration of Residential Rental Property Upon Adoption of Ordinance by City Council.

The City Council, by ordinance, may add any dwelling exempted from the definition of "Residential Rental Property" in this ordinance, to the Rental Action Management Program upon finding that existing remedial provisions have been inadequate to abate the detrimental impact on the tenants, the adjacent properties, the dwelling and the neighborhood.

Any property added to the Rental Action Management Program pursuant to an ordinance adopted by City Council shall be required to abide by the conditions set forth in this ordinance.

Section 14-79. 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 as designated by the Police Official 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 14-80. Duties and Responsibilities of the Residential Rental Property Review Board.

The Board shall hear appeals from an Owner of Residential Rental Property who is required to register due to disorder activity as defined in this ordinance, and/or whose registration has been revoked.

Section 14-81. Notice of Appeal of Rental Registration Due to Disorder Activity and Notice of Appeal of Revocation.

A Residential Rental Property Owner may appeal a notice of revocation of rental registration to the Board as well as the Police Official's decision to require registration following the Mandatory Initial Meeting. All 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 by certified mail or in the case of an appeal of the Police Official's decision to require registration, within ten (10) days of that decision. 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 14-82. Hearing Procedure and Appeal of Board's Findings.

- (a) The City Clerk shall forward an appeal of the Police Official's decision to require rental registration, or 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) In the event of an appeal of the Police Official's decision to require registration, the City shall have the burden of proof and must establish by the preponderance of the evidence that the Disorder Activity Count for the property falls at or above the Disorder Risk Threshold. In the event of an appeal of a notice of revocation due to Disorder Activity, 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. In the event of an appeal of a notice of revocation due to code violations, the City shall have the burden of proof and must establish by the preponderance of the evidence that the Owner's property has been issued a notice of violation four (4) or more times in the previous twelve (12) month period. 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 require registration or 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 registration requirement or revocation.

Section 14-83. 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 14-84. 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.

APPENDIX A

UCR Code	Offense Description	Point Value
O110	Homicide	4
O120	Homicide Negligence	4
O300	Robbery	3
O410	Aggravated Assault	3
O410	Aggravated Assault-Officer	3
O410	All Other	3
O510	Burglary - Forcible Entry- Residence	2
O520	Burglary - Non Forcible Entry- Residence	2
O640	Larceny from Motor Vehicle	2
O710	Motor Vehicle Theft-Automobile	2
O720	Motor Vehicle Theft-Truck	2
O730	Motor Vehicle Theft-Bus	2
O740	Motor Vehicle Theft-Recreational Vehicle	2
O790	Motor Vehicle Theft-All Other	2
O810	Assault-Simple Physical	2
O820	All Other- Communicating Threats	1
O830	Physical Assault - Sexual Motive	2
O840	Non physical Assault - Sexual Motive	2
O890	Assault- Physical Officer	2
O890	Simple Assault-All Other	2
1310	Buying / Receiving Stolen Property	2
1330	Possessing / Concealing Stolen Property	2
1530	Possessing / Concealing Weapons	2
1550	Using Weapons (Illegal Discharge)	3
1610	Prostitution	1
1810	Drug/Narcotic Violations	3
1834	Equipment / Paraphernalia - Possessing	1
1990	All Other Gambling	1
2211	Selling / Distributing Tax Paid Liquor	1
2212	Possessing / Concealing Tax Paid Liquor	1
2214	Using / Consuming Tax Paid Liquor	1
2410	Disorderly Conduct	2
2420	Disturbing the Peace	2
2430	Fighting (Affray)	2
2440	Unlawful Assembly	2
2450	Drunk and Disruptive	2
2660	Parole & Probation Violations	3
2680	City Ordinance Violations	1
2690	City Ordinance Violations	1

APPENDIX B

Chapter 6 - Animals and Fowl

Article III - Animals and Fowl within the City Limits

Division 2. - Dogs

Sec. 6-241. - Sanitary conditions.

Chapter 14 - Housing, Dwellings and Buildings

Article II - Standards of Fitness and Responsibilities of Owners and Occupants

Sec. 14-31. - Space and use standards.

Sec. 14-32. - Light and ventilation standards.

Sec. 14-33. - Exit standards.

Sec. 14-34. - Structural standards.

Sec. 14-35. - Property maintenance.

Sec. 14-36. - Electrical standards.

Sec. 14-37. - Plumbing standards.

Sec. 14-38. - Heating standards.

Sec. 14-39. - Responsibilities of owners and occupants.

Chapter 16 - Motor Vehicles and Traffic

Article XII - Abandoned, Junked and Nuisance Vehicles

Sec. 16-354. - Abandoned vehicles unlawful; removal authorized.

Sec. 16-355. - Public nuisance vehicles unlawful; removal authorized.

Sec. 16-356. - Junked motor vehicles unlawful; removal authorized.

Chapter 22 - Solid Waste

Article I - In General

Sec. 22-16. - Illegal dumping; owners and occupants required to keep premises free from public health and safety nuisances.

How would you calculate the top 10% of crime properties for inclusion in RAMP?

February 6, 2012

In order to calculate you need to know the total number of things being compared – in this case the number of single-family homes offered for rent that are the site of crime. For discussion purposes, let's say there are 30 single-family homes in Fayetteville that are offered for rent, but of the 30 only 20 have been the site of crime over the last 6 months.

The math then works out like this: **20 rental houses with crime incidents X 10% = 2 houses eligible for RAMP.**

RAMP adds to this by assigning possible points per crime type, as described in RAMP Appendix A, using a weighted criteria. At the 6-month reviews for RAMP eligible properties, staff would likely create something like this to clearly identify those top properties that could be eligible for RAMP.

H1: homicide= 4 pts	H11: no crime	H21: 3 homicide, 2 assaults=17 pts
H2: assault, threats, affray= 5 pts	H12: motor vehicle theft= 2 pts	H22: buying stolen property = 2 points
H3: assault, threats, affray= 5 pts	H13: gambling, unpaid liquor, drugs= 5pts	H23: no crime
H4: no crime	H14: no crime	H24: assault, threats, affray= 5 pts
H5: 2 burglaries, drunk/disruptive= 6 pts	H15: assault, threats, affray= 5 pts	H25: no crime
H6: assault, threats, affray= 5 pts	H16: no crime	H26: concealed weapon, parole viol. = 4pts
H7: no crime	H17: motor vehicle theft= 2 pts	H27: assault, threats, affray= 5 pts
H8 assault, threats, affray= 5 pts	H18: robbery, assault, drugs, affray= 11 pts	H28: motor vehicle theft= 2 pts
H9: no crime	H19: no crime	H29: no crime
H10: 2 prostitution, drugs, homicide=9 pts	H20: assault, threats, affray= 5 pts	H30: 4 drugs, 4 prostitution= 16 pts

In the above scenario H21, H30, and H18 would be reviewed for RAMP using the top 10%, as they clearly have the highest point values. Again for discussion purposes, let's assume that H21 was a domestic murder/suicide. The Police Department would NOT include them in RAMP, as the domestic violence was likely not preventable. As such, the top houses would then be H30 and H18.

To put it in perspective, the US Census 2010 projected that there were 59,638 single family homes (attached/detached) in Fayetteville. So of that number that are rental properties we would begin tracking which were the site of crime. At the 6-month mark following RAMP implementation, we would then determine which of those 1.) residential properties 2.) offered for rent 3.) that were the site of crime and 4.) were in the top 10% of crime and evaluate them for entry into RAMP

RAMP Program Budget			
	Start up costs for 1st yr	FY 2012 full yr	Assumptions
One Time Costs			
Printing, advertising, postage, supplies	10,000		Initial ad campaign and educational program, developing paperwork, engaging service area
Computers	16,596		1 desktop and monitor, two custom built desk tops and monitors, 2 Panasonic laptops
Software	75,000		ARCGIS/ESRI, CRYSTAL, MAGNET, Windows 7, Accurant Clear
Radios	5,600		2 analyst field operations
Purchase of vehicles (1)	50,000		No mileage reimbursement- police cruisers
Furniture office set for two Crime Analysts, 1 OAI, 1 inspector	5,000		5 office set-ups, filing,
Subtotal	162,195.59		
One Time Costs Personnel			
Pre-Employment:	788.60		
Books:	361.20		
BLET Training/Cert.:	16068.00		
FPD Prerelease Training:	2472.00		
Clothing/Supply:	1244.14		
Service Weapon/Ammo:	500.00		
Lateral Officer Training:	858.00		
Subtotal	22,292		
Total One Time Costs	184,487.53		
Annual Reoccurring Expenditures (Personnel and Operating)			
Personnel Expenditures			
Inspector		47,574	FY 12 half yr; FY13 Full yr with 2.5 % inflation rate
OA II part time- Inspections		15,095	
Crime Analyst		56,115	
Crime Analyst		56,115	
Police Officer		48,761	
10% Attorney Salary and Benefits*		8,808	
Total Personnel Expenditures		232,469	
Operating Expenditures			
Mileage Reimbursement Inspector (1)		600	\$50 a mth for fuel based off of current inspectors mileage reimbursement or \$600 yr, \$400 per yr in maint; 3.5% inc. yr
Fuel Police Cruisers (1)		6,000	
Maintenance Police Cruisers (1)		400	
Telephone		3,134.00	\$30 per month for cell phone for the inspector , 4 landlines for OAI, two analyst and inspector, \$42 cell phone with data plan for analyst(2)

	Start up costs for 1st yr	FY 2012 full yr	Assumptions
Office Supplies		3,000	
Memberships and Dues Crime Analyst		120	International Association of Crime Analyst (\$25 x2) and Intelligence Analyst Association (\$35 x2)
Memberships and Dues Inspector		35	NC Home Inspector Application fee http://www.ncdoi.com/OSFM/Engineering/HILB/Documents/ApplicationFormsHomeInspector.pdf
Annual Training/education for Crime Analyst		10,000	\$5000 per analyst, ESRI level I,II & III ESRI, Cystal Training, RMS record maintenance trainig, Magnet, Alpha Group Training plus \$160 certification application
Annual Training/education for Inspector		5,200	Level I Home Inspector Training, CSI training
Software Maintenance and License		16,300	ESRI license (3x2100), I2 \$5000, Magnet \$5000
Program- Printing		3,000	Program Notices, Forms, Violations Letters
Program- Postage		1,500	Certified postage to 230 participants and follow up communications
Annual Training/education for Police		500	\$500 per officer annually
Total Operating Expenditures		49,789	
Total annual FY cost (personnel & operating)		282,258	
Total Program Set up costs, personnel and operating budget		466,745	
*Added 10% for work of Assistant City Attorney			

CITY COUNCIL ACTION MEMO

TO: Mayor and Members of City Council
FROM: Dale Iman, City Manager
DATE: February 6, 2012
RE: **Recommended Fiscal Year 2013-2017 Capital Improvement Plan (CIP) and Information Technology Plan (ITP)**

THE QUESTION:

Staff requests Council consideration of the recommended Fiscal Year 2013-2017 Capital Improvement Plan (CIP) and Information Technology Plan (ITP).

RELATIONSHIP TO STRATEGIC PLAN:

Goal 2: More efficient city government - cost-effective service delivery. Objective 3: Investing in City's infrastructure, facilities and equipment.

BACKGROUND:

The recommended five-year CIP consists of infrastructure, facility and maintenance projects with an individual cost of \$50,000 or greater. The recommended five-year ITP generally consists of technology projects with an individual cost of \$25,000 or greater, and/or those projects with enterprise-wide impacts.

The following process was used to develop the recommended CIP and ITP:

- Updated the adopted 2012-2016 CIP and ITP with current estimated costs, funding sources and timelines
- Added other project needs identified by departments
- Developed a funding plan for priority projects based on projected available resources

The four documents attached summarize the recommended CIP and ITP:

- The project lists reflecting funding for each fiscal year from FY2013 through FY2017 (See documents with yellow headers)
- The project lists reflecting proposed source of funds, for example, funding provided by the General Fund or federal and state grants. (See documents with green headers)

ISSUES:

Do the recommended CIP and ITP meet the Council's interests?

BUDGET IMPACT:

Please see detailed attachments.

OPTIONS:

Discuss item.

RECOMMENDED ACTION:

Provide feedback on the recommended Fiscal Year 2013-2017 CIP and ITP to staff.

ATTACHMENTS:

Recommended 2013-2017 Capital Improvement Plan by Fiscal Year
Recommended 2013-2017 Capital Improvement Plan by Funding Source

Recommended 2013-2017 Information Technology Plan by Fiscal Year

Recommended 2013-2017 Information Technology Plan by Funding Source

City of Fayetteville
Proposed Capital Improvement Plan
Fiscal Years 2013 to 2017

Project Funding By Fiscal Year							
Project	Inception Through June 30, 2012	FY2013	FY2014	FY2015	FY2016	FY2017	Total Project Funding
Community Development							
Hope VI - City Contributions	5,418,827	1,107,173	-	-	-	-	6,526,000
Military Business Park	1,211,784	113,616	-	-	-	-	1,325,400
Murchison Road Redevelopment	-	266,000	246,000	246,000	246,000	246,000	1,250,000
Total - Community Development	6,630,611	1,486,789	246,000	246,000	246,000	246,000	9,101,400
Development Services							
Wayfinding Signage	450,000	-	-	-	-	-	450,000
Total - Development Services	450,000	-	-	-	-	-	450,000
Engineering & Infrastructure							
City-wide Sidewalk Improvements	659,023	465,000	208,000	182,851	1,714,718	435,600	3,665,192
Downtown Brick Sidewalk Repair	250,000	50,000	50,000	50,000	50,000	50,000	500,000
Downtown Streetscape	863,898	450,000	-	-	-	-	1,313,898
Fort Bragg Railway Connector	1,048,479	700,000	3,341,021	2,657,500	1,713,000	-	9,460,000
Fort Bragg Road Rehabilitation	700,000	300,000	-	-	-	-	1,000,000
Franklin Street Parking Deck	5,962,000	-	-	-	-	-	5,962,000
Intersection Improvements	-	-	-	-	350,000	3,025,000	3,375,000
Langdon Street Widening	-	100,000	-	-	700,000	-	800,000
Legend Avenue Relocation	-	-	500,000	100,000	1,100,000	-	1,700,000
Louise Street Bridge Replacement	-	-	-	250,000	500,000	-	750,000
Parking Lot Resurfacing	191,911	65,000	59,792	57,000	56,000	335,000	764,703
Ramsey Street Transportation Improvement	590,000	-	-	-	-	-	590,000
Russell Street Sidewalks	219,054	-	-	-	-	-	219,054
Soil Street Construction	966,085	-	-	-	-	-	966,085
Street Resurfacing	9,408,593	3,500,000	3,500,000	3,570,000	3,570,000	3,570,000	27,118,593
Transportation Improvement Projects (NCDOT Municipal Agreements)	1,688,876	-	125,000	-	-	-	1,813,876
Total - Engineering & Infrastructure	22,547,919	5,630,000	7,783,813	6,867,351	9,753,718	7,415,600	59,998,401
Environmental Services							
B Street Property Acquisition	-	155,500	55,000	-	-	-	210,500
Energy Efficiency Retrofits (EECBG Grant)	1,170,400	212,500	-	-	-	-	1,382,900

