



**Town of Clayton
Regular Town Council Meeting Agenda
Monday, November 16, 2020 @ 6:00 PM**

THE TOWN OF CLAYTON WILL FOLLOW GUIDELINES FROM THE CENTERS FOR DISEASE CONTROL AND THE NORTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES WITH REGARD TO SOCIAL DISTANCING.

BELOW PLEASE FIND CHANGES TO THE COUNCIL MEETING FORMAT:

ANY MEMBER OF THE PUBLIC THAT WISHES TO ADDRESS THE COUNCIL, MAY DO SO IN PERSON, HOWEVER YOU ARE ASKED TO CONTACT THE TOWN CLERK IN ADVANCE OF THE MEETING.

IF YOU DO NOT WISH TO ATTEND THE MEETING IN PERSON BUT DO WISH TO SHARE ANY PUBLIC COMMENT WITH THE COUNCIL, PLEASE FORWARD YOUR COMMENT(S) TO THE TOWN CLERK NO LATER THAN NOON THE DAY OF THE MEETING. PLEASE INCLUDE YOUR NAME AND ADDRESS. PUBLIC COMMENT(S) RECEIVED WILL BE READ INTO THE RECORD BY THE TOWN CLERK.
EMAIL: KMOFFETT@TOWNOFCLAYTONNC.ORG

THE PUBLIC MAY VIEW THE LIVE COUNCIL MEETING ON THE TOWN'S YOU TUBE CHANNEL:
<http://youtube.com/c/TownofClaytonNC1869>

BELOW PLEASE FIND ADDITIONAL INFORMATION REGARDING PROCEDURES FOR IN-PERSON MEETINGS:

- ALL persons attending must wear a mask.
- We will be following proper social distancing at all times.
- **Entrance and Exit will be main door on SECOND STREET.**
- **There is no entrance or exit on HORNE STREET.**
- Any member of the public attending will be asked to wait in the lobby until item they wish to address is ready for discussion.
- Lobby will be set to encourage social distancing.
- Chairs will be at least 6' from each other.
- We will have TWO staff members attending the meeting(s) to ensure smooth transition with those attending the meeting.
- One person will serve as LOBBY staff and the other will serve as CHAMBER staff.
- The meeting will be shown on the monitor in the lobby. (YouTube)
- All council or board members will be socially distanced in the council chambers and wearing face masks.*
- Staff will be socially distanced and seated within the council chambers. Face masks will be worn.*
- Hand sanitizer will be available, both in the lobby and council chambers.
- Podium/microphone will be sanitized after each speaker.

**Masks may be lowered when speaking.*

1. CALL TO ORDER

Pledge of Allegiance and Invocation

2. WATER RECLAMATION FACILITY PUBLIC MEETING

3. ADJUSTMENT OF THE AGENDA

4. CONSENT AGENDA

(Items on the consent agenda are considered routine in nature or have been thoroughly discussed at previous meetings. Any member of the Council may request to have an item removed from the consent agenda for further discussion.)

a. DRAFT Minutes

- November 2, 2020 - Regular Meeting
- November 2, 2020 - Closed Session

[November 2 2020 DRAFT Minutes](#)

POTENTIAL ACTION: Adoption of Consent Agenda as Presented

5. ADMINISTRATIVE ITEMS

6. INTRODUCTIONS AND SPECIAL PRESENTATIONS

7. PUBLIC HEARINGS

a. Code of Ordinance - Addition of Chapter 158 - Stormwater/Erosion (Continued from November 2, 2020)

Presenters: Joshua Baird, Town Engineer & Susan Locklear, Stormwater Engineer

[Cover](#)

[Stormwater Summary](#)

[Ordinance](#)

POTENTIAL ACTION: Adoption of Ordinance #2020-11-01

b. Update to Comprehensive List of Fees & Charges - Stormwater/Erosion Control

Presenters: Joshua Baird, Town Engineer & Susan Locklear, Stormwater Engineer

[Cover](#)

[Proposed Fee Schedule](#)

[Erosion Control Fee Comparison Table](#)

[Stormwater Fee Comparison Table](#)

[Ordinance](#)

POTENTIAL ACTION: Adoption of Ordinance #2020-11-02

8. OLD BUSINESS

a. Equipment Lease Purchase Agreement - Fire Truck

Presenter: Robert McKie, Finance Director

[Cover](#)

[Agreement](#)
[Resolution](#)

POTENTIAL ACTION: Adoption of Resolution #2020-42

9. NEW BUSINESS

- a. Amendment to Library Advisory Board By-Laws

Presenter: Joy Garretson, Library Director

[Cover](#)

[Amended By-Laws - STRIKE THROUGH Version](#)

[Amended By-Laws - CLEAN VERSION](#)

[Resolution](#)

POTENTIAL ACTION: Adoption of Resolution #2020-43

- b. Update to Bank Signature Cards - Operating Account &- Claytex Fire District

Presenter: Robert McKie, Finance Director

[Resolution Authorizing Bank Signatures - Operating Account](#)

[Resolution Authorizing Bank Signature - Claytex](#)

POTENTIAL ACTION: Adoption of Resolution #2020-44

POTENTIAL ACTION: Adoption of Resolution #2020-45

- c. Recommended Advisory Board Appointments

Presenter: Kimberly Moffett, Town Clerk

- Planning Board
- Public Art Advisory Board
- Parks & Recreation Advisory Board

[Cover](#)

[Recommendations](#)

POTENTIAL ACTION: Appointments to Advisory Boards as Presented

- d. Code of Ordinance Update - Chapter 50 - Time of Collection RE: System Development Fees

Presenter: Joshua Baird, Town Engineer

[Cover](#)

[HB 873](#)

[Proposed Changes - Red Line Version](#)

[Ordinance](#)

POTENTIAL ACTION: Adoption of Ordinance #2020-11-03

10. STAFF REPORTS

- a. Town Manager
- 4-Way Stop Sign at Blanche & Barbour
- b. Town Attorney
- c. Town Clerk
- d. Other Staff

- COVID Resource Referral Update
Presenter: Ann Game, Customer Service Director
[Payment Referrals for Utility Payments](#)

11. OTHER BUSINESS

- a. Informal Discussion & Public Comment
- b. Council Comments

12. ADJOURNMENT

Quasi-Judicial (evidentiary) – These hearings are different from other public hearings in that they resemble a court hearing where testimony is presented and the Town Council acts like a court of law. During evidentiary hearings, the Town Council receives only sworn testimony and other credible evidence. In addition, the Town Council must make findings of fact based upon the evidence presented. Citizens may give testimony in an evidentiary hearing after they have taken an oath.



**Town of Clayton
Regular Town Council Meeting Minutes
Monday, November 2, 2020 @ 6:00 PM
Council Chambers**

COUNCIL PRESENT:

Mayor McLeod
Mayor Pro Tem Thompson
Council Member Holder
Council Member Grannis
Council Member Bunn
Council Member Everett

STAFF PRESENT:

JD Solomon, Interim Town Manager
Nancy Medlin, Deputy Town Manager
Rich Cappola, Deputy Town Manager
Kimberly Moffett, Town Clerk
Joshua Baird, Town Engineer
Susan Locklear, Stormwater Engineer
Lee Barbee, Fire Chief
Robert McKie, Finance Director
James Blalock, Utilities Maintenance Supervisor
Cathy Marraccini, Interim Communications Director
Blake Mills, Asst. Public Services Director
Heidi Holland, Deputy Town Clerk

COUNCIL ABSENT:

1 CALL TO ORDER

Pledge of Allegiance and Invocation

- a) Mayor McLeod called the meeting to order at 6:00 p.m. He led everyone in the Pledge of Allegiance as well as offering the Invocation.