City of Fayetteville
Proposed Capital Improvement Plan
Fiscal Years 2013 to 2017

Project Funding By Fiscal Year							
Project	Inception Through June 30, 2012	FY2013	FY2014	FY2015	FY2016	FY2017	Total Project Funding
Grove Street Facility Yard Paving	-	-	54,000	-	-	-	54,000
Total - Environmental Services	1,170,400	368,000	109,000	-	-	-	1,647,400
Fire & Emergency Management							
Fire Station 12 Renovation or Land for Relocation	125,000						125,000
Fire Station 19	2,676,942	-	-	-	-	-	2,676,942
SCBA Replacements	-	-	-	-	1,104,100	-	1,104,100
Total - Fire	2,801,942	-	-	-	1,104,100	-	3,906,042
Maintenance							
Building Maintenance - HVAC/Boiler Replacements	160,000	150,000	30,000	102,000			442,000
Building Maintenance - Other	383,085						383,085
Building Maintenance - Roof Replacements	478,000	80,000	275,000	78,500	124,000	20,000	1,055,500
Cemetery Improvements (Fencing/Sidewalks)	125,000	-	-	-	-	-	125,000
Facility Space and Needs Analysis and Renovations	265,000	550,000		-	-	-	815,000
Playground Repairs/Refurbishing	491,535	139,000	109,000				739,535
Gymnasium Floor Resurfacing	60,000	-	-	-	-	-	60,000
Total - Maintenance	1,962,620	919,000	414,000	180,500	124,000	20,000	3,620,120
Parks & Recreation							
Cape Fear River Park	-	-	100,000	5,900,000	-	-	6,000,000
Cape Fear River Trail - Phase 2	2,645,000	-	-	-	-	-	2,645,000
Crystal Springs Rec Center	-	-	-	100,000	200,000	2,200,000	2,500,000
Energy Efficient Ballfield Lighting	60,000	-	-	-	-	-	60,000
Existing Parks & Buildings Improvements	-	-	-	-	100,000	1,375,000	1,475,000
Fields Road Sports Complex	-	-	250,000	5,350,000	-	-	5,600,000
Freedom Memorial Park	474,762	30,000	-	-	-	-	504,762
Greenway Acquisition	-	-	-	-	100,000	3,400,000	3,500,000
Linear Park	1,634,083	186,341	186,341	186,341	186,341	186,341	2,565,788
Martin Luther King Jr. Park	-	-	-	-	500,000	-	500,000
Martin Luther King Jr. Park Entry Feature	275,000	-	-	-	-	-	275,000
Multipurpose Aquatic Center	-	-	250,000	750,000	26,000,000	-	27,000,000

City of Fayetteville
Proposed Capital Improvement Plan
Fiscal Years 2013 to 2017

Project Funding By Fiscal Year							
Project	Inception Through June 30, 2012	FY2013	FY2014	FY2015	FY2016	FY2017	Total Project Funding
Neighborhood Parks	-	-	-	600,000	-	1,200,000	1,800,000
Neighborhood Pools	-	-	450,000	10,000,000	-	-	10,450,000
Park Land Acquisition	-	-	-	-	4,000,000	-	4,000,000
Performing Arts Center	-	-	-	-	250,000	7,000,000	7,250,000
Skateboard Park	-	-	-	25,000	100,000	600,000	725,000
Splash Pads	-	-	790,000	1,290,000	-	-	2,080,000
Tennis Center	-	-	300,000	2,700,000	-	-	3,000,000
Tokay Football Field Lighting	170,000	-	-	-	-	-	170,000
Walking Trails (Smith and Glen Reilly Parks)	64,000	-	-	-	-	-	64,000
Western Area Neighborhood Park	550,000	250,000	-	-	-	-	800,000
Total - Parks & Recreation	5,872,845	466,341	2,326,341	26,901,341	31,436,341	15,961,341	82,964,550
Special Projects							
Amtrak Station - Phase 3	-	-	700,000	-	-	-	700,000
NC State Veterans Park	14,669,000	300,000	-	1,478,000	-	-	16,447,000
Phase V Annexation Sewer Contributions	6,627,023	3,054,451	3,538,889	3,840,848	4,131,772	4,432,816	25,625,799
Texfi Site	603,619	125,000	475,000	450,000	-	-	1,653,619
Total - Special Projects	21,899,642	3,479,451	4,713,889	5,768,848	4,131,772	4,432,816	44,426,418
Stormwater							
Stormwater Drainage Improvements	7,497,701	10,794,464	2,412,686	3,183,822	1,410,881	791,301	26,090,855
Total - Stormwater	7,497,701	10,794,464	2,412,686	3,183,822	1,410,881	791,301	26,090,855
Transit							
Operations & Maintenance Facility Renovations - Phase 2	363,681	-	-	-	-	-	363,681
Operations & Maintenance Facility Renovations - Phase 3	-	272,000	140,700	-	-	-	412,700
Multi-Modal Center	2,796,076	872,822	7,300,000	7,300,000	-	-	18,268,898
Sidewalk and ADA Accessibility Improvements	426,911	113,000	-	-	-	-	539,911
Total - Transit	3,586,668	1,257,822	7,440,700	7,300,000	-	-	19,585,190
Airport							
Paid Parking Lot Rehabilitation	1,542,969	-	-	-	-	-	1,542,969
Runway 4/22 Rehabilitation	7,171,533	-	-	-	-	-	7,171,533

**City of Fayetteville
Proposed Capital Improvement Plan
Fiscal Years 2013 to 2017**

Project Funding By Fiscal Year							
Project	Inception Through June 30, 2012	FY2013	FY2014	FY2015	FY2016	FY2017	Total Project Funding
Runway Protection Zone Tree Clearing Project	250,000	-	-	-	-	-	250,000
Taxiway A, C, D, F Rehabilitation	7,190,279	-	-	-	-	-	7,190,279
West General Aviation Ramp Rehabilitation	775,835	-	-	-	-	-	775,835
Fence Replacement from FBO to Terminal	175,000	-	-	-	-	-	175,000
General Aviation Auto Parking	165,000	-	-	-	-	-	165,000
Replace Jet Bridge at Gate B4	489,500	-	-	-	-	-	489,500
Storm Drain Pipe (North of Paid Parking Lot)	115,000	-	-	-	-	-	115,000
Terminal Bathroom Upgrades	110,000	-	-	-	-	-	110,000
Air Carrier Apron Reconstruction - Phase I	2,136,212	2,674,983	-	-	-	-	4,811,195
Runway 4 Runway Safety Area and Taxiway A Extension	432,184	4,500,000	5,500,000	-	-	-	10,432,184
Terminal Renovation Phase IV (Canopy)	-	1,100,000	-	-	-	-	1,100,000
Terminal Renovation Phase V	-	225,000	450,000	4,500,000	-	-	5,175,000
Runway 4/22 Paved Shoulders	-	150,000	2,500,000	-	-	-	2,650,000
Air Carrier Apron Reconstruction - Phase II	-	-	1,684,211	-	-	-	1,684,211
Runway 10/28 Pavement Rehabilitation	-	-	2,500,000	-	-	-	2,500,000
Perimeter Fencing Replacement	-	-	-	100,000	1,400,000	-	1,500,000
Perimeter Road Paving	-	-	-	140,000	1,700,000	-	1,840,000
Land Purchase in Runway 4 Protection Zone	-	-	-	-	-	1,684,211	1,684,211
Total - Airport	20,553,512	8,649,983	12,634,211	4,740,000	3,100,000	1,684,211	51,361,917
Grand Total - Capital Improvement Plan	94,973,860	33,051,850	38,080,640	55,187,862	51,306,812	30,551,269	303,152,293

City of Fayetteville
Proposed Capital Improvement Plan
Fiscal Years 2013 to 2017

Project	Project Funding By Source of Funds					
	Project Funding To Date	General Fund Taxes / Revenues	Debt Financing Proceeds	Non General Fund Funding	Total Project Funding	Other Funding Source Comments
Community Development						
Hope VI - City Contributions	6,526,000	-	-	-	6,526,000	
Military Business Park	1,325,400	-	-	-	1,325,400	
Murchison Road Redevelopment	-	920,000	-	330,000	1,250,000	CDBG funding
Total - Community Development	7,851,400	920,000	-	330,000	9,101,400	-
Development Services						
Wayfinding Signage	450,000	-	-	-	450,000	
Total - Development Services	450,000	-	-	-	450,000	-
Engineering & Infrastructure						
City-wide Sidewalk Improvements	1,034,874	710,000	1,920,318		3,665,192	Planned Infrastructure/Facility Debt Issuance June 2015
Downtown Brick Sidewalk Repair	250,000	-	-	250,000	500,000	\$50,000 annual funding from CBTD proceeds
Downtown Streetscape	917,633	396,265	-	-	1,313,898	
Fort Bragg Railway Connector	1,892,000			7,568,000	9,460,000	SAFETEA Grant \$7,568,000
Fort Bragg Road Rehabilitation	700,000	300,000	-	-	1,000,000	
Franklin Street Parking Deck	5,962,000				5,962,000	
Intersection Improvements			3,375,000		3,375,000	Planned Infrastructure/Facility Debt Issuances June 2015 and June 2016
Langdon Street Widening	-	100,000	700,000	-	800,000	Planned Infrastructure/Facility Debt Issuance June 2015
Legend Avenue Relocation	-	600,000	1,100,000	-	1,700,000	Planned Infrastructure/Facility Debt Issuance June 2015
Louise Street Bridge Replacement	-	150,000	-	600,000	750,000	Anticipated 80% Federal Bridge Replacement Funding
Parking Lot Resurfacing	206,000	280,703	278,000		764,703	Planned Infrastructure and Facility Debt Issuance June 2016
Ramsey Street Transportation Improvement	590,000	-	-	-	590,000	
Russell Street Sidewalks	219,054				219,054	
Soil Street Construction	899,997	66,088	-	-	966,085	
Street Resurfacing	9,408,593	17,710,000	-	-	27,118,593	
Transportation Improvement Projects (NCDOT Municipal Agreements)	1,688,876	125,000			1,813,876	
Total - Engineering & Infrastructure	23,769,027	20,438,056	7,373,318	8,418,000	59,998,401	-
Environmental Services						
B Street Property Acquisition	-	210,500	-	-	210,500	
Energy Efficiency Retrofits (EECBG Grant)	1,382,900	-	-	-	1,382,900	
Grove Street Facility Yard Paving	-	54,000	-	-	54,000	
Total - Environmental Services	1,382,900	264,500	-	-	1,647,400	

City of Fayetteville
Proposed Capital Improvement Plan
Fiscal Years 2013 to 2017

Project	Project Funding By Source of Funds						Other Funding Source Comments
	Project Funding To Date	General Fund Taxes / Revenues	Debt Financing Proceeds	Non General Fund Funding	Total Project Funding		
Fire & Emergency Management							
Fire Station 12 Renovation or Land for Relocation	125,000	-	-	-	125,000		
Fire Station 19	2,676,942	-	-	-	2,676,942		
SCBA Replacements	-	1,104,100	-	-	1,104,100		
Total - Fire	2,801,942	1,104,100	-	-	3,906,042		-
Maintenance							
Building Maintenance - HVAC/Boiler Replacements	160,000	282,000	-	-	442,000		
Building Maintenance - Other	383,085		-	-	383,085		
Building Maintenance - Roof Replacements	478,000	577,500	-	-	1,055,500		
Cemetery Improvements (Fencing/Sidewalks)	125,000	-	-	-	125,000		
Facility Space and Needs Analysis and Renovations	265,000	550,000	-	-	815,000		
Playground Repairs/Refurbishing	526,000	213,535	-	-	739,535		
Gymnasium Floor Resurfacing	60,000	-	-	-	60,000		
Total - Maintenance	1,997,085	1,623,035	-	-	3,620,120		-
Parks & Recreation							
Cape Fear River Park	-	-	3,000,000	3,000,000	6,000,000	Proposed City and County Parks & Recreation Bond Issuance	
Cape Fear River Trail - Phase 2	2,645,000	-	-	-	2,645,000		
Crystal Springs Rec Center	-	-	1,250,000	1,250,000	2,500,000	Proposed City and County Parks & Recreation Bond Issuance	
Energy Efficient Ballfield Lighting	60,000	-	-	-	60,000		
Existing Parks & Buildings Improvements	-	-	950,000	525,000	1,475,000	Proposed City and County Parks & Recreation Bond Issuance	
Fields Road Sports Complex	-	-	2,800,000	2,800,000	5,600,000	Proposed City and County Parks & Recreation Bond Issuance	
Freedom Memorial Park	482,175	-	-	22,587	504,762	Anticipated Private Park Donations	
Greenway Acquisition	-	-	1,750,000	1,750,000	3,500,000	Proposed City and County Parks & Recreation Bond Issuance	
Linear Park	1,723,738	-	-	842,050	2,565,788	Anticipated Private Park Donations	
Martin Luther King Jr. Park	-	-	-	500,000	500,000	Anticipated Private Park Donations	
Martin Luther King Jr. Park Entry Feature	275,000	-	-	-	275,000		
Multipurpose Aquatic Center	-	-	13,500,000	13,500,000	27,000,000	Proposed City and County Parks & Recreation Bond Issuance	
Neighborhood Parks	-	-	900,000	900,000	1,800,000	Proposed City and County Parks & Recreation Bond Issuance	
Neighborhood Pools	-	-	7,850,000	2,600,000	10,450,000	Proposed City and County Parks & Recreation Bond Issuance	
Park Land Acquisition	-	-	4,000,000	-	4,000,000	Proposed City and County Parks & Recreation Bond Issuance	
Performing Arts Center	-	-	3,625,000	3,625,000	7,250,000	Proposed City and County Parks & Recreation Bond Issuance	

City of Fayetteville
Proposed Capital Improvement Plan
Fiscal Years 2013 to 2017

Project	Project Funding By Source of Funds						Other Funding Source Comments
	Project Funding To Date	General Fund Taxes / Revenues	Debt Financing Proceeds	Non General Fund Funding	Total Project Funding		
Skateboard Park	-	-	362,500	362,500	725,000		Proposed City and County Parks & Recreation Bond Issuance
Splash Pads	-	-	1,820,000	260,000	2,080,000		Proposed City and County Parks & Recreation Bond Issuance
Tennis Center	-	-	1,500,000	1,500,000	3,000,000		Proposed City and County Parks & Recreation Bond Issuance
Tokay Football Field Lighting	170,000	-	-	-	170,000		
Walking Trails (Smith and Glen Reilly Parks)	64,000	-	-	-	64,000		
Western Area Neighborhood Park	800,000	-	-	-	800,000		
Total - Parks & Recreation	6,219,913	-	43,307,500	33,437,137	82,964,550		-
Special Projects							
Amtrak Station - Phase 3	-	140,000	-	560,000	700,000		Anticipated 80% NC DOT Rail Grant
NC State Veterans Park	16,447,000	-	-	-	16,447,000		State Grants
Phase V Annexation Sewer Contributions	6,627,023	18,998,776	-	-	25,625,799		PWC/City Transfer Agreement
Texfi Site	588,619	265,000	-	800,000	1,653,619		Anticipated 80% Brownfields Grant, with PWC funding for local match
Total - Special Projects	23,662,642	19,403,776	-	1,360,000	44,426,418		-
Stormwater							
Stormwater Drainage Improvements	14,866,268	-	-	11,224,587	26,090,855		Future funding from stormwater revenues.
Total - Stormwater	14,866,268	-	-	11,224,587	26,090,855		Future funding from stormwater revenues.
Transit							
Operations & Maintenance Facility Renovations - Phase 2	363,681				363,681		
Operations & Maintenance Facility Renovations - Phase 3	412,700	-	-	-	412,700		
Multi-Modal Center	2,796,076	1,547,282		13,925,540	18,268,898		Anticipated Federal/State Grants
Sidewalk and ADA Accessibility Improvements	426,911	23,000		90,000	539,911		Anticipated Federal/State Grants
Total - Transit	3,999,368	1,570,282	-	14,015,540	19,585,190		-
Airport							
Paid Parking Lot Rehabilitation	1,542,969	-	-	-	1,542,969		
Runway 4/22 Rehabilitation	7,171,533	-	-	-	7,171,533		
Runway Protection Zone Tree Clearing Project	250,000	-	-	-	250,000		
Taxiway A, C, D, F Rehabilitation	7,190,279	-	-	-	7,190,279		
West General Aviation Ramp Rehabilitation	775,835	-	-	-	775,835		
Fence Replacement from FBO to Terminal	175,000	-	-	-	175,000		
General Aviation Auto Parking	165,000		-	-	165,000		
Replace Jet Bridge at Gate B4	489,500	-	-	-	489,500		