2 ADJUSTMENT OF THE AGENDA

3 CONSENT AGENDA

(Items on the consent agenda are considered routine in nature or have been thoroughly discussed at previous meetings. Any member of the Council may request to have an item removed from the consent agenda for further discussion.)

a) **DRAFT MINUTES**

- October 19, 2020 - Regular Session
- October 19, 2020 - Closed Session

b) **Warranty Acceptances**

- Parkview, Phases 2B, 3, 5, & 7
- The Groves at Summerlyn, Phase 2

ACTION: Adoption of Consent Agenda as Presented

Motion: Mayor Pro Tem Thompson
Second: Council Member Holder
Vote: Unanimous

4 ADMINISTRATIVE ITEMS

5 INTRODUCTIONS AND SPECIAL PRESENTATIONS

a) **Employee Certifications**

Presenter: James Blalock, Utilities Maintenance Supervisor

- Dylan Carroll, Utility Maintenance Mechanic - Collections 3 Certification
- Donnie Baker, Utility Maintenance Mechanic - C-Distribution Certification

Mr. Blalock was present and stated he was proud to recognize two employees who both recently received certifications. Both Dylan and Donnie passed their exams their first time out. He stated our water sewer employees are some of the best in the State. Council offered their congratulations and appreciation.

b) **Government Finance Officers Association - Certificate for Excellence in Finance Reporting**

Presenter: Jody McLeod, Mayor

Mr. McKie provided details about this award and stated this was the 11th year this was received by the town under the direction of Mr. McKie. Mayor McLeod shared additional details regarding the criteria to receive this certificate. He presented the certificate of achievement to Mr. McKie.

6 PUBLIC HEARINGS

a) **Code of Ordinance - Addition of Chapter 158 - Stormwater/Erosion**

Presenters: Joshua Baird, Town Engineer & Susan Locklear, Stormwater Engineer

Mr. Baird took this opportunity to introduce Susan Locklear. Susan started with the town on March 30 as the Stormwater Engineer. She came to us with many years of experience. Council welcomed her.

Mr. Baird and Ms. Locklear were present and provided a Power Point presentation outlining the addition of Chapter 158 to the Code. Staff has been working for a significant amount of time on in-house stormwater and erosion control. Mr. Baird stated a session was recently held for public input. Ms. Locklear stated the Ordinance was based on statutes. She highlighted some of the sections to include program implementation, illicit discharge detection and elimination, construction site runoff controls and post construction site runoff controls. She stated the purpose was to protect, maintain, and enhance the public health, safety environment and general welfare by establishing minimum requirements and procedures to control the adverse effect of increased post development stormwater runoff. Ms. Locklear also shared information regarding exemption update, which is reflective of updated state regulations. She shared information regarding modification that was made per recent public engagement session. Also addressed were design standards, operation and maintenance agreement (we have created a template for the town), performance securities, as built plans, easement requirements and maintenance inspection and reports. Also shared were details regarding the review process. Mr. Baird stated we are scheduled for an audit by the state in 2023. He stated currently the county does not have Phase 2 permit,"as-builts".

There will be a public hearing regarding proposed fees held at the November 16, 2020 council meeting. It is proposed that this ordinance be effective January 1, 2021. It was asked if both this ordinance and the fees could be adopted at the November 16, 2020 meeting. It was stated yes both could be adopted, if so desired, at that time. There was discussion regarding percentage of run off and it was stated this was state provided definition and data. There were questions and discussion about the costs that developers would be responsible for. There was discussion regarding variance requests and deciding board. Mr. Solomon stated those decisions were dependent upon the type of variance.

This was noted as a public hearing. With no one coming forward and wishing to speak the item was turned over to council for their deliberation.

ACTION: Continue this Public Hearing to the November 16, 2020 meeting.

Motion: Council Member Grannis
Second: Council Member Holder
Vote: Unanimous

7 OLD BUSINESS

a) Historic Clayton Street Blades

Presenters: Jennifer Gallimore, Economic Development Coordinator & J.David Millican, Downtown Development Advisory Board

Mr. Pierce provided a Power Point regarding the Historic District Street Blades. He emphasized this does create a tax district. Clayton has a national register historic district; not a locally designated historic district. He shared information about historic tax credits and opportunities for downtown Clayton. He stated the Downtown Development Advisory Board (DDA) looked at numerous examples of street blades. He shared specifics about the sign design that would include the town seal and indicate "Historic District". A total of 75 toppers would be needed. The total price, including the toppers and installation, would be \$2,014.54. Shared was the times and it was stated the project should be complete by the end of this year. He shared timeline, hoped project should be completed by end of 2020. Mr. Pierce stated he had spoken with numerous folks about this project to include representatives from the following families; Lee, Lipscomb, Blackley and Austin. Council Member Grannis offered this thanks and appreciation. Council Member Bunn offered his thanks and appreciation to the DDA for their hard work and dedication to this project.

ACTION: Direct Staff to Move Forward with Project

Motion: Council Member Bunn
Second: Council Member Grannis
Vote: Unanimous

8 NEW BUSINESS

a) Legend Park Project

Presenter: Joshua Baird, Town Engineer

Mr. Baird provided an update regarding Legend Park to include background of pre-regulatory landfill program. He stated the state has been working on the site. He addressed possible remediation. He stated it would be cost prohibitive to completely excavate and take materials off the site. He stated there are monthly meetings to keep updated with progress. Mr. Solomon stated that land could still be used as a ball field, storage for parks and recreation equipment, etc., however a traditional building could not be placed there. It is a very restricted use area. The Mayor did state the area needed maintenance to continue and not grow out of control.

b) **Recycle Program**

Presenter: Blake Mills, Asst. Public Works Director

Mr. Mills provided information regarding our current recycling program. He shared details about the type of recyclables make the most money and those that are the biggest loss. Aluminum cans have the best return and glass costs the most. He shared details about cost of recycling and stated it does pay for itself in ways other than financial. Clayton recycling is saving 10,000 trees annually and 16,000 jobs are created in NC from recycling. Mr. Mills shared suggestions for money saving recycling ideas. He stated he felt it was important that we stay the course and keep doing what we are doing. He stated this is a long term investment. Mr. Solomon stated that currently our recycle loss stands at approximately \$75,000 and wanted to ensure council was kept updated and informed. There was discussion whether it was believed that folks staying home with COVID had an impact on the amount of recycling. Council Member Grannis stated he had numerous citizens ask about possibility of receiving smaller containers. Mr. Mills stated he would look into that.

9 STAFF REPORTS

a) **Town Manager**

Mr. Solomon recognized Tammy Ray and Kimberly Bradley. They are both outstanding custodians and doing a great job. Offered appreciation to Haley Hogg, Senior Planner, for the great job she did at a recent public meeting. He also offered his thanks to James Warren for his dedication and continued outstanding performance over the last 20+ years for the town at the water treatment facility.

He stated the new type of council briefing document seemed to be well received. He stated we continue to work to balance revenues and expenses for the midyear budget revenue. He stated the next council meeting will include a public meeting about the water reclamation facility. This meeting will take place at the very beginning of the agenda.

He stated a firm, the Mercer Group, had been selected to assist with town manager search.

b) Town Attorney

c) Town Clerk

d) Other Staff

- Horne Street Parking Lot Shutdown Update

Presenter: Joshua Baird, Town Engineer

Mr. Baird provided update and reminded construction would begin in the parking lot tomorrow, November 3. Social media messages have been sent out. Additionally, individual meetings with adjacent neighbors were held. Parking will be available on Second Street, Town Square and along the surrounding streets. There is handicap parking available on Second Street. It was stated the project should take approximately 4 months to complete.

10 OTHER BUSINESS

a) Informal Discussion & Public Comment

b) Council Comments

11 CLOSED SESSION

a) Closed Session Pursuant to NCGS 143-318.11(a)(3)(4)(5)&(6)

ACTION: Motion to Go Into Closed Session at 7:36 p.m.

Motion: Council Member Bunn

Second: Mayor Pro Thom Thompson

Vote: Unanimous

12 ADJOURNMENT

a) With there being nothing further the meeting was adjourned at 9:37 p.m.

Motion: Council Member Holder

Second: Council Member Everett

Vote: Unanimous

Duly adopted this the 16th day of November 2020, while in regular session.

Jody L. McLeod
Mayor

ATTEST:

Kimberly A. Moffett, CMC, NCCMC
Town Clerk

November 2, 2020
Minutes



Town Council Agenda Cover Sheet

Meeting Date

November 16, 2020

Agenda Location

Public Hearings

Item Title

Stormwater Ordinance

Presenter

Joshua Baird – Town Engineer

Susan Locklear – Stormwater Engineer

Summary/Description

Section F of the Town's National Pollutant Discharge Elimination System (NPDES) permit requires the Town to implement and enforce a program to address stormwater runoff from new developments and redevelopment projects. Johnston County currently implements the Town's program, however, prior to transitioning programs from the County to the Town, the Town needs to adopt a Stormwater Ordinance that addresses stormwater requirements for new development and re-development. The ordinance incorporates requirements from Neuse Nutrient Strategy Rules and NPDES requirements for Municipal Separate Storm Sewer System (MS4s). A public engagement session was held on Friday, October 23 for the community to learn and ask questions about the proposed ordinance.

Staff presented the Stormwater Ordinance on at the November 2 Council meeting, followed by a public hearing. No public comments were received however the hearing was continued. Staff has made minor revisions based on Council discussion and further legal counsel. Staff proposes the ordinance to be adopted with an effective date of January 1, 2021.

Requested Action

Approval

Funding Source (If Applicable):

N/A

Cost: N/A Yes ☐ No ☒

Additional Documents to be Included in Agenda Packet

Proposed Stormwater Ordinance

Revised sections

Meeting Timeline

Click or tap here to enter text.

158.306 – VARIANCES.

1. Any person may petition the Town Council for a variance granting permission to use the person's land in a manner otherwise prohibited by this ordinance. To qualify for a variance, the petitioner must show all of the following:

158.401 - OPERATION AND MAINTENANCE AGREEMENT.

1. In General

- A. Prior to the conveyance or transfer of any lot or building site to be served by a *structural SCM* pursuant to this ordinance, and prior to issuance of any permit for *development* or *redevelopment* requiring a *structural SCM* pursuant to this ordinance, the applicant or *owner* of the site must execute an operation and maintenance agreement that shall be binding on all subsequent *owners* of the site, portions of the site, and lots or parcels served by the *structural SCM* in a form acceptable to the Stormwater Administrator. Until the transference of all property, sites, or lots served by the *structural SCM*, the original *owner* or applicant shall have primary responsibility for carrying out the provisions of the maintenance agreement.
- B. The operation and maintenance agreement shall require the *owner* or *owners* to maintain, repair and, if necessary, reconstruct the *structural SCM*, and shall state the terms, conditions, and schedule of maintenance for the *structural SCM*. In addition, it shall grant to the Town a right of entry in the event that the Stormwater Administrator has reason to believe it has become necessary to inspect, monitor, maintain, repair, or reconstruct the *structural SCM*; however, in no case shall the right of entry, of itself, confer an obligation of the Town to assume responsibility for the *structural SCM*. In the event the Town directs the correction, repair, replacement, or maintenance of the system or structure in writing and the actions are not satisfactorily performed within a reasonable time (but not greater than 120 days), the Town (or its contractors) may, after reasonable notice, enter the land and perform all the necessary work and may assess the owner of the facility with the cost of the work performed or the Town can seize all or part of the escrow or other fund set aside by the applicant or owner for perpetual maintenance. The owner served by the facility shall be jointly responsible to the Town for the maintenance of the facility and liable for any costs incurred by the Town pursuant to the Operation and Maintenance Agreement. All properties are jointly subject to the imposition of the liens for such costs.
- C. The operation and maintenance agreement must be approved by the Stormwater Administrator prior to plan approval, and it shall be referenced on the final plat and shall be recorded with the county Register of Deeds upon final plat approval. A copy of the recorded maintenance agreement shall be

given to the Stormwater Administrator within fourteen (14) days following its recordation.

2. Special Requirement for Homeowners' and Other Associations

For all *structural SCMs* required pursuant to this ordinance and that are to be or are owned and maintained by a homeowners' association, property owners' association, or similar entity, the required operation and maintenance agreement shall include all of the following provisions:

- A. Acknowledgment that the association shall continuously operate and maintain the stormwater control and management facilities.
- B. Establishment of an escrow account acceptable to the Town, which can be spent solely for sediment removal, structural, biological or vegetative replacement, major repair, or reconstruction of the *structural SCMs*. If *structural SCMs* are not performing adequately or as intended or are not properly maintained, the Town, in its sole discretion, may remedy the situation, and in such instances the Town 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 *structural SCMs*, provided that the Town shall first consent to the expenditure.
- ~~C.~~ ~~Developer contribution funds shall fund the escrow account. Prior to acceptance of the As-Built plans and release of performance security the developer shall pay into the escrow account an amount equal to twenty-five (25) per cent of the initial construction cost of the *structural SCMs*. 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 sinking fund budget.~~
- ~~D.~~ Granting to the Town a right of entry to inspect, monitor, maintain, repair, and reconstruct *structural SCMs*.
- ~~E.~~ Allowing the Town to recover from the association and its members any and all costs the Town expends to maintain or repair the *structural SCMs* or to correct any operational deficiencies. Failure to pay the Town all of its expended costs, after forty-five days written notice, shall constitute a breach of the agreement. In case of a deficiency, the Town 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. Interest, collection costs, and attorney fees shall be added to the recovery.

- | ~~FE~~. A statement that this agreement shall not obligate the Town to maintain or repair any *structural SCMs*, and the Town shall not be liable to any person for the condition or operation of *structural SCMs*.
- | ~~GE~~. A statement that this agreement shall not in any way diminish, limit, or restrict the right of the Town to enforce any of its ordinances as authorized by law.
- | ~~HG~~. A provision indemnifying and holding harmless the Town for any costs and injuries arising from or related to the structural SCM, unless the Town has agreed in writing to assume the maintenance responsibility for the SCM and has accepted dedication of any and all rights necessary to carry out that maintenance.

TOWN OF CLAYTON

Amendment to the Code of Ordinances: Addition of Chapter 158 – Stormwater Management

BEING HEREBY ADOPTED BY THE TOWN COUNCIL FOR THE TOWN OF CLAYTON, NORTH CAROLINA, to amend the Town of Clayton Code of Ordinances with the addition of Chapter 158; Stormwater Management as follows:

ARTICLE 1: GENERAL PROVISIONS

158.100 TITLE

158.101 AUTHORITY

158.102 FINDINGS

158.103 PURPOSE

158.104 APPLICABILITY AND JURISDICTION

158.105 INTERPRETATION

158.106 DEFINITIONS

158.107 DESIGN MANUAL

158.108 RELATIONSHIP TO OTHER LAWS, REGULATIONS AND PRIVATE
AGREEMENTS

158.109 SEVERABILITY

158.110 EFFECTIVE DATE

ARTICLE 2: ADMINISTRATION AND PROCEDURES

158.200 REVIEW AND DECISION-MAKING ENTITIES

158.201 REVIEW PROCEDURES

158.202 APPLICATIONS FOR APPROVAL

158.203 APPROVALS

158.204 APPEALS

ARTICLE 3: STANDARDS

158.300 GENERAL STANDARDS

158.301 DENSITY

158.302 IMPERVIOUS SURFACE REQUIREMENTS

158.303 STRUCTURAL STORMWATER CONTROL REQUIREMENTS

158.304 STANDARDS FOR STORMWATER CONTROL MEASURES

158.305 VARIATIONS FROM THIS SECTION

158.306 VARIANCES

ARTICLE 4: MAINTENANCE

158.400 GENERAL STANDARDS FOR MAINTENANCE

158.401 OPERATION AN MAINTENANCE AGREEMENT

158.402 INSPECTION PROGRAM

158.403 PERFORMANCE SECURITY FOR INSTALLATION AND
MAINTENANCE

158.404 NOTICE TO OWNERS

158.405 RECORDS OF INSTALLATION AND MAINTENANCE ACTIVITIES

158.406 NUISANCE

158.407 MAINTENANCE EASEMENT

ARTICLE 5: ENFORCEMENT AND VIOLATIONS

158.500 GENERAL

158.501 REMEDIES AND PENALTIES

158.502 PROCEDURES

ARTICLE 1: GENERAL PROVISIONS

158.100 - TITLE.

This ordinance shall be officially known as "The Stormwater Management Ordinance." It is referred to herein as "this ordinance."

158.101 – AUTHORITY.

The Town is authorized to adopt this ordinance pursuant to North Carolina law, including but not limited to:

1. Article 14, Section 5 of the Constitution of North Carolina; Town of Clayton Charter;
2. North Carolina General Statutes 143-214.7
3. and rules promulgated by the Environmental Management Commission thereunder; Session Law 2006-246; Chapter 160A, §§ 174, 185

158.102 - FINDINGS.

It is hereby determined that:

1. *Development* and *redevelopment* alter the hydrologic response of local watersheds and increase stormwater runoff rates and volumes, flooding, soil erosion, stream channel erosion, nonpoint and point source pollution, and sediment transport and deposition, as well as reducing groundwater recharge;
2. These changes in stormwater runoff contribute to increased quantities of water-borne pollutants and alterations in hydrology that are harmful to public health and safety as well as to the natural environment; and
3. These effects can be managed and minimized by applying proper design and well-planned controls to manage stormwater runoff from *development* sites.
4. 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 ordinance.

Therefore, the Town establishes this set of water quality and quantity regulations to meet the requirements of state and federal law regarding control of stormwater runoff and discharge.

¹

¹ Adapted from Stormwater Center/EPA Model Ordinance.

158.103 – PURPOSE.

1. General

The purpose of this ordinance is to protect, maintain and enhance the public health, safety, environment and general welfare by establishing minimum requirements and procedures to control the adverse effects of increased post-*development* stormwater runoff and nonpoint and point source pollution associated with new *development* and *redevelopment*. It has been determined that proper management of construction-related and post-*development* stormwater runoff will minimize damage to public and private property and infrastructure; safeguard the public health, safety, and general welfare; and protect water and aquatic resources.

2. Specific

This ordinance seeks to meet its general purpose through the following specific objectives and means:

- A. Establishing decision-making processes for *development* that protect the integrity of watersheds and preserve the health of water resources;
- B. Requiring that new *development* and *redevelopment* maintain the pre-*development* hydrologic response in their post-*development* state as nearly as practicable for the applicable design storm to reduce flooding, streambank erosion, nonpoint and point source pollution and increases in stream temperature, and to maintain the integrity of stream channels and aquatic habitats;
- C. Establishing minimum post-*development* stormwater management standards and design criteria for the regulation and control of stormwater runoff quantity and quality;
- D. Establishing design and review criteria for the construction, function, and use of *structural stormwater SCMs* that may be used to meet the minimum post-*development* stormwater management standards;
- E. Encouraging the use of better management and site design practices, such as the use of vegetated conveyances for stormwater and the preservation of greenspace, riparian buffers and other conservation areas to the maximum extent practicable;
- F. Establishing provisions for the long-term responsibility for and maintenance of *structural and nonstructural stormwater SCMs* to ensure that they continue to function as designed, are maintained appropriately, and pose no threat to public safety;

- G. Establishing administrative procedures for the submission, review, approval and disapproval of *stormwater management plans*, for the inspection of approved projects, and to assure appropriate long-term maintenance.
- H. Coordinating site design plans that include open space and natural areas with the UDO Chapter 56, Article 5: Natural Resource Protection.
- I. Assigning responsibility and processes for approving the creation and maintenance of adequate drainage.

158.104 - APPLICABILITY AND JURISDICTION.

1. General

Beginning with and subsequent to its effective date, this ordinance shall be applicable to all *development* and *redevelopment*, including, but not limited to, site plan applications, subdivision applications, and grading applications, unless exempt pursuant to Subsection (3) of this Section, Exemptions.

2. Establishment of vested right. (G.S. 160A-385.1; G.S. 160D-108)

- A. A vested right shall be deemed established with respect to any property upon the valid approval, or conditional approval, of a site specific development plan or a phased development plan, following notice and public hearing by the Town with jurisdiction over the property. Such vested right shall confer upon the landowner the right to undertake and complete the development and use of said property under the terms and conditions of the site specific development plan or the phased development plan including any amendments thereto. The Town may approve a site specific development plan or a phased development plan upon such terms and conditions as may reasonably be necessary to protect the public health, safety, and welfare. Such conditional approval shall result in a vested right, although failure to abide by such terms and conditions will result in a forfeiture of vested rights. The Town shall not require a landowner to waive his vested rights as a condition of developmental approval. A site specific development plan or a phase development plan shall be deemed approved upon the effective date of the Town's action or ordinance relating thereto.
- B. Duration and termination of vested right.
 - i. A right which has been vested as provided for in this section shall remain vested for a period of **two years**. This vesting shall not be extended by any amendments or modifications to a site specific development plan unless expressly provided by the Town.

- ii. The Town may provide that rights shall be vested for a period exceeding two years but **not exceeding five years** where warranted in light of all relevant circumstances, including, but not limited to, the size and phasing of development, the level of investment, the need for the development, economic cycles, and market conditions. These determinations shall be in the sound discretion of the Town.

3. Exemptions

A. Thresholds

- i. Residential, single family or duplex, *development* and recreational facilities less than one acre in size, with no increase in number of lots, and is not part of a *larger common plan of development or sale*, and non-residential *development* less than one-half acre in size and no more than 24% impervious and is not part of a *larger common plan of development or sale* is exempt from the provisions of this ordinance.
- ii. *Redevelopment* of residential structures that results in no net increase in *built-upon area* and provides equal or greater stormwater control than the previous development is exempt from the provisions of this ordinance.
- iii. *Redevelopment* of non-residential structures on less than one-half acre that is not part of a *larger common plan of development or sale*, and that results in a cumulative *built-upon area of less than 24%* and provides equal or greater stormwater control than the previous development is exempt from the provisions of this ordinance.
- iv. *Development* and *redevelopment* that disturb less than a stated area threshold are not exempt if such activities are part of a *larger common plan of development or sale* that exceeds the area threshold, even though multiple, separate or distinct activities take place at different times on different schedules.

B. General exemption

Activities that are exempt from permit requirements of Section 404 of the federal Clean Water Act as specified in 40 CFR 232 (primarily, ongoing farming and forestry activities) are exempt from the provisions of this ordinance.

C. Existing impervious

Existing impervious surfaces established prior to November 1, 2008, as determined through aerial photography, permits, plans, etc. are exempt from the provisions of this ordinance; however, if the impervious area

limits are reduced after November 1, 2008 and the previously impervious area is reestablished as pervious for a period of 1 year or more, the impervious area is no longer exempt.