City of Fayetteville
Proposed Capital Improvement Plan
Fiscal Years 2013 to 2017

Project	Project Funding By Source of Funds					Other Funding Source Comments
	Project Funding To Date	General Fund Taxes / Revenues	Debt Financing Proceeds	Non General Fund Funding	Total Project Funding	
Storm Drain Pipe (North of Paid Parking Lot)	115,000	-	-	-	115,000	
Terminal Bathroom Upgrades	110,000	-	-	-	110,000	
Air Carrier Apron Reconstruction - Phase I	4,811,195	-	-	-	4,811,195	
Runway 4 Runway Safety Area and Taxiway A Extension	432,184	-	-	10,000,000	10,432,184	Airport, Federal & State Funds
Terminal Renovation Phase IV (Canopy)	-	-	-	1,100,000	1,100,000	Airport, Federal & State Funds
Terminal Renovation Phase V	-	-	-	5,175,000	5,175,000	Airport, Federal & State Funds
Runway 4/22 Paved Shoulders	-	-	-	2,650,000	2,650,000	Airport, Federal & State Funds
Air Carrier Apron Reconstruction - Phase II	-	-	-	1,684,211	1,684,211	Airport, Federal & State Funds
Runway 10/28 Pavement Rehabilitation	-	-	-	2,500,000	2,500,000	Airport, Federal & State Funds
Perimeter Fencing Replacement	-	-	-	1,500,000	1,500,000	Airport, Federal & State Funds
Perimeter Road Paving	-	-	-	1,840,000	1,840,000	Airport, Federal & State Funds
Land Purchase in Runway 4 Protection Zone	-	-	-	1,684,211	1,684,211	Airport, Federal & State Funds
Total - Airport	23,228,495	-	-	28,133,422	51,361,917	-
Grand Total - Capital Improvement Plan	110,229,040	45,323,749	50,680,818	96,918,686	303,152,293	

City of Fayetteville
Proposed Information Technology Plan
Fiscal Years 2013 to 2017

Project	Project Funding By Fiscal Year						Total Project Funding
	Inception Through June 30, 2012	FY2013	FY2014	FY2015	FY2016	FY2017	
Enterprise-Wide I.T. Infrastructure							
Desktop Virtualization / Computer Replacement	1,164,562	317,300	292,300	292,300	292,300	292,300	2,651,062
Information Technology Disaster Recovery Initiative	-	375,318	118,349	-	-	-	493,667
Network Core Redundancy	93,000	-	-	-	-	-	93,000
Virtual Server Expansion Equipment	-	60,034	-	-	-	-	60,034
Total - Enterprise-Wide I.T. Infrastructure	1,257,562	752,652	410,649	292,300	292,300	292,300	3,297,763
Enterprise-Wide Applications							
City Wireless Network Expansion Project	-	103,800	53,200	-	-	-	157,000
Customer Relation Management (CRM) / Work Order System	50,000			400,000	124,000	124,000	698,000
Enterprise GIS Environment	-	62,067	-	-	-	-	62,067
Enterprise Resource Planning (ERP) Replacement	-	150,000	1,650,000	1,650,000	1,650,000		5,100,000
Laserfiche Rio Upgrade	131,363	131,245	-	-	-	-	262,608
Total - Enterprise-Wide Applications	181,363	447,112	1,703,200	2,050,000	1,774,000	124,000	6,279,675
Development Services							
Plan Review Module	-	68,500	-	-	-	-	68,500
Public Portal	51,700	12,500	-	-	-	-	64,200
Total - Development Services	51,700	81,000	-	-	-	-	132,700
Environmental Services							
On-Route Software Upgrade	-	-	290,000	-	-	-	290,000
Total - Environmental Services	-	-	290,000	-	-	-	290,000
Finance							
Integrated Cashiering System - Phase II	106,180	-	-	-	-	-	106,180
Total - Finance	106,180	-	-	-	-	-	106,180
Management Services							
Lafayette Room Telecast Equipment Upgrade	48,390	-	-	-	-	-	48,390
Total - Management Services	48,390	-	-	-	-	-	48,390
Parks & Recreation							
Rec Trac Software Upgrade	18,831	57,732	-	-	-	-	76,563
Total - Parks & Recreation	18,831	57,732	-	-	-	-	76,563
Police							
800 MHz Radio System Upgrade	-	-	6,828,867	-	-	-	6,828,867

City of Fayetteville
Proposed Information Technology Plan
Fiscal Years 2013 to 2017

Project Funding By Fiscal Year							
Project	Inception Through June 30, 2012	FY2013	FY2014	FY2015	FY2016	FY2017	Total Project Funding
Computer Aided Dispatch/Records Management System Replacement with Automatic Vehicle Locator	3,240,272	-	-	-	-	-	3,240,272
In-Car Video Systems	1,208,899	-	-	-	-	-	1,208,899
Server Room Uninterruptible Power Supply Replacement	-	58,650	-	-	-	-	58,650
Total - Police	4,449,171	58,650	6,828,867	-	-	-	11,336,688
Transit							
Transit Automatic Vehicle Locator System	347,718	-	-	-	-	-	347,718
Total - Transit	347,718	-	-	-	-	-	347,718
 Grand Total - Information Technology Plan	 6,460,915	 1,397,146	 9,232,716	 2,342,300	 2,066,300	 416,300	 21,915,677

City of Fayetteville
Proposed Information Technology Plan
Fiscal Years 2013 to 2017

Project	Project Funding By Source of Funds					Funding Source Comments
	Project Funding To Date	General Fund Taxes / Revenues	Debt Financing Proceeds	Non General Fund Funding	Total Project Funding	
Enterprise-Wide I.T. Infrastructure						
Desktop Virtualization / Computer Replacement	1,164,562	1,355,000	-	131,500	2,651,062	Ongoing General Fund and Other Operating Budgets
Information Technology Disaster Recovery Initiative	-	493,667			493,667	
Network Core Redundancy	93,000	-			93,000	
Virtual Server Expansion Equipment	-	60,034			60,034	
Total - Enterprise-Wide I.T. Infrastructure	1,257,562	1,908,701	-	131,500	3,297,763	
Enterprise-Wide Applications						
City Wireless Network Expansion Project	-	151,000		6,000	157,000	Recreation District and General Fund
Customer Relation Management (CRM) / Work Order System	50,000	648,000			698,000	
Enterprise GIS Environment	-	62,067			62,067	
Enterprise Resource Planning (ERP) Replacement	-	150,000	4,950,000		5,100,000	
Laserfiche Rio Upgrade	131,363	131,245			262,608	
Total - Enterprise-Wide Applications	181,363	1,142,312	4,950,000	6,000	6,279,675	
Development Services						
Plan Review Module	-	68,500			68,500	
Public Portal	51,700	12,500			64,200	
Total - Development Services	51,700	81,000	-	-	132,700	
Environmental Services						
On-Route Software Upgrade	-	290,000			290,000	
Total - Environmental Services	-	290,000	-	-	290,000	
Finance						
Integrated Cashiering System - Phase II	106,180	-			106,180	
Total - Finance	106,180	-	-	-	106,180	
Management Services						
Lafayette Room Telecast Equipment Upgrade	48,390	-			48,390	
Total - Management Services	48,390	-	-	-	48,390	
Parks & Recreation						
Rec Trac Software Upgrade	16,589	45,628		14,346	76,563	Recreation District and General Fund
Total - Parks & Recreation	16,589	45,628	-	14,346	76,563	
Police						
800 MHz Radio System Upgrade	-	-	6,160,890	667,977	6,828,867	Anticipated PWC Participation
Computer Aided Dispatch/Records Management System Replacement with Automatic Vehicle Locator	3,240,272	-			3,240,272	
In-Car Video Systems	1,008,069	-		200,830	1,208,899	General Fund, Grants and Forfeiture Funds

City of Fayetteville
Proposed Information Technology Plan
Fiscal Years 2013 to 2017

Project Funding By Source of Funds						
Project	Project Funding To Date	General Fund Taxes / Revenues	Debt Financing Proceeds	Non General Fund Funding	Total Project Funding	Funding Source Comments
Server Room Uninterruptible Power Supply Replacement	-	58,650			58,650	
Total - Police	4,248,341	58,650	6,160,890	868,807	11,336,688	
Transit						
Transit Automatic Vehicle Locator System	347,718	-			347,718	
Total - Transit	347,718	-	-	-	347,718	
Grand Total - Information Technology Plan	6,257,843	3,526,291	11,110,890	1,020,653	21,915,677	

CITY COUNCIL ACTION MEMO

TO: Mayor and Members of City Council
FROM: Michael Gibson, Parks, Recreation & Maintenance Director
DATE: February 6, 2012
RE: **Parks and Recreation Capital Project Bond Issue Proposal**

THE QUESTION:

Staff has completed a package of projects and financial strategies designed to accomplish Council's stated goal. Is that package ready to be presented to the community for consideration?

RELATIONSHIP TO STRATEGIC PLAN:

Goal 3 - Growing City, Livable Neighborhoods - A Great Place To Live: Policy Action 1 - Park Bond Referendum (with Cumberland County)

BACKGROUND:

Council's top priority to develop a park bond referendum proposal has a complete report of projects in this proposal. Park bond referendum proposal package has been completed by Site Solutions. This detailed report will be provided to Council under separate cover.

ISSUES:

Staff prepared a preliminary list of Parks & Recreation capital projects, based upon the adopted facilities master plan, and presented it to the Council and Cumberland County Commission during a joint meeting. The general feedback from that discussion was to refine the list looking for ways to reduce the cost and potential tax impact. Staff was also charged with clarifying the process to achieve voter consideration.

Staff has taken the revised cost estimates based upon the work of Site Solutions mentioned above and worked with Janice Burke of FirstSouthwest Financial to develop a financial plan. That plan has been reviewed and refined in consultation with the finance staffs of both the City and County as well as bond counsel and the Local Government Commission. Staff will present the key elements of this plan and the public review process.

BUDGET IMPACT:

The capital project proposal is designed to be supported by new revenue and the project self supporting from an operational perspective. Council may consider providing some funding to support the effort to educate the community regarding the proposal.

OPTIONS:

Staff will discuss next steps and options during the Work Session.

RECOMMENDED ACTION:

No Action required

CITY COUNCIL ACTION MEMO

TO: Mayor & City Council
FROM: Kristoff Bauer, Asst. City Manager
DATE: February 6, 2012
RE: **Revisions to Policy 150.2 Relating To Annexation Requirements In Exchange For PWC Services Have Not Been Implemented With Complete Success. Revisions To Policies And Implementation Practices To Address Issues Will Be Presented.**

THE QUESTION:

Do proposed revisions to the implementation process and supporting policies correct Council's concerns with the operation of the prior policy relating to the requirement for annexation in exchange for provision of PWC services?

RELATIONSHIP TO STRATEGIC PLAN:

Goal 3: Growing City, Livable neighborhoods – A Great Place To Live – Obj. 4: Manage the City's future growth and development with quality development and redevelopment reflecting plans, policies, and standards

BACKGROUND:

On December 14th of 2009, the Council adopted a revised PWC Policy 150.2 "Provision of Water and Sewer to Municipal Influence Area." This revised policy established the requirement that property owners within the City's growth area seeking PWC water or sewer service must file a petition for voluntary annexation before that service will be provided.

PWC policy at that time allowed developers to get water and sewer availability permits without petitioning for annexation as required by the policy. The policy was enforced at the time when water meters were requested. At that point, the development could be very close to completion.

In addition, case law established the standard that petitions for annexation, in order to be valid, must contain the signatures of all property owners at the time of Council consideration instead of the time of petition.

This combination of factors created two challenges to the successful implementation of Policy 150.2: 1) it allowed development to proceed to completion under County standards, and 2) it created the opportunity for the annexation petition to be invalidated through sale of lots, pre-sale of homes, or sale of completed homes during the period after the petition for annexation was filed.

Subsequent to that action there was an incident when a property owner filed a petition for annexation and then took actions that invalidated that petition before the City Council was able to act thereon.

ISSUES:

Staff has worked with PWC and representatives of the development community to develop an implementation strategy designed to address the issues above without negatively impacting the development process. Key elements of this strategy include:

- 1 - A clarified Policy 150.2 (Attached)
- 2 - Adding language to water and sewer availability permits as well as the PWC service agreement
- 3 - Expediting the annexation review process to allow it to run parallel with the initial zoning process, and
- 4 - Revision to Policy 165.1 - Initial Zoning After Annexation (Attached) - to address an order concern and give the Council additional flexibility in establishing the initial zoning.

Staff will review how these changes respond to concerns raised and how the new process will be

implemented.

BUDGET IMPACT:

A successful implementation of Policy 150.2 should positively impact the City's financial position over time by allowing the City to grow with adjacent urban development.

OPTIONS:

This is for discussion purposes only.

RECOMMENDED ACTION:

This is for discussion purposes only. Staff will bring revised policies forward, consistent with Council discussion, for consideration at the February 27th Council Meeting.

ATTACHMENTS:

Policy 150.2 Recommended

Policy 150.2 Changes

Policy 165.1 Changes

SUBJECT – PUBLIC WORKS COMMISSION Provision of Water and Sewer to Municipal Influence Area	Number 150.2	Revised	Effective Date	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 Area¹ (“MIA”) that meet the statutory requirements for annexation must be annexed into 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 for annexation does not apply to single-family residential homeowner requesting service from an existing water and/or sanitary sewer main when their lot is not contiguous to a corporate boundary of the City of Fayetteville.

¹The version of the MIA referenced in this policy is that established by interlocal agreement with Cumberland County June 9, 2008 as amended by the City’s Annexation Agreement with the Town of Hope Mills adopted August 23, 2010.

SUBJECT – PUBLIC WORKS COMMISSION Provision of Water and Sewer to Municipal Influence Area	Number 150.2	Revised	Effective Date	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 Area¹ (“MIA”) that meet the statutory requirements for annexation must be annexed into 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.

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¹The version of the MIA referenced in this policy is that established by interlocal agreement with Cumberland County June 9, 2008 as amended by the City’s Annexation Agreement with the Town of Hope Mills adopted August 23, 2010.

SUBJECT - ZONING Initial Zoning After Annexation	Number 165.1	Revised	Effective Date	Page 1 of 1
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The policy of the City Council on the initial zoning of property under consideration for annexation~~after it has been annexed~~ into the City is as follows:

1. The City Planning Department shall notify the property owners by letter that the initial municipal zoning proceedings are beginning. The letter shall state the existing County zoning of the property, if zoned, and the proposed municipal zoning. The initial zoning proposal and any requests for changes shall be heard by the City Planning Commission prior to recommending the zoning map to the City Council.
2. For voluntary annexation requests, the City Clerk shall schedule the initial zoning public hearing before the City Council immediately prior to the annexation public hearing. Council's action on that zoning will be preliminary as the property in question has not yet been annexed and, therefore, is not within the City's authority to zone.
3. The annexation petitioner may request to withdraw their petition to annex after the preliminary initial zoning action and prior to action on that petition. If such a request is timely made by all petitioners, the Council will table action on the annexation petition indefinitely.
4. The final initial zoning action will be included in the motion to approve the petition for annexation.

CITY COUNCIL ACTION MEMO

TO: Mayor and Members of City Council
FROM: Dale Iman, City Manager
DATE: February 6, 2012
RE: **Consideration of Adoption of Revisions to Chapter 23, Article III Stormwater Management Ordinance.**

THE QUESTION:

Council is asked to adopt proposed revisions in the attached Stormwater Management Ordinance, Article III of Chapter 23 of the City Code of Ordinances.

RELATIONSHIP TO STRATEGIC PLAN:

Growing City, Livable Neighborhoods; More Efficient Government

BACKGROUND:

The Stormwater Management Ordinance, also referred to as Chapter 23, Article III, Stormwater Control, initially became effective January 1, 2009, and at Council's urging, established minimum requirements and procedures for new development to control the adverse effects of increased stormwater quantity and runoff quality.

The ordinance also included State-mandated Phase II stormwater requirements developed directly from language as contained in the State's Stormwater Phase II Model Ordinance.

A local Stakeholders Group, the Stormwater Advisory Board, and City staff originally developed the Stormwater Control Ordinance in 2008, and that same group has recently been working for several months to craft and review these proposed ordinance changes. As part of that effort, a new Stormwater Administrative Manual, an internal, user-friendly working document that will help all users apply the ordinance to their specific needs has also been developed.

ISSUES:

Since the original Article III first became effective in early 2009, City Staff and those affected by the resulting requirements have wrestled with several technical matters particularly those regarding stormwater Best Management Practices (BMP's). Proposed ordinance revisions to address those areas of concern and provide for clarification and/or other resolution have now been fully reviewed by the Stakeholder's Group, the Stormwater Advisory Board, and City Staff. All parties have now expressed agreement with both the proposed Ordinance changes and the new Administrative Manual.

The NC Division of Water Quality recently reviewed the City's Ordinance and has proposed the majority of the requested revisions. To continue to maintain our municipal NPDES stormwater permit compliance, and as part of the NC Division of Water Quality's (DWQ) recent review, the City is required to add specific new language as contained in the State's Model Ordinance to meet Phase II requirements. When adopted, the City's ordinance will better align with the State's Stormwater Phase II Model Ordinance, and the State has agreed to immediately delegate authority to the City to administer post-construction requirements. Doing so will provide for internal and external efficiencies eliminating a duplication of services between the City and local NC DENR office thereby allowing developers to need only a single (stormwater) permit rather than two.

A performance guarantee is required by the Ordinance to effectively ensure that stormwater BMP's are built/installed like the engineering design specified. The original ordinance

performance guarantee is 150% of the estimated BMP construction cost and is established to guard against the “unknown” as the City prepared to move into the BMP business. Now that City Staff has gained some experience and a comfort level over time, a change has been proposed to reduce the performance guarantee to 75% of estimated construction which would reduce financial burden and also be more consistent with similar UDO requirements.

The Stormwater Advisory Board has unanimously requested that these changes be adopted. The City has also received a letter from the Home Builders Association of Fayetteville in support of these changes.

BUDGET IMPACT:

N/A

OPTIONS:

1. Set a public hearing for consideration and voting on the proposed revisions to the Stormwater Control Ordinance, Article III of Chapter 23 of the City Code of Ordinances.
2. Defer any action.

RECOMMENDED ACTION:

Option 1 -- Set a public hearing for consideration and voting on the proposed revisions to the Stormwater Control Ordinance, Article III of Chapter 23 of the City Code of Ordinances.

ATTACHMENTS:

Stormwater Management Ordinance Chapter 23, Article III

Stormwater Advisory Board 12-6-11 Minutes with Approved Motion for Ordinance Changes

Letter of Support from the Home Builders Association of Fayetteville

December 14, 2011

6th Draft

ARTICLE III. - STORMWATER CONTROL

[Sec. 23-20. - Title, purpose, application.](#)
[Sec. 23-21. - Definitions.](#)
[Sec. 23-22. - Scope of article.](#)
[Sec. 23-23. - Powers of the department.](#)
[Sec. 23-24. - Exemptions from requirements.](#)
[Sec. 23-25. - Scope of stormwater design plans.](#)
[Sec. 23-26. - Stormwater design plans and approval process.](#)
[Sec. 23-27. - Plan requirements.](#)
[Sec. 23-28. - Plan hydrologic criteria.](#)
[Sec. 23-29. - Plan land use conditions criteria.](#)
[Sec. 23-30. - Plan wetlands criteria.](#)
[Sec. 23-31. - Minimum stormwater quantity control requirements.](#)
[Sec. 23-32. - Minimum stormwater quality control requirements.](#)
[Sec. 23-33. - Approval and permit requirements.](#)
[Sec. 23-34. - Building permit or street plan approval suspension and revocation.](#)
[Sec. 23-35. - Professional registration requirements.](#)
[Sec. 23-36. - Fees.](#)
[Sec. 23-37. - Construction and inspection.](#)
[Sec. 23-38. - Ownership and maintenance of stormwater management facilities.](#)
[Sec. 23-39. - Operation and maintenance agreement.](#)
[Sec. 23-40. - Inspection program.](#)
[Sec. 23-41. - Performance ~~guarantee~~ security for installation.](#)
[Sec. 23-42. - Notice to owners; deed recordation and indications on plat.](#)
[Sec. 23-43. - Records of installation and maintenance activities.](#)
[Sec. 23-44. - Variances from requirements.](#)
[Sec. 23-45. - Appeals.](#)
[Sec. 23-46. - Enforcement.](#)
[Sec. 23-47. - Relationship to other laws, regulations, and private agreements.](#)
[Sec. 23-48. - Severability.](#)
[Sec. 23-49. - Effective date.](#)

Sec. 23-20. - Title, purpose, application.

(a) The provisions of this article shall constitute and be known as the "Stormwater Control Ordinance of Fayetteville, North Carolina".

(b) The purpose of this article is to protect, maintain, and enhance the public health, safety, and general welfare by establishing minimum requirements and procedures to control the adverse effects of the increase in stormwater quantity and the stormwater runoff quality associated with both future land development and consideration of existing developed land within the City of Fayetteville. Proper management of the quantity and quality of stormwater runoff will minimize damage to public and private property, prevent personal damage and bodily harm, ensure a functional drainage system, reduce the effects of development on land and stream channel erosion, promote the attainment and maintenance of water quality standards, enhance the local environment associated with the drainage system, reduce local flooding, and maintain as nearly as possible the predeveloped runoff characteristics of the area, and facilitate economic development while mitigating associated flooding and drainage impacts.

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Chapter 23 - STORMWATER MANAGEMENT
ARTICLE III. - STORMWATER CONTROL

Additionally, the purpose of this article is to comply with the post construction stormwater requirements as per the city's NPDES stormwater discharge permit.

(c) Further, the Federal Water Pollution Control Act of 1972 ("Clean Water Act") and federal Phase II Stormwater Rules promulgated under it, as well as rules of the North Carolina Environmental Management Commission promulgated in response to federal Phase II requirements, compel certain urbanized areas, including this jurisdiction, to adopt minimum stormwater controls such as those included in this article.

~~(e)~~(d) The application of this article and the provisions expressed herein, shall be the minimum stormwater management requirements and shall not be deemed a limitation or repeal of any other powers granted by state statute. In addition, if site characteristics indicate that complying with these minimum requirements will not provide adequate designs or protection for local property or residents, it is the designer's responsibility to exceed the minimum requirements as necessary. The city engineer or designee shall be responsible for the coordination and enforcement of the provisions of this article.

~~(d)~~(e) Compliance with all applicable local, state, and federal regulations and permits shall be the responsibility of the applicant. Other stormwater regulations to consider when complying with this article include, but are not limited to, the following:

- (1) Water supply watershed regulations, chapter 29 of this Code of Ordinances;
- (2) Federal wetland permits;
- (3) Water quality certifications; and
- (4) Sediment and erosion control requirements.

(Ord. No. S2008-020, § 1, 10-27-2008)

Sec. 23-21. - Definitions.

For the purpose of this article, the following terms, phrases, and words, and their derivatives, shall have the meaning given herein:

Adequate channel shall mean a natural or manmade channel or pipe which is capable of conveying the runoff from the design storm events without flooding existing structures or causing property damage.

Best management practice (BMP) shall mean a wide range of management procedures, schedules of activities, prohibitions on practices, and other management practices which have been demonstrated to effectively control the quality and/or quantity of stormwater runoff and which are compatible with the planned land use.

Built-upon area shall mean that portion of a development project that is covered by impervious or partially impervious surface including, but not limited to, buildings; pavement and gravel areas such as roads, parking lots, and paths; and recreation facilities such as tennis courts. Built-upon area does not include a wooden slatted deck, the water area of a swimming pool, or pervious or partially pervious paving material to the extent that the paving material absorbs water or allows water to infiltrate through the paving material.

City shall mean the City of Fayetteville, North Carolina.

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ARTICLE III. - STORMWATER CONTROL

City clerk shall mean the City Clerk of the City of Fayetteville, North Carolina, or his/her designee.

City council shall mean the duly elected Governing Body of the City of Fayetteville, North Carolina.

City engineer shall mean the City Engineer of the City of Fayetteville, North Carolina, or his/her designee.

City engineering and infrastructure department shall mean the Engineering and Infrastructure Department of the City of Fayetteville, North Carolina.

City manager shall mean the City Manager of the City of Fayetteville, North Carolina, or his/her designee.

Cross-drain culvert shall mean a structure designed to convey a watercourse under a roadway, railway, pedestrian walk, or through an embankment.

Design report shall mean the report that accompanies the stormwater design plan and includes data used for engineering analysis, results of all analysis, design and analysis calculations (including results obtained from computer programs), and other engineering data that would assist the city engineer in evaluating proposed stormwater management facilities.

Design storm events shall mean the frequency storm used for the design of stormwater management facilities.

Designer shall mean a registered professional who is permitted to prepare plans and studies required by this article.

Detention structure shall mean a permanent stormwater management structure whose primary purpose is to temporarily store stormwater runoff and release the stored runoff at controlled rates.

Developed land use conditions shall mean the land use conditions according to the current city land use map or proposed site plan. Also, the conditions which exist following the completion of the land disturbing activity in terms of topography, vegetation, land use and rate, quality, volume or direction of stormwater runoff.

Development shall (to the extent permitted by law) mean any of the following actions undertaken by a public or private individual or entity:

- (1) All land altering activities associated with the division of a lot, tract, or parcel of land into two or more lots plots, sites, tracts, parcels or other divisions by plan or deed;
- (2) The construction, installation, or alteration of a structure, impervious surface, or drainage facility;
- (3) Any land change including, without limitation to, clearing, tree removal, grubbing, stripping, dredging, grading, excavating, transporting and filling of land; or
- (4) Adding, removing, exposing, excavating, leveling, grading, digging, burrowing, dumping, piling, dredging, or otherwise disturbing the soil, vegetation, and mud, sand or rock of a site.

Easement shall mean a grant or reservation by the owner of land for the use of such land by others for a specific purpose or purposes, and which must be included in the conveyance of land affected by such

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easement.

Erosion shall mean the process by which ground surface is worn away by the action of wind and/or water.

Exemption shall mean those development activities that are not subject to the stormwater requirements contained in this article.

Existing land use condition shall mean the land use conditions existing at the time the design plans are submitted for approval.

FEMA-designated floodplain shall mean the 100-year floodplain shown on the most current FEMA flood insurance rate map or flood boundary and floodway map. This shall include both the detailed 100-year floodplain which shows a 100-year flood elevation and the approximate 100-year floodplain.

Functional maintenance shall mean any action necessary to preserve stormwater management facilities in proper working condition, in order to serve the intended purposes set forth in this article, and to prevent structural failure of such facilities. Functional maintenance shall not include actions taken solely for the purpose of enhancing the aesthetics aspects associated with stormwater management facilities.

Grading shall mean excavating, filling (including hydraulic fill), or stockpiling of earth material, or any combination thereof, including the land in its excavated or filled condition.

Impervious shall mean the condition of being impenetrable by water.

Imperviousness shall mean the degree to which a site is impervious.

Infiltration shall mean the passage or movement of water into the soil subsurface.

Interior culvert shall mean a culvert that is not located under a roadway, railway, or pedestrian walk.

Maintenance (as relates to BMPs or other stormwater management facilities). See "functional maintenance" or "routine maintenance".

100-year frequency storm shall mean a storm that is capable of producing rainfall expected to be equaled or exceeded on the average of once in one 100 years. It also may be expressed as an exceedance probability with a one percent chance of being equaled or exceeded in any given year.

On-site stormwater management shall mean the design and construction of a facility necessary to control stormwater runoff within and for a single development.

One-year frequency storm shall mean a storm that is capable of producing rainfall expected to be equaled or exceeded on the average of once in one year. It also may be expressed as an exceedance probability with a 100 percent chance of being equaled or exceeded in any given year.

Predevelopment conditions shall mean those which existed on the site at the time this article became effective.

Preliminary plat shall mean the preliminary plat of a subdivision submitted pursuant to the subdivision regulations of the city.

Pervious pavement shall mean concrete and asphalt paving materials that allow for infiltration of

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stormwater into a storage area with void spaces that provide temporary storage.

Record drawings shall mean a set of engineering or site drawings that delineate the specific permitted stormwater management facility(ies) as actually constructed.

Redevelopment shall mean any development on previously developed land, other than a rebuilding activity that results in no net increase in built-upon area and provides equal or greater stormwater control than the previous development.

Regional stormwater management shall mean the design and construction of a facility necessary to control stormwater runoff for more than one development.

Regulated floodplain shall mean the floodplain area designated by FEMA regulations or designated by the city.

Retention structures shall mean a permanent structure whose primary purpose is to permanently store a given volume of stormwater runoff. Release of the given volume is by infiltration and/or evaporation.

Routine maintenance shall mean any action to enhance the aesthetics aspects associated with stormwater management facilities. Routine maintenance shall include actions such as grass cutting, trash removal, and landscaping.

Site shall mean any lot, plot, parcel or tract of land.

Stormwater design plan shall mean the set of drawings and other documents that comprise all of the information and specifications for the drainage systems, structures, concepts and techniques that will be used to control stormwater as required by this article. Also included are the supporting engineering calculations and results of any computer analysis.

Stormwater management shall mean the collection, conveyance, storage, treatment and disposal of stormwater runoff in a manner to minimize accelerated channel erosion, increased flood damage, and/or degradation of water quality and in a manner to enhance and ensure the public health, safety, and general welfare which shall include a system of vegetative or structural measures, or both, that control the increased volume and rate of stormwater runoff caused by manmade changes to the land.

Stormwater management facilities shall mean those structures and facilities that are designed for the collection, conveyance, storage, treatment and disposal of stormwater runoff into and through the drainage system. This includes all stormwater quantity and quality facilities.

Stormwater runoff shall mean the direct response of a watershed to precipitation and includes the surface and subsurface runoff that enters a ditch, stream, storm drain, or other concentrated flow during and following precipitation.

Subdivision shall mean that which is defined in chapter 25, Subdivisions, of this Code of Ordinances; and G.S. 160A-~~376~~475(d).

Ten-year frequency storm shall mean a storm that is capable of producing rainfall expected to be equaled or exceeded on the average of once in ten years. It may also be expressed as an exceedance probability with a ten percent chance of being equaled or exceeded in any given year.

Thoroughfare shall mean all numbered routes and all roads with four or more travel lanes.

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25-year frequency storm shall mean a storm that is capable of producing rainfall expected to be equaled or exceeded on the average of once in 25 years. It may also be expressed as an exceedance probability with a four percent chance of being equaled or exceeded in any given year.

Variance shall mean the modification of the minimum stormwater management requirements for specific circumstances where strict adherence of the requirements would result in practical difficulties or undue hardship and not fulfill the intent of this article.