4. No Development or Redevelopment Until Compliance and Permit

No *development* or *redevelopment* shall occur except in compliance with the provisions of this ordinance or unless exempted. No *development* for which a permit is required pursuant to this ordinance shall occur except in compliance with the provisions, conditions, and limitations of the permit.

5. Map

- A. The provisions of this ordinance shall apply within the areas designated on the map titled "Stormwater Map of Town of Clayton, 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 ordinance.²
- B. The Stormwater Map shall be kept on file by the Stormwater Administrator and shall be updated to take into account changes in the land area covered by this ordinance and the geographic location of all *structural SCMs* permitted under this ordinance. In the event of a dispute, the applicability of this ordinance to a particular area of land or SCM shall be determined by reference to the North Carolina Statutes, the North Carolina Administrative Code, and local zoning and jurisdictional boundary ordinances.

158.105 – INTERPRETATION.

1. Meaning and Intent

All provisions, terms, phrases, and expressions contained in this ordinance shall be construed according to the general and specific purposes set forth in Section 158.103, Purpose. If a different or more specific meaning is given for a term defined elsewhere in *Clayton, North Carolina Code of Ordinances*, the meaning and application of the term in this ordinance shall control for purposes of application of this ordinance.

2. Text Controls in Event of Conflict

In the event of a conflict or inconsistency between the text of this ordinance and any heading, caption, figure, illustration, table, or map, the text shall control.

² Adapted from North Carolina Model Watershed Protection Ordinance.

3. Authority for Interpretation

The Stormwater Administrator has authority to determine the interpretation of this ordinance. Any person may request an interpretation by submitting a written request to the Stormwater Administrator, who shall respond in writing within 30 days. The Stormwater Administrator shall keep on file a record of all written interpretations of this ordinance.

4. References to Statutes, Regulations, and Documents

Whenever reference is made to a resolution, ordinance, statute, regulation, manual (including the *Design Manual*), or document, it shall be construed as a reference to the most recent edition of such that has been finalized and published with due provision for notice and comment, unless otherwise specifically stated.

5. Computation of Time

The time in which an act is to be done shall be computed by excluding the first day and including the last day. If a deadline or required date of action falls on a Saturday, Sunday, or holiday observed by the Town, the deadline or required date of action shall be the next day that is not a Saturday, Sunday or holiday observed by the Town. References to days are calendar days unless otherwise stated.

6. Delegation of Authority

Any act authorized by this Ordinance to be carried out by the Stormwater Administrator may be carried out by his or her designee.

7. Usage

A. Mandatory and Discretionary Terms

The words “shall,” “must,” and “will” are mandatory in nature, establishing an obligation or duty to comply with the particular provision. The words “may” and “should” are permissive in nature.

B. Conjunctions

Unless the context clearly indicates the contrary, conjunctions shall be interpreted as follows: The word “and” indicates that all connected items, conditions, provisions and events apply. The word “or” indicates that one or more of the connected items, conditions, provisions or events apply.

C. Tense, Plurals, and Gender

Words used in the present tense include the future tense. Words used in the singular number include the plural number and the plural number includes the singular number, unless the context of the particular usage clearly indicates

otherwise. Words used in the masculine gender include the feminine gender, and vice versa.

8. Measurement and Computation

Lot area refers to the amount of horizontal land area contained inside the lot lines of a lot or site.

158.106 – DEFINITIONS.

When used in this Ordinance, the following words and terms shall have the meaning set forth in this section, unless other provisions of this Ordinance specifically indicate otherwise.

1. **Built-upon area (BUA)**

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.

2. **Common plan of development**

A site where multiple separate and distinct development activities may be taking place at different times on different schedules but governed by a single development plan regardless of ownership of the parcels. Information that may be used to determine a "common plan of development" include plats, blueprints, marketing plans, contracts, building permits, public notices or hearings, zoning requests, and infrastructure development plans.

3. **Curb Outlet System**

Curb and gutter with breaks or other outlets used to convey stormwater runoff to vegetated conveyances or other vegetated areas.

4. **Design volume**

The amount of stormwater runoff that an SCM or series of SCMs is designed to treat.

5. **Department**

The North Carolina Department of Environmental Quality.

6. **Design Manual**

The stormwater design manual approved for use in Phase II jurisdictions by the *Department* for the proper implementation of the requirements of the federal Phase II stormwater program. All references herein to the *Design Manual* are to the latest published edition or revision.

5. **Development**

Any land-disturbing activity that increases the amount of *built-upon area* or that otherwise decreases the infiltration of precipitation into the soil.

6. Division

The Division means the Division of Energy, Mineral, and Land Resources.

7. High Density

More than 24% BUA or more than two dwelling units per acre.

8. Low Density

No more than 24% BUA or no more than two dwelling units per acre

9. MDC

Minimum Design Criteria as set forth by the Department for stormwater control devices in the *Design Manual*

10. Non-erosive velocity

The flow rate of water, usually measured in feet per second, that does not exceed the maximum permissible shear stress for the condition and type of soil and groundcover over which the water is flowing. Erosion occurs when the maximum permissible shear stress is exceeded.

11. Non-structural SCM

Preserved open space, natural systems and existing landscape utilized to manage stormwater at its source.

12. One-year, 24-hour storm

The maximum amount of rainfall during a 24 consecutive hour period expected, on average, to occur once a year. One-year, 24-hour storm depths are estimated by the National Oceanic and Atmospheric Administration (NOAA) Precipitation Frequency Data Server (PFDS), which is herein incorporated by reference, including subsequent amendments and editions, and may be accessed at no cost at <http://hdsc.nws.noaa.gov/hdsc/pfds/>.

13. Owner

The legal or beneficial owner of land, including but not limited to a mortgagee or vendee in possession, receiver, executor, trustee, or long-term or commercial lessee, or any other person or entity holding proprietary rights in the property or having legal power of management and control of the property. "Owner" shall include long-term commercial tenants; management entities, such as those charged with or engaged in the management of properties for profit; and every person or entity having joint ownership of the property. A secured lender not in possession of the property does not constitute an owner, unless the secured lender is included within the meaning of "owner" under another description in this definition, such as a management entity.

14. Peak attenuation volume

Stormwater runoff in excess of the design volume that is conveyed to an SCM where it is not treated in accordance with the applicable MDC, but is released by the SCM in a controlled manner to address potential downstream erosion and flooding impacts to meet federal, State, or local regulations beyond the requirements of this Section.

15. Primary SCM

A wet pond, stormwater wetland, infiltration system, sand filter, bio-retention cell, permeable pavement, green roof, rainwater harvesting, or an approved new stormwater technology that is designed, constructed and maintained in accordance with the MDC.

16. Project

The proposed development activity for which an applicant is seeking a stormwater permit from the Town in accordance with this Section. "Project" shall exclude any land adjacent to the area disturbed by the project that has been counted as pervious by any other development regulated under a federal, State, or local stormwater regulation. Owners and developers of large developments consisting of many linked projects may consider developing a master plan that illustrates how each project fits into the design of the large development.

17. Redevelopment

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*.

18. Runoff treatment

Means that the volume of stormwater runoff generated from all of the built-upon area of a project at build-out during a storm of one inch in depth that is treated in one or more primary SCMs or a combination of Primary and Secondary SCMs that provides equal or better treatment.

19. Runoff volume match

Means that the annual runoff volume after development shall not be more than ten percent higher than the annual runoff volume before development.

20. SCM

Stormwater Control Measure; also known as BMP or Best Management Practice; Means a permanent structural device that is designed, constructed, and maintained to remove pollutants from stormwater runoff by promoting settling or filtration; or to mimic the natural hydrologic cycle by promoting infiltration, evapo-transpiration, post-filtration discharge, reuse of stormwater, or a combination thereof.

21. Structural SCM

A physical device designed to trap, settle out, or filter pollutants from stormwater runoff; to alter or reduce stormwater runoff velocity, amount, timing, or other characteristics; to approximate the pre-*development* hydrology on a developed site; or to achieve any combination of these goals. Structural SCMs includes physical practices such as constructed wetlands, vegetative practices, filter strips, grassed swales, and other methods installed or created on real property. "Structural SCM" is synonymous with "structural practice," "stormwater control facility," "stormwater control practice," "stormwater treatment practice," "stormwater management practice," "stormwater

control measures,” “structural stormwater treatment systems,” and similar terms used in this ordinance.

22. Substantial progress

For the purposes of determining whether sufficient progress has been made on an approved plan, one or more of the following construction activities toward the completion of a site or subdivision plan shall occur: obtaining a grading permit and conducting grading activity on a continuous basis and not discontinued for more than thirty (30) days; or installation and approval of on-site infrastructure; or obtaining a building permit for the construction and approval of a building foundation. “Substantial progress” for purposes of determining whether an approved plan is null and void is not necessarily the same as “substantial expenditures” used for determining vested rights pursuant to applicable law.

23. Town

Town of Clayton, NC

24. Working Days

Days exclusive of Saturday and Sunday and Federal and State holidays observed by the Town.

158.107 - DESIGN MANUAL.

1. Reference to Design Manual

A. The Stormwater Administrator shall use the policy, criteria, and information, including technical specifications and standards, in the *Design Manual* as the basis for decisions about stormwater permits and about the design, implementation and performance of *structural and non-structural stormwater SCMs*.

B. The *Design Manual* includes a list of acceptable stormwater treatment practices, including specific design criteria for each stormwater practice. Stormwater treatment practices that are designed, constructed, and maintained in accordance with these design and sizing criteria will be presumed to meet the minimum water quality performance standards of the Phase II and other applicable stormwater laws.³

2. Relationship of Design Manual to Other Laws and Regulations

If the specifications or guidelines of the *Design Manual* are more restrictive or apply a higher standard than other laws or regulations, that fact shall not prevent application of the specifications or guidelines in the *Design Manual*.

³ From Stormwater Center/EPA Model Ordinance.

3. Changes to Standards and Specifications

If the standards, specifications, guidelines, policies, criteria, or other information in the *Design Manual* are amended subsequent to the submittal of an application for approval pursuant to this ordinance but prior to approval, the new information shall control and shall be utilized in reviewing the application and in implementing this ordinance with regard to the application.

158.108 - RELATIONSHIP TO OTHER LAWS, REGULATIONS AND PRIVATE AGREEMENTS.

1. Conflict of Laws

This ordinance is not intended to modify or repeal any other ordinance, rule, regulation or other provision of law. The requirements of this ordinance are in addition to the requirements of any other ordinance, rule, regulation or other provision of law. Where any provision of this ordinance 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.

2. Private Agreements

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

158.109 – SEVERABILITY.

If the provisions of any section, subsection, paragraph, subdivision or clause of this ordinance shall be adjudged invalid by a court of competent jurisdiction, such judgment shall not affect or invalidate the remainder of any section, subsection, paragraph, subdivision or clause of this ordinance.

158.110 - EFFECTIVE DATE.

This Ordinance shall take effect on January 1, 2021.

ARTICLE 2: ADMINISTRATION AND PROCEDURES

158.200 - REVIEW AND DECISION-MAKING ENTITIES.

1. Stormwater Administrator

A. Designation

A Stormwater Administrator shall be designated by the Town to administer and enforce this ordinance.

B. Powers and Duties

In addition to the powers and duties that may be conferred by other provisions of the Town and other laws, the Stormwater Administrator shall have the following powers and duties under this ordinance:

- i. To review and approve, approve with conditions, or disapprove applications for approval of plans pursuant to this ordinance.
- ii. To make determinations and render interpretations of this ordinance.
- iii. To establish application requirements and schedules for submittal and review of applications and appeals, to review and make recommendations to the Planning Board on applications for *development* or *redevelopment* approvals.
- iv. To enforce the provisions of this ordinance in accordance with its enforcement provisions.
- v. To maintain records, maps, forms and other official materials as relate to the adoption, amendment, enforcement, and administration of this ordinance.
- vi. To provide expertise and technical assistance to the Planning Board, upon request.
- vii. To designate appropriate other person(s) who shall carry out the powers and duties of the Stormwater Administrator.
- viii. To take any other action necessary to administer the provisions of this ordinance.

158.201 - REVIEW PROCEDURES.

1. Permit Required

A stormwater permit is required for all *development* and *redevelopment* unless exempt pursuant to this ordinance. A permit may only be issued subsequent to a properly submitted and reviewed permit application, pursuant to this section.

2. Effect of Permit

- A. A stormwater permit shall govern the design, installation, and construction of stormwater management and control practices on the site, including *structural SCMs* and elements of site design for stormwater management other than *structural SCMs*.
- B. The permit is intended to provide a mechanism for the review, approval, and inspection of the approach to be used for the management and control of stormwater for the *development* or *redevelopment* site consistent with the requirements of this ordinance, whether the approach consists of *structural SCMs* or other techniques such as low-impact or low-density design. The permit does not continue in existence indefinitely after the completion of the project; rather, compliance after project construction is assured by the maintenance provisions of this ordinance.

3. Authority to File Applications

All applications required pursuant to this Code shall be submitted to the Stormwater Administrator by the land *owner* or the land *owner's* duly authorized agent.

4. Establishment of Application Requirements, Schedule, and Fees

A. Application Contents and Form

The Stormwater Administrator shall establish requirements for the content and form of all applications and shall amend and update those requirements from time to time. At a minimum, the stormwater permit application shall describe in detail how post-*development* stormwater runoff will be controlled and managed, the design of all stormwater facilities and practices, and how the proposed project will meet the requirements of this ordinance.

B. Submission Schedule

The Stormwater Administrator shall establish a submission schedule for applications. The schedule shall establish deadlines by which complete applications must be submitted for the purpose of ensuring that there is adequate time to review applications and that the various stages in the review process are accommodated.

C. Permit Review Fees

The Town shall establish permit review fees as well as policies regarding refund of any fees upon withdrawal of an application, and may amend and update the fees and policies from time to time.

D. Administrative Manual

For applications required under this Code, the Stormwater Administrator shall compile the application requirements, submission schedule, fee schedule, a copy of this ordinance, and information on how and where to obtain the Design Manual in an Administrative Manual, which shall be made available to the public.

5. Submittal of Complete Application

- A. Applications shall be submitted to the Stormwater Administrator pursuant to the application submittal schedule in the form established by the Stormwater Administrator, along with the appropriate fee established pursuant to this section.
- B. An application shall be considered as timely submitted only when it contains all elements of a complete application pursuant to this ordinance, along with the appropriate fee. If the Stormwater Administrator finds that an application is incomplete, the applicant shall be notified of the deficient elements and shall be provided with an opportunity to submit a complete application. However, the submittal of an incomplete application shall not suffice to meet a deadline contained in the submission schedule established above.

6. Review

Within 20 working days after a complete application is submitted, the Stormwater Administrator shall review the application and determine whether the application complies with the standards of this ordinance.

A. Approval

If the Stormwater Administrator finds that the application complies with the standards of this ordinance, the Stormwater Administrator shall approve the application. The Stormwater Administrator may impose conditions of approval as needed to ensure compliance with this ordinance. The conditions shall be included as part of the approval.

B. Fails to Comply

If the Stormwater Administrator finds that the application fails to comply with the standards of this ordinance, the Stormwater Administrator shall notify the

applicant and shall indicate how the application fails to comply. The applicant shall have an opportunity to submit a revised application.