Water quality shall mean those characteristics of stormwater runoff that relate to the physical, chemical, biological, or radiological integrity of water.

Water quantity shall mean those characteristics of stormwater runoff that relate to the rate and volume of the stormwater runoff to downstream areas resulting from land disturbing activities.

Watershed shall mean the drainage area contributing stormwater runoff to a single point.

Wetland shall mean those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands include swamps, marshes, bogs, and similar areas as determined by the U.S. Army Corps of Engineers.

(Ord. No. S2008-020, § 1, 10-27-2008)

Sec. 23-22. - Scope of article.

(a) No person shall develop any land without having provided for appropriate stormwater management measures that control or manage stormwater runoff, in compliance with this article, unless exempted in section 23-24 below.

(b) The provisions of this article shall apply throughout the incorporated areas in the City of Fayetteville, North Carolina.

(c) The city engineering and infrastructure department shall be responsible for the coordination and enforcement of the provisions of this article, and shall have the authority to enforce this article in accordance with the enforcement provisions.

(d) The application of this article and the provisions expressed herein shall be the minimum stormwater management requirements and shall not be deemed a limitation or repeal of any other local requirements authorized by state statute. Where other requirements are more stringent those shall apply. This article does not eliminate the necessity for obtaining other permits as may be required by other governmental entities.

(e) This article shall apply to both public and privately owned or maintained drainage systems, and stormwater management facilities.

(f) *Map.* The provisions of this article shall apply within the areas designated on the map titled "Stormwater Map of Fayetteville, North Carolina", which is adopted simultaneously herewith. The Stormwater Map and all explanatory matter contained thereon accompanies and is hereby made a part of this article.

The Stormwater Map shall be kept on file by the city engineer and shall be updated to take into account changes in the land area covered by this article and the geographic location of all stormwater

management facilities permitted under this article. In the event of a dispute, the applicability of this article to a particular area of land shall be determined by reference to the North Carolina Statutes, the North Carolina Administrative Code, and local zoning and jurisdictional boundary ordinances.

(Ord. No. S2008-020, § 1, 10-27-2008)

Sec. 23-23. - Powers of the department.

(a) The city engineering and infrastructure department shall have the power to administer and enforce all regulations and procedures adopted to implement this article, including the right to maintain an action or procedure in any court of competent jurisdiction to compel compliance with or restrain any violation of this article, and to enforce the provisions of this article in accordance with its enforcement provisions.

(b) The city engineering and infrastructure department can:

- (1) Administer, coordinate, and oversee design, construction, and operation and maintenance of city stormwater facilities and conveyances;
- (2) Implement or oversee implementation of development standards and guidelines;
- (3) Determine the manner in which stormwater facilities should be operated;
- (4) Inspect private systems which discharge to a public drainage system;
- (5) Require compliance with maintenance requirements;
- (6) Advise the other city departments on issues related to stormwater;
- (7) Protect facilities and properties controlled by the city and prescribe how they are used by others; and
- (8) Require proposed developments, not exempt from this article, to comply with the terms of this article.

(Ord. No. S2008-020, § 1, 10-27-2008)

Sec. 23-24. - Exemptions from requirements.

The following development activities are exempt from the provisions of this article and the requirements of providing stormwater management measures. Even if exempt from this article, the following as well as all development activity is not allowed to divert water to adjacent property to cause a nuisance and/or property damage and should comply with the intent of this article.

- (1) Construction or improvement of a single-family residence (single-family residence - separately built) or their accessory buildings that is separately built and not part of multiple construction or a subdivision development approved under this article and that cumulatively disturbs less than one acre. If included in a subdivision plan, all development activities must follow the stormwater management plan that has been approved for the subdivision.
- (2) New developments that do not include more than 20,000 square feet of impervious area in total and that cumulatively disturb less than one acre.

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(3) New construction to existing development that does not include more than 2,000 square feet of new impervious area and that cumulatively disturbs less than one acre. If the new construction to existing development exceeds 2,000 square feet of new impervious area but the total impervious area for the property does not exceed 5,000 square feet of impervious area and that cumulatively disturbs less than one acre, the development shall also be exempt.

(4) Land disturbing activities for agricultural uses.

(5) Land disturbing activities undertaken on forest land for the production and harvesting of timber and timber products where all of the following occur:

- a. The growing of trees;
- b. The harvesting of timber, leaves, or seeds;
- c. The regeneration of either timely replanting of trees or natural generation;
- d. The application of applicable "best management practices", including the N.C. Department of Environment, ~~Health~~ and Natural Resources "Forest Practice Guidelines Related to Water Quality"—Title 15A North Carolina Administrative Code subchapter 11, sections 1.010—.0209 and all successor documents; and
- e. A forest management plan is prepared or approved either by a professional forester registered in the State of North Carolina or by the Division of North Carolina Forest Resources. Copies of the forest management plan shall be provided to the city upon request.

(6) Land disturbing activities for which a permit is required under the Mining Act of 1972; G.S. Ch. 74, Article 7.

(7) Projects which commenced prior to the application of this article, such as:

- a. Approved subdivisions and site plans. However, if the approved subdivision or site plan is modified or changed after the effective date of this article, the proposed development would have to comply with all requirements of this article in its entirety.
- b. Projects which have an outstanding unexpired valid building permit in compliance with either G.S. 160A-422 or G.S. 153A-357 or have an outstanding unexpired valid soil erosion permit in compliance with G.S. 160A-458; provided that, upon application of any impervious surfaces, the exemption based on a valid soil erosion permit shall not apply.
- c. Projects which have obtained a state permit, such as landfills and land application of residuals.
- d. Projects which have continuing vested rights in compliance with G.S. 160A-385.1 or G.S. 153A-344.1.

Phased developments do not constitute separate developments and the total area of all phases will be used to determine exemption requirements.

(Ord. No. S2008-020, § 1, 10-27-2008)

Sec. 23-25. - Scope of stormwater design plans.

(a) The following items relate to the general scope of plans required by this article:

(1) In developing plans for subdivisions, individual lots in a residential development shall not be considered to be separate development activities and shall not require individual permits. Instead the subdivision development, as a whole, shall be considered to be a single development activity. Hydrologic parameters that reflect the ultimate subdivision development shall be used in all engineering calculations.

(2) For developments that have different planned phases of development, if all phases are covered by the approved stormwater design plan, one permit will be given for the entire development so that new permits will not be needed for each phase of development.

(b) In subdivisions, lots should generally be graded in such a manner that surface runoff does not cross more than two lots before it is collected in a system of open channels, closed conduits, or a combination of both.

(c) For all development activities, concentrated stormwater runoff leaving a development site must be discharged directly into a well-defined, natural or manmade off-site receiving channel or pipe. If the receiving channel or pipe is found to be inadequate, the developer must incorporate measures to either improve the receiving channel or pipe to an adequate condition, or detain/retain runoff on the site to a level that can be accommodated by the receiving channel or pipe. Newly constructed channels or pipes shall be designed as adequate channels or pipes.

The development site should be designed to maximize the amount of rainfall that infiltrates into the soils and minimize the amount of direct flow into public drainage facilities, adjoining streets, waterbodies, watercourses, and wetlands, to the extent feasible.

(Ord. No. S2008-020, § 1, 10-27-2008)

Sec. 23-26. - Stormwater design plans and approval process.

(a) Unless granted an exemption from this article, a stormwater design plan (as part of the construction plans) for each development activity shall be submitted for review by the city engineer for the entire development activity, or any portion thereof. If granted an exemption from this article, those development activities are still required to submit a stormwater design plan for review by the city engineer to ensure that all other city minimum requirements have been satisfied.

(b) Permit required. A stormwater permit is required for all development and redevelopment unless exempt pursuant to this article. A permit may only be issued subsequent to a properly submitted and reviewed permit application, pursuant to the administrative manual.

(c) Consultation meeting. A land owner or developer may request a consultation meeting with the city engineer to review and discuss the stormwater management system to be utilized in a proposed development project. The purpose of the meeting(s) is to discuss any questions for stormwater management measures necessary for the proposed project, as well as to discuss and assess constraints, opportunities and potential approaches to stormwater management designs before formal site design engineering commences.

~~(b)(d)~~ All stormwater design plans as required by this article shall be submitted to the city engineering and infrastructure department for review and approval. The applicant shall submit three

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copies of the final plans. Within 30 calendar days from and after receipt of the plans, the city engineer shall issue a decision approving, rejecting, or conditionally approving the plans with modifications. The review and approval time frames for all subsequent submittals on the same plans, if required, shall be 15 calendar days.

~~(e)~~(e) All preliminary plats of the development shall be consistent with the stormwater design plan required in subsection (a) of this section.

~~(d)~~(f) Should any stormwater design plan involve any stormwater management facilities or land to be dedicated to public use, the same information shall also be submitted for review and approval to the department having jurisdiction over the land or other appropriate departments or agencies identified by the city engineer for review and approval. This stormwater design plan shall serve as the basis for all subsequent construction.

~~(e)~~(g) A stormwater design plan shall not be considered approved without the inclusion of an approval stamp with a signature and date on the plans. The stamp of approval on the plans is solely an acknowledgement of satisfactory compliance with the requirements of these regulations. The approval stamp does not constitute a representation or warranty to the applicant or any other person concerning the safety, appropriateness, or effectiveness of any provision, or omission from the stormwater design plan.

~~(f)~~(h) Following approval of stormwater design plans, an owner shall have a vested right to develop the property in accordance with the conditions of approval for two years. Extensions or renewals of the plan approvals may be granted by the city engineer upon written request by the person responsible for the development activity.

~~(g)~~(i) All requirements for sites located in water supply watersheds as set forth in the Code of Ordinances must be met. In addition, all state and/or federal requirements such as U.S. Army Corps of Engineers wetland permits must be met, if required.

~~(h)~~(j) Administrative manual. For applications required under this article, the city engineering and infrastructure department shall compile the application requirements, submission schedule, fee schedule, a copy of this article, and information on how and where to obtain the latest version of the "Stormwater Best Management Practices Manual" as provided by the North Carolina Division of Water Quality in an Administrative Manual, which shall be made available to the public.

(Ord. No. S2008-020, § 1, 10-27-2008)

Sec. 23-27. - Plan requirements.

Stormwater design plans shall include as a minimum the following:

- (1) A vicinity map indicating a north arrow, scale, boundary lines of the site, and other information necessary to locate the development site.
- (2) The maximum scale shall be one inch equals 100 feet.
- (3) The existing and proposed topography of the development site except for individual lot grading plans in single-family subdivisions. Profiles of proposed streets in single-family subdivisions shall be provided showing existing and proposed grades.
- (4) Physical improvements on the site, including present development and proposed

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development.

(5) Location, dimensions, elevations, and characteristics of all existing and proposed stormwater management facilities.

(6) Stormwater design plans shall include designation of all easements needed for inspection and emergency maintenance of the stormwater management facilities along with those easements needed for the maintenance of the drainage system conveying public water. As a minimum, easements shall have the following characteristics:

a. Provide adequate access to all stormwater management facilities for inspection and emergency maintenance. Provide a minimum 20-foot permanent maintenance access easement from a public or private right-of-way to all stormwater management facilities. Provide a minimum 10-foot permanent drainage easement around the perimeter of all stormwater management facilities. The perimeter shall be the edge of facilities such as sand filters or bioretention areas. For wet and dry extended detention basins and similar facilities, the perimeter shall be the top of bank where the stormwater is stored. Any fences constructed around such facilities shall be outside of the 10-foot permanent drainage easement.

b. Provide adequate access to all parts of the public drainage system and structures.

c. Provide a minimum 20-foot easement for closed pipe systems. The required easement width shall be computed as follows:

$\text{Width} = 10 \text{ feet} + (\text{the diameter or total outside width for multiple pipes}) + (2 \text{ times the invert depth}).$

The easement width should be rounded to the nearest five-foot increment.

Drainage easements associated with culverts should be centered over the culvert but may be offset as long as a minimum of ten feet is provided on both sides.

d. Provide easements centered on watercourses with the minimum widths based on the following:

Easement Widths for Open Channels

<u>Drainage Area, acres</u>	<u>Easement Width, feet</u>
< 10 acres	10 feet on each side
10 to < 25 acres	20 feet on each side
25 to < 50 acres	30 feet on each side
50 to < 100 acres	40 feet on each side
> 100 acres	Greater of the floodway width or 50 feet

e. Restriction on easements shall include prohibiting all fences without gates and structures which would interfere with access to the easement areas and/or the maintenance function of the drainage system. If an obstruction (fence, wall, landscaping, etc.) is located in a drainage easement and inhibits access to the drainage system, the city shall remove the

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obstruction as necessary but will not be obligated to replace it.

(7) In subdivisions where a stormwater management facility serves more than one lot, the facility shall be located on a separate lot that is owned by the homeowner association. This lot shall have a minimum frontage of 20 feet.

(87) The stormwater design plan shall include all engineering calculations needed to design the system and associated structures including existing and developed velocities, peak rates of discharge, and hydrographs of stormwater runoff at all existing and proposed points of discharge from the site.

(98) Description of site conditions around points of all surface water discharge including vegetation and method of flow conveyance from the development activity.

(109) Construction and design details for structural controls.

(1140) If there are FEMA-designated floodplains, they must be shown. All construction in the FEMA-designated floodplain must conform to chapter 12, Flood Damage Prevention, of this Code of Ordinances. A separate floodplain submittal may be required.

(1244) A plan for maintenance of privately owned stormwater management facilities shall be included as part of the stormwater design plan which as a minimum shall specify the following:

- a. Types of maintenance activities which should be anticipated so that the proposed drainage system and stormwater management facilities will operate as designed.
- b. The frequency and amount of maintenance that should be anticipated.
- c. The equipment that will be required to perform the needed maintenance.
- d. Name, address, and telephone number of the party responsible for maintenance.

Section 23-39 outlines the requirements for the operation and maintenance agreement which must be executed on all privately owned stormwater management facilities. The city shall provide a standard agreement for this purpose.

(1342) Any existing wetlands on the property shall be delineated on both the stormwater design plan as well as the final plat.

(Ord. No. S2008-020, § 1, 10-27-2008)

Sec. 23-28. - Plan hydrologic criteria.

(a) The hydrologic criteria to be used for the stormwater design plans shall be as follows:

<u>Description</u>	<u>Design Storm</u>
Permanent Storage Facilities	1 and 10
Roadway Inlets	5-year
Swales	10-year
Storm Drainage Systems	10-year
Open Channels	25-year

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Culverts (Subdivision streets)	25-year
Culverts (Thoroughfare roads)	50-year
Emergency Spillways	100-year
Energy Dissipaters	Same as Outlet System

(b) All hydrologic analysis will be based on land use conditions as specified in section 23-29, below.

(c) For the design of storage facilities, a secondary outlet device or emergency spillway shall be provided to discharge the excess runoff in such a way that no danger of loss of life or facility failure is created.

(Ord. No. S2008-020, § 1, 10-27-2008)

Sec. 23-29. - Plan land use conditions criteria.

For all stormwater management facilities, a hydrologic-hydraulic study shall be done showing how the drainage system will function with the proposed facilities. For such studies the following land use conditions shall be used.

- (1) For the design of the facility outlet structure, use developed land use conditions for the area within the proposed development and existing land use conditions for upstream areas draining to the facility.
- (2) For any analysis of flood flows downstream from the proposed facility, use existing land use conditions for all downstream areas.
- (3) All stormwater management facilities, emergency spillways shall be checked using the 100-year storm and routing flows through the facility and emergency spillways. For this analysis, developed land use conditions representing ultimate build-out conditions shall be used for all areas draining to the facility.
- (4) The effects of existing upstream detention facilities can be considered in the hydrologic-hydraulic study only if such facilities have been constructed and maintained, as detention facilities, as required by this article.