C. Revision and Subsequent Review

- i. A complete revised application shall be reviewed by the Stormwater Administrator within 15 working days after its re-submittal and shall be approved, approved with conditions or disapproved.
- ii. If a revised application is not re-submitted within thirty (30) calendar days from the date the applicant was notified, the application shall be considered withdrawn, and a new submittal for the same or substantially the same project shall be required along with the appropriate fee for a new submittal.
- iii. One re-submittal of a revised application may be submitted without payment of an additional permit review fee. Any re-submittal after the first re-submittal shall be accompanied by a permit review fee additional fee, as established pursuant to this ordinance.

158.202 - APPLICATIONS FOR APPROVAL.

1. Concept Plan and Consultation Meeting

Before a stormwater management permit application is deemed complete, the Stormwater Administrator or developer may request a consultation on a concept plan for the post-construction stormwater management system to be utilized in the proposed *development* project. This consultation meeting should take place at the time of the preliminary plan of subdivision or other early step in the *development* process. The purpose of this meeting is to discuss the post-construction 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 is commenced. Local watershed plans, *Natural Resource Protection*, and other relevant resource protection plans should be consulted in the discussion of the concept plan.

To accomplish this goal, the following information should be included in the concept plan, which should be submitted in advance of the meeting:

A. Existing Conditions / Proposed Site Plans

Existing conditions and proposed site layout sketch plans, which illustrate at a minimum: existing and proposed topography; perennial and intermittent streams; mapping of predominant soils from soil surveys; boundaries of existing predominant vegetation; proposed limits of clearing and grading; and location of existing and proposed roads, buildings, parking areas and other impervious surfaces.

B. Natural Resources Inventory

A written or graphic inventory of natural resources at the site and surrounding area as it exists prior to the commencement of the project. This description should include a discussion of soil conditions, forest cover, geologic features, topography, wetlands, and native vegetative areas on the site, as well as the location and boundaries of other natural feature protection and conservation areas such as lakes, ponds, floodplains, stream buffers and other setbacks (e.g., drinking water well setbacks, septic setbacks, etc.). Particular attention should be paid to environmentally sensitive features that provide particular opportunities or constraints for *development* and stormwater management.

C. Stormwater Management System Concept Plan

A written or graphic concept plan of the proposed post-*development* stormwater management system including: preliminary selection and location of proposed structural stormwater controls; low-impact design elements; location of existing and proposed conveyance systems such as grass channels, swales, and storm drains; flow paths; location of floodplain/floodway limits; relationship of site to upstream and downstream properties and drainages; and preliminary location of any proposed stream channel modifications, such as bridge or culvert crossings.

2. Stormwater Management Permit Application

- A. The stormwater management permit application shall detail how post-*development* stormwater runoff will be controlled and managed and how the proposed project will meet the requirements of this ordinance, including Section 3, Standards. All such plans shall be prepared by a qualified registered North Carolina professional engineer, surveyor, soil scientist or landscape architect, and the engineer, surveyor, soil scientist or landscape architect shall perform services only in their area of competence, and shall verify that the design of all stormwater management facilities and practices meets the submittal requirements for complete applications, that the designs and plans are sufficient to comply with applicable standards and policies found in the *Design Manual*, and that the designs and plans ensure compliance with this ordinance.
- B. The submittal shall include all of the information required in the submittal checklist established by the Stormwater Administrator. Incomplete submittals shall be treated pursuant to 158.201(5)(B).

3. As-Built Plans and Final Approval

- A. Upon completion of a project, and before a certificate of occupancy shall be granted, the applicant shall certify that the completed project is in accordance with the approved stormwater management plans and designs, and shall

submit actual "as built" plans for all stormwater management facilities or practices after final construction is completed.

- B. The plans shall show the final design specifications for all stormwater management facilities and practices and the field location, size, depth, and planted vegetation of all measures, controls, and devices, as installed.
- C. Storm pipe systems should be included with pipe sizes and inverts, as well as structure tops and inverts.
- D. The designer of the stormwater management measures and plans shall certify, under seal, that the as-built stormwater measures, controls, and devices are in compliance with the approved stormwater management plans and designs and with the requirements of this ordinance.
- E. A final inspection and approval by the Stormwater Administrator shall occur before the release of any performance securities.

4. Other Permits

No certificate of compliance or occupancy shall be issued by the Town Inspections Division without final as-built plans and a final inspection and approval by the Stormwater Administrator, except where multiple units are served by the stormwater practice or facilities, in which case the Town Inspections Division may elect to withhold a percentage of permits or certificates of occupancy until as-built plans are submitted and final inspection and approval has occurred.

158.203 - APPROVALS.

1. Effect of Approval

Approval authorizes the applicant to go forward with only the specific plans and activities authorized in the permit. The approval shall not be construed to exempt the applicant from obtaining other applicable approvals from local, state, and federal authorities.

2. Time Limit/Expiration

- A. An approved plan shall become null and void if the applicant fails to make *substantial progress* on the site within one year after the date of approval. The Stormwater Administrator may grant a single, one-year extension of this time limit, for good cause shown, upon receiving a written request from the applicant before the expiration of the approved plan.
- B. In granting an extension, the Stormwater Administrator may require compliance with standards adopted since the original application was submitted unless there has been substantial reliance on the original permit and the change in standards would infringe the applicant's vested rights.

158.204 - APPEALS.

1. Right of Appeal

Any aggrieved person affected by any decision, order, requirement, or determination relating to the interpretation or application of this ordinance made by the Stormwater Administrator, may file an appeal to the Planning Board within thirty (30) days.

2. Filing of Appeal and Procedures

- A. Appeals shall be taken within the specified time period by filing a notice of appeal and specifying the grounds for appeal on forms provided by the Town.
- B. The Stormwater Administrator shall transmit to the Planning Board all documents constituting the record on which the decision appealed from was taken.
- C. The hearing conducted by the Planning Board shall be conducted in the nature of a quasi-judicial proceeding with all findings of fact supported by competent, material evidence.

3. Review by Superior Court

Every decision of the Planning Board shall be subject to Superior Court review by proceedings in the nature of certiorari. Petition for review by the Superior Court shall be filed with the Clerk of Superior Court within thirty (30) days after the latter of the following:

- A. The decision of the Planning Board is filed; or
- B. A written copy of the decision is delivered to every aggrieved party who has filed a written request for such copy with the Chair of the Planning Board at the time of its hearing of the case.

ARTICLE 3: STANDARDS

158.300 - GENERAL STANDARDS.

All *development* and *redevelopment* to which this ordinance applies shall comply with the standards of this section.

158.301 – DENSITY.

1. Calculation of project density

The following requirements shall apply to the calculation of project density:

- A. Project density shall be calculated as the total built-upon area divided by the total project area;
- B. A project with existing development shall calculate project density as the difference of total built-upon area minus existing built-upon area divided by the difference of total project area minus existing built-upon area;
- C. Total project area shall exclude areas below the Normal High Water Line (NHWL); and
- D. On a case-by-case basis as determined by the Town during application review, projects may be considered to have both high and low density areas based on one or more of the following criteria:
 - i. natural drainage area boundaries;
 - ii. variations in land use throughout the project; and
 - iii. construction phasing.