(Ord. No. S2008-020, § 1, 10-27-2008)

Sec. 23-30. - Plan wetlands criteria.

Wetland areas shall not be disturbed until documentation is provided to the city engineer to show that the applicant has received approval from the U.S. Army Corps of Engineers regarding appropriate permits and approval of development activities. Stormwater design plans shall not be approved until this documentation has been provided to the city engineer. The city does have the option of providing conditional approval of the stormwater design plans that stipulate the documentation shall be provided prior to any disturbance of wetland areas.

(Ord. No. S2008-020, § 1, 10-27-2008)

Sec. 23-31. - Minimum stormwater quantity control requirements.

(a) Install stormwater management facilities to limit the one-year and ten-year developed peak

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discharge rates to predeveloped peak discharge rates or to the amount that can be accommodated by the receiving downstream drainage system, whichever is more restrictive.

(b) Watersheds that have well documented water quantity problems may have more stringent, or modified, design criteria [such as controlling the 25-year developed peak discharge rate to the predeveloped peak discharge rate] determined by the city engineer that is responsive to the specific needs of that watershed.

(c) Stormwater management facilities may include both structural and nonstructural elements. Natural swales and other natural runoff conduits shall be retained where practicable.

(d) Stormwater design plans can be rejected by the city engineer if they incorporate structures and facilities that are not easily maintained.

(e) The drainage system and all stormwater management structures within the city (including both public and private portions) will be designed to the same engineering and technical criteria and standards. The design and construction must be sealed by a registered professional (as outlined in section 23-35) as meeting or exceeding public drainage system standards. The city engineering and infrastructure department's review will be the same whether the portion of the drainage system will be under public or private control or ownership.

(Ord. No. S2008-020, § 1, 10-27-2008)

Sec. 23-32. - Minimum stormwater quality control requirements.

(a) *General standards.* All development and redevelopment to which this article applies shall comply with the standards of this section.

(b) *Development standards for low-density projects.* Low-density projects shall comply with each of the following standards:

(1) No more than two dwelling units per acre or 24 percent built-upon area.

(2) Stormwater runoff from the development shall be transported from the development by vegetated conveyances to the maximum extent practicable.

(3) Built-upon area shall be at a minimum of 30 feet landward of all perennial and intermittent surface waters draining less than or equal to 640 acres. Built-upon area shall be at a minimum of 75 feet landward of all perennial and intermittent surface waters draining greater than 640 acres. This distance shall be measured from the top of bank on both sides of the perennial and intermittent surface waters. For all perennial and intermittent surface waters, constructed BMPs shall be located at a minimum of 30 feet landward. A perennial or intermittent surface water shall be deemed present if the feature is approximately shown on either the most recent version of the soil survey map prepared by the Natural Resources Conservation Service of the United States Department of Agriculture (USDA) or the most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey (USGS). An exception to this requirement may be allowed when surface waters are not present in accordance with the provisions of 15A NCAC 2B .0233 (3)(a) or similar site-specific determination made using division of water quality approved methodology.

(4) The approval of the stormwater permit shall require an enforceable restriction on property usage that runs with the land, such as a recorded deed restriction or protective covenants, to

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ensure that future development and redevelopment maintains the site consistent with the approved project plans.

(5) A project with an overall density at or below the low-density thresholds, but containing areas with a density greater than the overall project density, may be considered low density as long as the project meets or exceeds the post construction model practices for low-density projects and locates the higher density in upland areas and away from surface waters and drainageways to the maximum extent practicable.

(c) *Development standards for high-density projects.* A project not consistent with the requirements for a low-density project may be permitted as a high-density project and shall implement stormwater control measures that comply with each of the following standards:

(1) The measures shall control and treat runoff from the first inch of rain. Runoff volume drawdown time shall be a minimum of 48 hours, but not more than 120 hours.

(2) High-density projects must discharge the storage volume at a rate equal to or less than the predevelopment discharge rate for the one year, 24-hour storm.

(3) All structural stormwater treatment systems used to meet these requirements shall be designed to have a minimum of 85 percent average annual removal for Total Suspended Solids (TSS).

(4) For BMPs that require a separation from the seasonal high water table, the separation shall be provided by at least 12 inches of naturally occurring soil above the seasonal high water table.

(5) General engineering design criteria for all projects shall be in accordance with 15A NCAC 2H .1008(c).

(6) Built-upon area shall be at a minimum of 50 feet landward of all perennial and intermittent surface waters draining less than or equal to 640 acres. Built-upon area shall be at a minimum of 75 feet landward of all perennial and intermittent surface waters draining greater than 640 acres. This distance shall be measured from the top of bank on both sides of the perennial and intermittent surface waters. For all perennial and intermittent surface waters, constructed BMPs shall be located at a minimum of 30 feet landward. A perennial or intermittent surface water shall be deemed present if the feature is approximately shown on either the most recent version of the soil survey map prepared by the Natural Resources Conservation Service of the United States Department of Agriculture (USDA) or the most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey (USGS). An exception to this requirement may be allowed when surface waters are not present in accordance with the provisions of 15A NCAC 2B .0233 (3)(a) or similar site-specific determination made using division of water quality approved methodology.

(7) The approval of the stormwater permit shall require an enforceable restriction on property usage that runs with the land, such as a recorded deed restriction or protective covenants, to ensure that future development and redevelopment maintains the site consistent with the approved project plans.

(d) *Standards for stormwater control measures.*

(1) *Evaluation according to contents of Stormwater Best Management Practices Manual.* All

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stormwater control measures and stormwater treatment practices required under this article shall be evaluated by the city engineer according to the policies, criteria, and information, including technical specifications and standards and the specific design criteria for each stormwater practice, in the latest version of the "Stormwater Best Management Practices Manual" as provided by the North Carolina Division of Water Quality. The city engineer shall determine whether proposed BMPs will be adequate to meet the requirements of this article.

(2) *Determination of adequacy; presumptions and alternatives.* Stormwater treatment practices that are designed, constructed, and maintained in accordance with the criteria and specifications in the latest version of the "Stormwater Best Management Practices Manual" as provided by the North Carolina Division of Water Quality will be presumed to meet the minimum water quality and quantity performance standards of this article. Whenever an applicant proposes to utilize a practice or practices not designed and constructed in accordance with the criteria and specifications in the latest version of the "Stormwater Best Management Practices Manual" as provided by the North Carolina Division of Water Quality, the applicant shall have the burden of demonstrating that the practice(s) will satisfy the minimum water quality and quantity performance standards of this article. The city engineer may require the applicant to provide the documentation, calculations, and examples necessary for the city engineer to determine whether such an affirmative showing is made.

(Ord. No. S2008-020, § 1, 10-27-2008)

Sec. 23-33. - Approval and permit requirements.

(a) No final site ~~development~~-plan or subdivision ~~plan~~plat approval shall be issued or modified without the following items:

(1) An approved stormwater design plan;

(2) An executed operation and maintenance agreement, if required, in accordance with section 23-39;

(3) The posting of an installation performance guarantee;

~~(4)~~ An approved erosion control plan, if applicable;

~~(5)~~ Right of entry given to the city for city personnel to enter property for emergency maintenance if necessary; and

~~(6)~~ Any off-site easements needed.

(b) No final certificate of occupancy permit shall be issued pursuant to chapter 7 of this Code of Ordinances or final plat approved without the following:

(1) All final inspection requirements as per section 23-37 are met;

(2) Receipt of record drawings as outlined in section 23-37; and

(3) ~~A recorded~~executed operation and maintenance agreement, if required, in accordance with section 23-39

(c) All land clearing, construction, development and drainage shall be done in accordance with the

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approved stormwater design plan or previously approved revisions.

(d) Submittal and/or approval of stormwater design plans does not preclude the applicant from obtaining all other necessary permits and compliance with appropriate regulations including, but not limited to, the following:

- (1) Water supply watershed regulations, chapter 29 of this Code of Ordinances;
- (2) Federal wetland permits;
- (3) Water quality certifications; and
- (4) Sediment and erosion control requirements.

(Ord. No. S2008-020, § 1, 10-27-2008)

Sec. 23-34. - Building permit or street plan approval suspension and revocation.

(a) The following conditions shall represent grounds for suspension and/or revocation for building permit(s) and/or street plan approval(s):

- (1) Any violation(s) of the conditions of the stormwater design plan approval;
- (2) Construction not in accordance with the approved plans;
- (3) Approval of a stormwater design plan has not been obtained;
- (4) Noncompliance with correction notice(s); or
- (5) The existence of an immediate danger in a downstream area.

(b) If one or more of these conditions are found, a written notice of violation shall be served upon the owner or authorized representative and the time in which to correct the deficiencies shall be specified. The notice shall set forth the measures necessary to achieve compliance with the plan. Correction of these violations must be started immediately or the owner shall be deemed in violation of this article.

(c) If appropriate remedial actions as outlined in the written notice are not completed within the specified time period, a building permit or street plan approval will be suspended or revoked within seven days. The suspension or revocation will then be in force until the development is in compliance with this article.

(d) If a violation of this article is occurring that will cause significant damage to downstream property or structures, the city engineer can issue an immediate suspension or revocation.

(Ord. No. S2008-020, § 1, 10-27-2008)

Sec. 23-35. - Professional registration requirements.

(a) Stormwater design plans and design reports that are incidental to the overall or ongoing site design shall be prepared, and stamped/sealed by a qualified registered professional engineer, land surveyor or landscape architect, using acceptable engineering standards and practices. All other stormwater design plans and design reports shall be prepared, and stamped/sealed by a qualified registered professional engineer, using acceptable engineering standards and practices.

(b) The engineer, surveyor, or landscape architect shall perform services only in areas of his/her competence, and shall undertake to perform engineering or land surveying assignments only when qualified by education and/or experience in the specific technical field. In addition, the engineer, surveyor, or landscape architect must verify that the plans have been designed in accordance with this article and the standards and criteria stated or referred to in this article.

(Ord. No. S2008-020, § 1, 10-27-2008)

Sec. 23-36. - Fees.

The initial fees associated with the operation of this article shall be set annually by city council as part of the annual budget ordinance, or by an amendment thereto. If no amendment to the prior year's fees is proposed or adopted by city council as part of the budget ordinance, then the prior year's fees shall continue in full force and effect. A list of the fees proposed at the enactment of this article for plan review and other fees associated with this article may be obtained from the city engineering and infrastructure department.

(Ord. No. S2008-020, § 1, 10-27-2008)

Sec. 23-37. - Construction and inspection.

(a) The owner or his representative shall notify the city engineer before commencing any work to implement the stormwater design plan, at key milestones noted during plan approval, and upon completion of the work.

(b) Any portion of the construction which does not comply with the stormwater design plan shall be promptly corrected by the permittee.

(c) The city engineer will notify the person responsible for the development activity in writing when violations are observed describing the following:

- (1) Nature of the violation;
- (2) Required corrective actions; and
- (3) The time period for violation correction.

(d) A final inspection shall be conducted by the city engineer upon completion of the work included in the approved stormwater design plan to determine if the completed work is constructed in accordance with the plan.

(e) The permittee shall provide record drawings signed and sealed by a registered professional (as outlined in section 23-35) to be submitted upon completion of the stormwater management facilities included in the stormwater design plan. The record drawings shall be referenced to North Carolina State Plane Coordinates and shall be provided in hard copy form as well as a digital file which is compatible with the city's software. The registered professional shall state on the record drawings that:

- (1) The facilities have been constructed as shown on the record drawings; and
- (2) The facilities meet the approved stormwater design plan and specifications.

(f) As a minimum, the record drawings shall contain the following:

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- (1) Mark through and redraw drainage structures when the as-built location deviates more than ten feet horizontally from the location indicated on the plans.
- (2) Show all drainage structures, pipe inverts, and rim elevations.
- (3) Show distances between drainage structures on the plan view as well as the profile.
- (4) Show the final design specifications for all stormwater management facilities and the field location, size, depth, and planted vegetation of all measures, controls, and devices, as installed.

(Ord. No. S2008-020, § 1, 10-27-2008)

Sec. 23-38. - Ownership and maintenance of stormwater management facilities.

(a) All stormwater management facilities shall be privately owned and maintained unless the city accepts the facility for city ownership and maintenance. The owner thereof shall grant to the city a right of entry which allows for inspection and emergency repair, in accordance with the terms of the operation and maintenance agreement set forth in section 23-39, hereof.

(b) Single-family residential stormwater management facilities accepted for maintenance. The city shall accept functional maintenance responsibility of structural stormwater management facilities that are installed pursuant to this article following a warranty period of one year from the date of record-drawing certification described in section 23-37, or from the date the facility ceases to function as an erosion control measure and starts to function as a stormwater management facility, whichever is later, provided the stormwater management facility:

- (1) Only serves a single-family detached residential development or townhomes all of which have public street frontage;
- (2) Is satisfactorily maintained during the one-year warranty period by the owner or designee;
- (3) Meets all the requirements of this article;
- (4) Includes adequate and perpetual access and sufficient area, by easement or otherwise, for inspection, maintenance, repair, or reconstruction; and
- (5) Prior to the release of the installation performance ~~guarantee~~ security as outlined in section 23-41, the developer shall pay into a maintenance fund used to maintain such facilities in the future an amount equal to 20 percent of the initial construction cost of the stormwater management facilities related to detention ponds or other BMPs constructed to meet the requirements of this article.

The city engineer must receive an application for transfer of maintenance responsibilities for the structural stormwater management facility along with the stormwater design plan submittal.

(c) The person responsible for maintenance of any stormwater management facility installed pursuant to this article and not covered under subsection (b) above, shall submit to the city engineer an inspection report from one of the following persons performing services only in their area of competence: a qualified registered North Carolina professional engineer, surveyor, landscape architect, soil scientist, aquatic biologist, or person certified by the North Carolina Cooperative Extension Service for stormwater treatment practice inspection and maintenance. The inspection report shall contain all of

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the following:

- (1) The name and address of the landowner;
- (2) The recorded book and page number of the lot of each stormwater management facility;
- (3) A statement that an inspection was made of all stormwater management facilities;
- (4) The date the inspection was made; and
- (5) A statement that all inspected stormwater management facilities are performing properly and are in compliance with the terms and conditions of the approved maintenance agreement required by this article; and
- ~~(6) The original signature and seal of the engineer, surveyor, or landscape architect.~~

All inspection reports shall be on forms supplied by the city engineer. An original inspection report shall be provided to the city engineer beginning one year from the date of record-drawing certification and each year thereafter on or before the date of the record-drawing certification.

(Ord. No. S2008-020, § 1, 10-27-2008)

Sec. 23-39. - Operation and maintenance agreement.

(a) *In general.* At the time record drawings are provided to the city engineer as described in section 23-37 and prior to final approval of a project for compliance with this article, but in all cases prior to placing the stormwater management facilities into service, the applicant or owner of the site must execute an operation and maintenance agreement that shall be binding on all current and subsequent owners of the site, portions of the site, and lots or parcels served by the stormwater management facility. Failure to execute an operation and maintenance agreement within the timeframe specified by the city engineer may result in assessment of penalties as specified in section 23-46. For single-family residential subdivisions, the original owner or applicant shall have primary responsibility for carrying out the provisions of the maintenance agreement for a period of one year from the date of record-drawing certification described in section 23-37, or for a period of one year from the date the facility ceases to function as an erosion control measure and starts to function as a stormwater management facility, whichever is later. At the end of the one-year timeframe, the stormwater management facility shall be inspected as outlined in section 23-41 in order to release the performance guarantee~~security~~. Once the stormwater management facility has passed inspection, primary responsibility for carrying out the provisions of the maintenance agreement shall be transferred to a homeowners' association, property owners' association, or similar entity. In cases where the city is accepting functional maintenance responsibility, such responsibility shall be transferred to the city once the stormwater management facility has passed inspection. A homeowners' association, property owners' association, or similar entity shall still be responsible for routine maintenance such as mowing the grass and picking up litter.

- (1) The operation and maintenance agreement shall require the owner or owners to maintain, repair, and, if necessary, reconstruct the stormwater management facility, and shall state the terms, conditions, and schedule of maintenance for the stormwater management facility. In addition, it shall grant to the city a right of entry in the event that the city engineer has reason to believe it has become necessary to inspect, monitor, maintain, repair, or reconstruct the stormwater management facility; however, in no case shall the right of entry, of itself, confer an obligation on the city to assume responsibility for the stormwater management facility.

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(2) The operation and maintenance agreement must be approved by the city engineer prior to final approval, and it shall be referenced on the final plat and shall be recorded with the Cumberland County Register of Deeds upon final plat approval. A copy of the recorded maintenance agreement shall be given to the city engineer within 14 days following its recordation.

(b) *Special requirement for homeowners' and other associations.* For all stormwater management facilities required pursuant to this article and that are to be or are owned and maintained by a homeowners' association, property owners' association, or similar entity in a single-family residential subdivision, the required operation and maintenance agreement shall include all of the following provisions:

(1) Acknowledgment that the association shall continuously operate and maintain the stormwater control and management facilities.

(2) Establishment of an escrow account, which can be spent solely for sediment removal, structural, biological or vegetative replacement, major repair, or reconstruction of the stormwater management facilities. If stormwater management facilities are not performing adequately or as intended or are not properly maintained, the city, in its sole discretion, may remedy the situation, and in such instances the city shall be fully reimbursed from the escrow account. Escrowed funds may be spent by the association for sediment removal, structural, biological or vegetative replacement, major repair, and reconstruction of the stormwater management facilities, ~~provided that the city shall first consent to the expenditure.~~

(3) Both developer and homeowners' association contributions shall fund the escrow account. Prior to the release of the installation performance ~~guarantee~~ security as outlined in Section 23-41, the developer shall pay into the escrow account an amount equal to 15 percent of the initial construction cost of the stormwater management facilities. Two-thirds (2/3) of the total initial construction cost shall be deposited into the escrow account within the first five years and the full amount shall be deposited within ten years following initial construction of the stormwater management facilities. Funds shall be deposited each year into the escrow account. A portion of the annual assessments of the association shall include an allocation into the escrow account. Any funds drawn down from the escrow account shall be replaced in accordance with the schedule of anticipated work used to create the escrow account budget.

(4) The percent of developer contribution and lengths of time to fund the escrow account may be varied by the city depending on the design and materials of the stormwater control and management facility.

(5) Granting to the city a right of entry to inspect, monitor, maintain, repair, and reconstruct stormwater management facilities.

(6) Allowing the city to recover from the association and its members any and all costs the city expends to maintain or repair the stormwater management facilities or to correct any operational deficiencies. Failure to pay the city all of its expended costs, after 45 days' written notice, shall constitute a breach of the agreement. In case of a deficiency, the city shall thereafter be entitled to bring an action against the association and its members to pay, or foreclose upon the lien hereby authorized by the agreement against the property, or both, in case of a deficiency. Interest, collection costs, and attorney fees shall be added to the recovery.

(7) A statement that this agreement shall not obligate the city to maintain or repair any stormwater management facilities, and the city shall not be liable to any person for the condition or

operation of stormwater management facilities.

(8) A statement that this agreement shall not in any way diminish, limit, or restrict the right of the city to enforce any of its ordinances as authorized by law.

(9) A provision indemnifying and holding harmless the city for any costs and injuries arising from or related to the stormwater management facility, unless the city has agreed in writing to assume the maintenance responsibility for the stormwater management facility and has accepted dedication of any and all rights necessary to carry out that maintenance.

(Ord. No. S2008-020, § 1, 10-27-2008)

Sec. 23-40. - Inspection program.

(a) Inspections and inspection programs by the city may be conducted or established on any reasonable basis, including, but not limited to, routine inspections; random inspections; inspections based upon complaints or other notice of possible violations; and joint inspections with other agencies inspecting under environmental or safety laws. Inspections may include, but are not limited to, reviewing maintenance and repair records; sampling discharges, surface water, and material or water in stormwater management facilities; and evaluating the condition of stormwater management facilities.

(b) If the owner or occupant of any property refuses to permit such inspection, the city engineer shall proceed to obtain an administrative search warrant pursuant to G.S. 15-27.2, or its successor. No person shall obstruct, hamper or interfere with the city engineer while carrying out his or her official duties.

(Ord. No. S2008-020, § 1, 10-27-2008)

Sec. 23-41. - Performance guaranteesecurity for installation.

(a) *Shall be required.* The city shall require the submittal of a performance guaranteesecurity or bond with surety, cash escrow, letter of credit or other acceptable legal arrangement prior to issuance of a permit in order to ensure that the stormwater management facilities are installed by the permit holder as required by the approved stormwater design plan.

(b) *Amount.* The amount of an installation performance guaranteesecurity shall be equal to at least 75 percent of the total estimated construction cost of the stormwater management facilities approved under the permit, ~~plus 50 percent~~. The installation performance guaranteesecurity shall remain in place until at least one year after final approval. In cases where the facility initially functions as an erosion control measure, the installation performance guaranteesecurity shall remain in place until at least one year after the facility starts to function as a stormwater management facility.

(c) *Use of performance guaranteesecurity.*

(1) *Forfeiture provisions.* The performance guaranteesecurity shall contain forfeiture provisions for failure, after proper notice, to complete work within the time specified, or to initiate or maintain any actions which may be required of the applicant or owner in accordance with this article, approvals issued pursuant to this article, or an operation and maintenance agreement established pursuant to this article.

(2) *Default.* Upon default of the owner to construct, maintain, repair and, if necessary, reconstruct any stormwater management facility in accordance with the applicable permit or

operation and maintenance agreement, the city engineer shall obtain and use all or any portion of the guaranteesecurity to make necessary improvements based on an engineering estimate. Such expenditure of funds shall only be made after requesting the owner to comply with the permit or maintenance agreement.

(3) *Costs in excess of performance guaranteesecurity.* If the city takes action upon such failure by the applicant or owner, the city may collect from the applicant or owner the difference between the amount of the reasonable cost of such action and the amount of the guaranteesecurity held, in addition to any other penalties or damages due.

(4) *Refund.* No sooner than one year after final approval, the applicant may petition the city to release the value of the performance guaranteesecurity. For single-family residential subdivisions, the one-year timeframe shall be as outlined in section 23-39. Upon receipt of such petition, the city engineer shall inspect the stormwater management facility to determine whether the controls are performing as designed and intended. The city engineer shall present the petition, inspection report, and recommendations to the director of the city engineering and infrastructure department.

a. If the director of the city engineering and infrastructure department approves the report and accepts the petition, the city may release the installation performance guaranteesecurity upon execution by the applicant of an indemnification agreement in favor of the city which shall be a covenant upon the property and run with the land.

b. If the director of the city engineering and infrastructure department does not accept the report and rejects the petition, the director of the city engineering and infrastructure department shall provide the applicant with instruction to correct any deficiencies and all steps necessary for the release of the installation performance guaranteesecurity.

(Ord. No. S2008-020, § 1, 10-27-2008)

Sec. 23-42. - Notice to owners; deed recordation and indications on plat.

The applicable operations and maintenance agreement pertaining to every stormwater management facility shall be referenced on the final plat and shall be recorded with the Cumberland County Register of Deeds upon final plat approval. If no subdivision plat is recorded for the site, then the operations and maintenance agreement shall be recorded with the Cumberland County Register of Deeds so as to appear in the chain of title of all subsequent purchasers under generally accepted searching principles. For condominiums, the operations and maintenance agreement shall be recorded with the association documents.

(Ord. No. S2008-020, § 1, 10-27-2008)

Sec. 23-43. - Records of installation and maintenance activities.

The owner of each stormwater management facility shall keep records of inspections, maintenance, and repairs for at least five years from the date of creation of the record of inspection and shall submit the same upon reasonable request to the city engineer.

(Ord. No. S2008-020, § 1, 10-27-2008)

Sec. 23-44. - Variances from requirements.

(a) The city council may grant a variance from the requirements of this article if:

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- (1) There are exceptional circumstances applicable to the site such that strict adherence to the provisions of this article will result in unnecessary hardship and not fulfill the intent of this article;
- (2) The variance is in harmony with the general purpose and intent of this article; and
- (3) In granting this variance, water quality has been protected, public safety and welfare has been assured, and substantial justice has been done.

(b) A written request for a variance shall be submitted to the city clerk and shall state the specific variance sought and the reasons, with supporting data, for their granting. The request shall include descriptions, drawings, calculations and any other information that is necessary to evaluate the proposed variance.

(c) The city engineer will conduct a review of the request for a variance and submit a report to the city council.

(Ord. No. S2008-020, § 1, 10-27-2008)

Sec. 23-45. - Appeals.

The disapproval or required modification of any proposed stormwater design plan, or the determination by the city of noncompliance, or failure to maintain shall entitle the aggrieved person to appeal this decision or lack of action to the city council. Such appeal must be made in writing to the city clerk and the city manager within 15 days of written notice of disapproval or modification of a stormwater design plan, or determination of either noncompliance or failure to maintain or within 30 days of the receipt of a notice of assessment of a civil penalty, made or rendered by the city engineer in the enforcement of this article.

(Ord. No. S2008-020, § 1, 10-27-2008)

Sec. 23-46. - Enforcement.

(a) *General.*

(1) *Authority to enforce.* The provisions of this article shall be enforced by the city engineer, his or her designee, or any authorized agent of the city. Whenever this section refers to the city engineer, it includes his or her designee as well as any authorized agent of the city.

(2) *Violation unlawful.* Any failure to comply with an applicable requirement, prohibition, standard, or limitation imposed by this article, or the terms or conditions of any permit or other development or redevelopment approval or authorization granted pursuant to this article, is unlawful and shall constitute a violation of this article.

(3) *Each day a separate offense.* Each day that a violation continues shall constitute a separate and distinct violation or offense.

(4) *Responsible persons/entities.* Any person who erects, constructs, reconstructs, alters (whether actively or passively), or fails to erect, construct, reconstruct, alter, repair or maintain any structure, practice, or condition in violation of this article shall be subject to the remedies, penalties, and/or enforcement actions in accordance with this section. Persons subject to the remedies and penalties set forth herein, may include any architect, engineer, builder, contractor, developer, agency, or any other person who participates in, assists, directs, creates, causes, or

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maintains a condition that results in or constitutes a violation of this article, or fails to take appropriate action, so that a violation of this article results or persists; or an owner, any tenant or occupant, or any other person, who has control over, or responsibility for, the use or development of the property on which the violation occurs. For the purposes of this section, responsible person(s) shall include, but not be limited to:

a. *Person maintaining condition resulting in or constituting violation.* An architect, engineer, builder, contractor, developer, agency, or any other person who participates in, assists, directs, creates, causes, or maintains a condition that constitutes a violation of this article, or fails to take appropriate action, so that a violation of this article results or persists.

b. *Responsibility for land or use of land.* The owner of the land on which the violation occurs, any tenant or occupant of the property, any person who is responsible for stormwater controls or practices pursuant to a private agreement or public document, or any person, who has control over, or responsibility for, the use, development or redevelopment of the property.

(b) *Remedies and penalties.* The remedies and penalties provided for violations of this article, whether civil or criminal, shall be cumulative and in addition to any other remedy provided by law, and may be exercised in any order.

(1) *Remedies.*

a. *Withholding of certificate of occupancy.* The city engineer or other authorized agent may refuse to issue a certificate of occupancy for the building or other improvements constructed or being constructed on the site and served by the stormwater practices in question until the applicant or other responsible person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violations described therein. This remedy shall not apply to buildings in a single-family residential subdivision ~~or residential condominium project.~~

b. *Disapproval of subsequent permits and development approvals.* As long as a violation of this article continues and remains uncorrected, the city engineer or other authorized agent may withhold, and the city council may disapprove, any request for permit or development approval or authorization provided for by this article or the zoning, subdivision, and/or building regulations, as appropriate, for the land on which the violation occurs.

c. *Injunction, abatements, etc.* The city engineer, with the written authorization of the city manager, may institute an action in a court of competent jurisdiction for a mandatory or prohibitory injunction and order of abatement to correct a violation of this article. Any person violating this article shall be subject to the full range of equitable remedies provided in the general statutes or at common law.

d. *Correction as public health nuisance, costs as lien, etc.* If the violation is deemed dangerous or prejudicial to the public health or public safety and is within the geographic limits prescribed by G.S. 160A-193, the city engineer, with the written authorization of the city manager, may cause the violation to be corrected and the costs to be assessed as a lien against the property.

(2) *Civil penalties.*

a. *Violations of article.* A violation of any of the provisions of this article or rules or other

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orders adopted or issued pursuant to this article may subject the violator to a civil penalty. A civil penalty may be assessed from the date the violation occurs. No penalty shall be assessed until the person alleged to be in violation has been notified of the violation. Refusal to accept the notice or failure to notify the city engineer of a change of address shall not relieve the violator's obligation to comply with this article or to pay such a penalty.

b. *Amount of penalty.* The ~~maximum~~ civil penalty for each violation of this article ~~is \$5,000.00~~ may be up to the maximum allowed by law. Each day of continuing violation shall constitute a separate violation. In determining the amount of the civil penalty, the city engineer shall consider any relevant mitigating and aggravating factors including, but not limited to, the effect, if any, of the violation; the degree and extent of harm caused by the violation; the cost of rectifying the damage; whether the violator saved money through noncompliance; whether the violator took reasonable measures to comply with this article; whether the violation was committed willfully; whether the violator reported the violation to the city engineer; and the prior record of the violator in complying or failing to comply with this article or any other post construction article or law. The city engineer is authorized to vary the amount of the per diem penalty based on criteria specified in the administrative manual and based on relevant mitigating factors. Civil penalties collected pursuant to this article shall be credited to the city's general fund as nontax revenue.

c. *Notice of assessment of civil penalty.* The city engineer shall determine the amount of the civil penalty and shall notify the violator of the amount of the penalty and the reason for assessing the penalty. This notice of assessment of civil penalty shall be served by any means authorized under G.S. 1A-1, Rule 4, and shall direct the violator to either pay the assessment or file an appeal within 30 days of receipt of the notice as specified in subsection (2)e., below.

d. *Failure to pay civil penalty assessment.* If a violator does not pay a civil penalty assessed by the city engineer within 30 days after it is due, or does not request a hearing as provided in subsection (2)e., below, the city engineer shall request the initiation of a civil action to recover the amount of the assessment. The civil action shall be brought in Cumberland County Superior Court or in any other court of competent jurisdiction. A civil action must be filed within three years of the date the assessment was due. An assessment that is appealed is due at the conclusion of the administrative and judicial review of the assessment.

e. *Appeal of remedy or penalty.* The issuance of a notice of assessment of a civil penalty by the city engineer shall entitle the responsible party or entity to an appeal before the city council if such person submits written demand for an appeal hearing to the city clerk within 30 days of the receipt of a notice of assessment of a civil penalty. The demand for an appeal shall be accompanied by a filing fee as established by city council. The appeal of a notice of assessment of a civil penalty shall be conducted as described in section 23-45 of this article.

(3) *Criminal penalties.* A violation of this article may be enforced as a misdemeanor subject to the maximum fine permissible under North Carolina law.

(c) *Procedures.*

(1) *Authority to inspect.* The city engineer shall have the authority, upon presentation of proper credentials, to enter and inspect any land, building, structure, or premises to ensure compliance

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with this article, or rules or orders adopted or issued pursuant to this article, and to determine whether the activity is being conducted in accordance with this article and the approved stormwater design plan, and whether the measures required in the plan are effective. No person shall willfully resist, delay, or obstruct the city engineer while the city engineer is inspecting or attempting to inspect an activity under this article.

(2) *Notice of violation and order to correct.* When the city engineer finds that any building, structure, or land is in violation of this article, the city engineer shall notify in writing the responsible person/entity. The notification shall indicate the nature of the violation, contain the address or other description of the site upon which the violation occurred or is occurring, order the necessary action to abate the violation, and give a deadline for correcting the violation. The notice shall, if required, specify a date by which the responsible person/entity must comply with this article, and advise that the responsible person/entity is subject to remedies and/or penalties or that failure to correct the violation within the time specified will subject the responsible person/entity to remedies and/or penalties as described in this section of this article. In determining the measures required and the time for achieving compliance, the city engineer shall take into consideration the technology and quantity of work required, and shall set reasonable and attainable time limits. The city engineer may deliver the notice of violation and correction order personally, by the Fayetteville Police, by certified or registered mail, return receipt requested, or by any means authorized for the service of documents by Rule 4 of the North Carolina Rules of Civil Procedure.

If a violation is not corrected within a reasonable period of time, as provided in the notification, the city engineer may take appropriate action under this article to correct and abate the violation and to ensure compliance with this article.

(3) *Extension of time.* A person who receives a notice of violation and correction order, or the owner of the land on which the violation occurs, may submit to the city engineer a written request for an extension of time for correction of the violation. On determining that the request includes enough information to show that the violation cannot be corrected within the specified time limit for reasons beyond the control of the person requesting the extension, the city engineer may extend the time limit as is reasonably necessary to allow timely correction of the violation, up to, but not exceeding 60 days. The city engineer may grant 30-day extensions in addition to the foregoing extension if the violation cannot be corrected within the permitted time due to circumstances beyond the control of the person violating this article. The city engineer may grant an extension only by written notice of extension. The notice of extension shall state the date prior to which correction must be made, after which the violator will be subject to the penalties described in the notice of violation and correction order.

(4) *Enforcement after time to correct.* After the time has expired to correct a violation, including any extension(s) if authorized by the city engineer, the city engineer shall determine if the violation is corrected. If the violation is not corrected, the city engineer may act to impose one or more of the remedies and penalties authorized by this article.

(5) *Emergency enforcement.* If delay in correcting a violation would seriously threaten the effective enforcement of this article or pose an immediate danger to the public health, safety, or welfare, then the city engineer may order the immediate cessation of a violation. Any person so ordered shall cease any violation immediately. The city engineer may seek immediate enforcement, without prior written notice, through any remedy or penalty authorized by this article.

(Ord. No. S2008-020, § 1, 10-27-2008)

Sec. 23-47. - Relationship to other laws, regulations, and private agreements.

(a) *Conflict of laws.* This article is not intended to modify or repeal any other ordinance, rule, regulation or other provision of law. The requirements of this article are in addition to the requirements of any other article, rule, regulation or other provision of law. Where any provision of this article imposes restrictions different from those imposed by any other ordinance, rule, regulation or other provision of law, whichever provision is more restrictive or imposes higher protective standards for human or environmental health, safety, and welfare shall control.

(b) *Private agreements.* This article is not intended to revoke or repeal any easement, covenant, or other private agreement. However, where the regulations of this article are more restrictive or impose higher standards or requirements than such an easement, covenant, or other private agreement, the requirements of this article shall govern. Nothing in this article shall modify or repeal any private covenant or deed restriction, but such covenant or restriction shall not legitimize any failure to comply with this article. In no case shall the city be obligated to enforce the provisions of any easements, covenants, or agreements between private parties.

(Ord. No. S2008-020, § 1, 10-27-2008)

Sec. 23-48. - Severability.

If any term, requirement, or provision of this article or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this article or the application of such terms, requirements and provisions to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby and each term, requirement or provision of this article shall be valid and be enforced to the fullest extent permitted by law.

(Ord. No. S2008-020, § 1, 10-27-2008)

Sec. 23-49. - Effective date.

This article shall become effective on January 1, 2009.

(Ord. No. S2008-020, § 1, 10-27-2008)

STORMWATER ADVISORY BOARD MEETING MINUTES

2011 – MEETING MINUTES OF STORMWATER ADVISORY BOARD REGULAR MEETING DECEMBER 06, 2011

**STORMWATER ADVISORY BOARD
REGULAR MEETING
CITY HALL, LAFAYETTE ROOM
DECEMBER 06, 2011
5:30 P.M.**

Present: Chair Carlon Mercer;
Board Members Charles Donnell, Rod Hohing, and Vice Chair, Lynn Vaughan
Absent: Board Member Kevin Briscoe
Others Present: Greg Caison, Engineering & Infrastructure
Michelle J. Foye, Stormwater Paralegal
Shauna Haslem, Stormwater Educator
Al Hardee, Senior Stormwater Inspector
John Fersner, US Infrastructure

1. CALL TO ORDER

Chair Mercer called the meeting to order at 5:30 p.m. in the Lafayette Room at City Hall. The record is to reflect there was a member absent, Mr. Kevin Briscoe and a newly appointed member Rod Hohing is present.

2. APPROVAL OF AGENDA

MOTION: Board Member Donnell moved to approve the agenda.
SECOND: Vice Chair Vaughan
VOTE: Unanimous (4-0) Favor

3. APPROVAL OF MINUTES

MOTION: Board Member, Donnell
SECOND: Board Member Vaughan
VOTE: Unanimous (4-0) Favor

The following item was approved:

Regular Stormwater Advisory Board Meeting held on November 1, 2011

INTRODUCTION OF NEW MEMBER: ROD HOHING

Mr. Hohing introduced himself and stated that he has lived in Fayetteville for 39 years and raised his three children here. For the last 15 years of his manufacturing career he worked out of town and commuted between Fayetteville and Smithfield and Garner. Mr. Hohing formerly worked with Mr. Caison many years ago. He likes to fish, walk and quail hunt. The Board then briefly introduced themselves to Mr. Hohing.

4. NPDES PERMIT RENEWAL STATUS

Mr. Caison discussed that he was recently contacted by the State to address the renewal cycle of the permit. Currently Fayetteville is still in the original Phase I Permit. Other Phase I cities are to renew their permits in 2012. We are currently 6 to 8 months out of cycle on that status based on anticipated renewal. Mr. Caison is trying to guard our City against having to comply with requirements that other cities will not have. City staff will respond to the Division of Water Quality's comments next week. The Board will be addressed soon after the first of the year and as required.

STORMWATER ADVISORY BOARD MEETING MINUTES

5. REVIEW OF PROPOSED ORDINANCE CHANGES & ADMIN MANUAL

Mr. Caison introduced John Fersner, who gave a presentation of the background and history Stormwater Control Ordinance & NPDES Permit Fee. Development standards (drafted October 2007) added a new City-wide Fee that is mainly geared to address quantity and flooding. There are changes that City Staff and the Stormwater Stakeholders have compiled for the Ordinance. (Please See attached PowerPoint Presentation copy of proposed Administrative Manual, Stormwater Control Ordinance Chapter 23. All proposed changes are highlighted.). The new manual does not have to be approved by council; however, the Stormwater Control Ordinance has to be approved by the State, and then approved by Council. Council will be approached thru a work session on February 6, 2012 in which a similar presentation will be presented.

MOTION TO APPROVE STORMWATER CONTROL ORDINANCE CHANGES

Mr. Donnell moved that the Stormwater Advisory Board approve the requested changes to the Stormwater Management Ordinance, Chapter 23, City of Fayetteville Code of Ordinances, and that the proposed ordinance with revisions be forwarded to City Council for adoption.

MOTION: Board Member Donnell moved to approve.
SECOND: Chairman Mercer
VOTE: Unanimous (4-0) Favor

6. OTHER:

Next Meeting will be January 3rd.

7. ADJOURNMENT

The meeting adjourned at 6:31 p.m.

Carlton Mercer, Chair
Lynn Vaughan, Vice-Chair

/MJF

Handouts: Copy of Proposed Administrative Manual & Stormwater Control Ordinance



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HBAF Staff

Executive Officer

Natalie Fryer

Communications Manager

Pamela Grierson

Governmental Affairs Consultant

Angie Hedgepeth

January 24, 2012

Mr. Greg Caison
Stormwater Manager
City of Fayetteville
433 Hay Street
Fayetteville, NC 28301

Re: Amendments to the City of Fayetteville Stormwater Control Ordinance

Dear Mr. Caison:

We are writing to you on behalf of the Home Builders Association of Fayetteville to express our support for the recent revisions to the Stormwater Control Ordinance.

During the review of the ordinance conducted by city staff, members of the HBAF were invited to participate in a stakeholders discussion, along with local engineers and Stormwater Advisory Board members. The city's consultant, Mr. John Ferstner of U.S. Infrastructure, provided expert advice and guidance during the process.

The review was conducted with a spirit of cooperation between staff, consultant and stakeholders. We believe that the revised ordinance will better serve the needs of the city and its citizens.

We appreciate the opportunity to be involved in the ordinance revision and wish to thank city staff for the professional manner in which these review sessions were conducted.

Sincerely,

A handwritten signature in black ink, appearing to read "Hector Ray".

Hector Ray

A handwritten signature in black ink, appearing to read "Dohn Broadwell, Jr.".

Dohn Broadwell, Jr.
Jimmy Kizer
John Gillis

MISSION STATEMENT:

The Home Builders Association of Fayetteville's Mission is to serve, advocate, and promote the local building and development industries while fostering unity between members, government, and the community.

CITY COUNCIL ACTION MEMO

TO: Mayor and Members of City Council
FROM: Jerry Dietzen, Environmental Services Director
DATE: February 6, 2012
RE: **Back Door Yard Waste Collection Service**

THE QUESTION:

Does City Council wish to provide back door yard waste collection service for those not physically capable of pushing or pulling a cart to the curb?

RELATIONSHIP TO STRATEGIC PLAN:

This item is related to Goal number 4: More Attractive City - Clean and Beautiful
Objective 1- Clean and beautiful community with less trash and less visual blight

BACKGROUND:

Council Member Bates requested information on what it would take to provide back door yard waste service for individuals who currently receive back door garbage collection. Traditionally we have found that individuals with disabilities who are not physically able to pull or push the garbage cart to the curb are also not able to complete weekly yard work so they have a relative or yard service company complete this work. The person completing the yard work would then place the carts at the curb for collection.

However, in our analysis of this request, the department recorded the time it would take to leave the truck, go to the back yard location where the trash carts are located and return to the truck and then to double that time to return the cart to the same location in the yard. Our average time was 3.5 minutes per service location. We did not include the loading time since that would be constant.

ISSUES:

In order to keep the cost of this new program reasonable, every back door resident would have to participate and would be charged the service rate. This would apply if they used the service or not.

Providing this additional service would cause the department to be less efficient in its delivery of services during holidays and peak season collections.

BUDGET IMPACT:

The analysis indicates that it would take a minimum of two additional garbage trucks, four additional personnel and the associated supplies, materials, vehicle maintenance and fuel to serve these households in this manner. The beginning cost for this new service as reviewed by Finance

would be approximately \$683,757 per year subject to annual increases due to inflation. The cost per household, based upon mandatory participation of all 650 households, would begin at \$45.58 per year or \$3.80 per household per month.

OPTIONS:

1. Consider providing backdoor yard waste service as a new initiative in the budget process. The item would then compete with other needs in the budget process.
2. Consider only the service of returning the carts to the side of the house following collection at the street as an alternate to the full service. This way, the carts would not remain at the curb throughout the week. This service level would be less costly.
3. Keep yard waste collection as it is currently

RECOMMENDED ACTION:

Staff recommends option number 3: Keep yard waste collection as it is currently

ATTACHMENTS:

Back Door Yard Waste Analysis

Yard Waste Backdoor Collection Analysis: Option 1														
17-Nov-11														
Time in Manhours per employee to retrieve, dump & return cart(s).	Number of employees per truck/route	Number of Households per week	Total Calculated Manhours per week	Average Cost per manhour	Total Personnel Cost/week	Total Personnel Cost/year	Maint Cost/truck/Year	Fuel Cost/Truck/Year	No. Trucks needed	Truck Insurance, Supplies, Depreciation/year	Total Equipment Cost Per Year			
0.05	2	650	65	\$ 65.55	4,260.81	221,561.91	31,136.61	12,597.00	2					
Personnel Semi-Automated						FY12 Base	FY12 Benefits	Assumed inflationary increase 2.5%						
EOII	2	2	2	2	2	\$25,443.00	\$10,537.18	71,960.37	71,960.37	71,960.37	71,960.37	71,960.37		
Collector	2	2	2	2	2	\$22,214.40	\$9,978.31	64,385.43	64,385.43	64,385.43	64,385.43	64,385.43		
EOII Holiday Overtime	0	0	0	0	0	\$12.23	\$2.12	0.00	0.00	0.00	0.00	0.00		
Collector Holiday Overtime	0	0	0	0	0	\$10.68	\$1.85	0.00	0.00	0.00	0.00	0.00		
Total Salaries								136,346	136,346	136,346	136,346	136,346		
Operating Semi-Automated						Quantity	Cost Per Unit	Assumed inflationary increase 2.5%						
Vehicle Fuel	2	2	2	2	2	12,597.00		65,189.48	67,471.11	69,832.60	72,276.74	74,806.42		
Uniforms	4	4	4	4	4	382.00		3,953.70	4,092.08	4,235.30	4,383.54	4,536.96		
Truck Supplies	2	2	2	2	2	50.00		258.75	267.81	277.18	286.88	296.92		
Workman's Comp.Claim average	4	4	4	4	4			0.00	0.00	0.00	0.00	0.00		
Truck Maintenance	2	2	2	2	2	31,136.61		161,131.95	166,771.57	172,608.57	178,649.87	184,902.62		
								0.00	0.00	0.00	0.00	0.00		
								230,534	238,603	246,954	255,597	264,543		
Other						Quantity	For 1/4 of HH Routes	Assumed inflationary increase 3.5%						
Estimated cost for liability damage claims						4,083.85		0.00	0.00	0.00	0.00	0.00		
Liability Insurance Allocation per Vehicle	2	2	2	2	2	138.87		277.74	277.74	277.74	277.74	277.74		
Liability Insurance Allocation per Employee	4	4	4	4	4	113.03		452.12	452.12	452.12	452.12	452.12		
Total Annual Capital Cost Estimate								729.86	729.86	729.86	729.86	729.86		
Capital						Quantity	Cost Per Unit	Assumed inflationary increase 2.5%						
Avg. Vehicle Cost Allocated over 10 yrs	2	2	2	2	2	16,917.60		33,835.20	33,835.20	33,835.20	33,835.20	33,835.20		
Radio	0	0	0	0	0	0.00		0	0	0	0	0		
tags	0	0	0	0	0	0.00		0	0	0	0	0		
Total Annual Capital Cost Estimate								33,835	33,835	33,835	33,835	33,835		
Total Estimated Cost Summary														
Estimated Annual Expenditures								683,757	703,217	723,247	743,863	765,084		
Number of Households														
Estimated Annual Cost Per Household								45.58	46.88	48.22	49.59	51.01		
Estimated Monthly Cost Per Household								3.80	3.91	4.02	4.13	4.25		
Estimate Average Monthly Cost over 5 yr period										4.02				

Replacement yrs based on conversation with John McColl on 11/1/11. Average salvage value estimated based upon last 6 vehicles sold at auction (email from Pam Owens @ PWC on 11/1/11)