2. Design Requirements

A. Low Density Projects

Low density projects shall meet the following minimum design criteria:

i. Dispersed Flow

Projects shall be designed to maximize dispersed flow through vegetated areas and minimize channelization of flow;

ii. Vegetated Conveyances

Stormwater that cannot be released as dispersed flow shall be transported by vegetated conveyances. A minimal amount of non-

vegetated conveyances for erosion protection or piping for driveways or culverts under a road shall be allowed by the Town when it cannot be avoided. Vegetated conveyances shall meet the following requirements:

- a. Side slopes shall be no steeper than 5:1 (horizontal to vertical) unless it is demonstrated to the Town that the soils and vegetation will remain stable in perpetuity based on engineering calculations and on-site soil investigation; and
- b. The conveyance shall be designed so that it does not erode during the peak flow from the 10-year storm as demonstrated by engineering calculations.

iii. Curb Outlet Systems

Low density projects may use curb and gutter with outlets to convey stormwater to grassed swales or vegetated areas. Requirements for these curb outlet systems shall be as follows:

- a. The curb outlets shall be designed such that the swale or vegetated area can carry the peak flow from the 10-year storm at a non-erosive velocity;
- b. The longitudinal slope of the swale or vegetated area shall not exceed five percent, except where not practical due to physical constraints. In these cases, devices to slow the rate of runoff and encourage infiltration to reduce pollutant delivery shall be provided;
- c. The swale's cross-section shall be trapezoidal with a minimum bottom width of two feet;
- d. The side slopes of the swale or vegetated area shall be no steeper than 5:1 (horizontal to vertical);
- e. The minimum length of the swale or vegetated area shall be 100 feet.

B. High density projects

High density projects shall meet the following minimum design criteria:

- i. Treatment requirements

SCMs shall be designed, constructed, and maintained so that the project achieves either "runoff treatment" or "runoff volume match" as those terms are defined in 158.106 - Definitions.

ii. Off-site stormwater

Stormwater runoff from off-site areas and existing development shall not be required to be treated in the SCM. Runoff from off-site areas or existing development that is not bypassed shall be included in the sizing of on-site SCMs at its full built-out potential.

iii. Off-site SCM

- a. A project that controls runoff through an off-site SCM shall be allowed on a case-by-case basis as determined by the Town if the off-site SCM meets the MDC for the specific device.
- b. Legal documents are required for clarification of ownership and maintenance responsibilities.
- c. Adequate access and maintenance easements are required to be recorded to a public right of way.

iv. Expansion or Replacement of existing development

When new built-upon area is added to existing development or existing development is replaced with new built-upon area, only the area of net increase shall be subject to this Section.

v. MDC for SCMS

SCMs shall meet the relevant MDC set forth in the *Design Manual*

158.302 IMPERVIOUS SURFACE REQUIREMENTS.

1. Setback requirement

- A. All impervious surfaces, except for roads, paths, and water dependent structures, shall be located at least 30 feet landward of all perennial and intermittent surface waters.
- B. A perennial or intermittent surface water shall be deemed present if the feature is 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 complete 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*-approved methodology.

2. Development in Protected Area of Water Supply Watersheds

See Chapter 159 – Water Supply Watershed Protection Ordinance.

158.303 - STRUCTURAL STORMWATER CONTROL REQUIREMENTS.

1. *Owners* of property subject to this ordinance and required to install structural stormwater control measures shall implement those measures in compliance with each of the following standards:
 - A. The measures shall control and treat runoff from the first inch of rain.
 - B. The design volume shall take into account the runoff at build out from all surfaces draining to the system.
 - C. General engineering design criteria for all projects shall be in accordance with 15A NCAC 2H .1050-1062, as explained in the *Design Manual*;
 - D. Vegetated side slopes shall be no steeper than 3:1.
 - E. The measure shall discharge the storage volume at a rate equal or less than the pre-development discharge rate for the 1-year, 24-hour storm;
 - F. Overflow or bypass devices for inflow volumes in excess of the treatment volume or peak attenuation volume, if applicable, shall be included.
 - G. Each point of discharge from the development must be evaluated for attenuation needs. The post development runoff rate for the 1-year, 2-year, 10-year and 25-year, 24-hour storm events must be equal or less than the pre- development rates for the equivalent storm events at each point of discharge.
 - H. The approval of the stormwater permit shall require enforceable restrictions on property usage that runs with the land, including recorded deed restrictions and protective covenants, to ensure that future *development* and *redevelopment* maintains the site consistent with the approved project plans.
2. The project shall meet either a nitrogen loading rate target of 3.6 pounds/acre/year or "runoff volume match". Proposed development projects that would replace or expand existing structures and result in a net increase in built-upon area shall meet one of these options for the project less any existing built-upon area.

3. Proposed development undertaken by a local government solely as a public road expansion or public sidewalk project, or proposed development subject to the jurisdiction of the Surface Transportation Board, may meet the loading rate target of this Item entirely through use of permanent nutrient offset credit pursuant to 15A NCAC 02B .0703.
4. Where in satisfying the onsite requirements of 158.303(1), a project does not meet the loading rate target of this section, it may do so through use of permanent nutrient offset credit pursuant to 15A NCAC 02B .0703. Persons doing so shall provide proof of credit acquisition to the Town prior to issuance of the stormwater permit.

158.304 - STANDARDS FOR STORMWATER CONTROL MEASURES.

1. Evaluation According to Contents of Design Manual

All stormwater control measures, also known as SCM's, required under this ordinance shall be evaluated by the Stormwater Administrator according to the policies, criteria, and information, including technical specifications and standards and the specific design criteria for each stormwater practice, in the *Design Manual*. The Stormwater Administrator shall determine whether proposed SCMs will be adequate to meet the requirements of this ordinance.

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 *Design Manual* will be presumed to meet the minimum water quality and quantity performance standards of this ordinance. Whenever an applicant proposes to utilize a practice or practices not designed and constructed in accordance with the criteria and specifications in the *Design Manual*, the applicant shall have the burden of demonstrating that the practice(s) will satisfy the minimum water quality and quantity performance standards of this ordinance. The Stormwater Administrator may require the applicant to provide the documentation, calculations, and examples necessary for the Stormwater Administrator to determine whether such an affirmative showing is made.

3. Separation from Seasonal High Water Table

For SCMs 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.⁴

⁴ From SL 2006-246, § 9(k).

4. Required Storm Depth

For high density projects designed to achieve runoff treatment, the required storm depth shall be one inch. Applicants shall have the option to design projects to achieve "runoff volume match" in lieu of "runoff treatment."

5. Stormwater Outlets

Stormwater outlets shall be designed so that they do not cause erosion downslope of the discharge point during the peak flow from the 10-year storm event as shown by engineering calculations.

158.305 VARIATIONS FROM THIS SECTION.

The Town shall have the option to approve projects that do not comply with all of the provisions of this Section on a case-by-case basis as follows:

1. If the variation pertains to an SCM design that does not meet all of the MDC, then the applicant shall provide technical justification based on engineering calculations and the results of research studies showing that the proposed design provides equal or better stormwater control and equal or better protection of waters of the State than the requirements of this Section and that it shall function in perpetuity. The Town shall have the option to require compliance with the MDC in the event that the alternative SCM design fails;
2. If the variation pertains to other aspects of the project, then the applicant shall demonstrate that the project provides equal or better stormwater control and equal or better protection of waters of the State than the requirements of this Section;

158.306 – VARIANCES.

1. Any person may petition the Town Council for a variance granting permission to use the person's land in a manner otherwise prohibited by this ordinance. To qualify for a variance, the petitioner must show all of the following:
 - A. Unnecessary hardships would result from strict application of this ordinance.
 - B. The hardships result from conditions that are peculiar to the property, such as the location, size, or topography of the property.
 - C. The hardships did not result from actions taken by the petitioner.
 - D. The requested variance is consistent with the spirit, purpose, and intent of this ordinance; will secure public safety and welfare; and will preserve substantial justice.

2. The Town may impose reasonable and appropriate conditions and safeguards upon any variance it grants.
3. Statutory exceptions

Notwithstanding 158.306(1), exceptions from the 30-foot landward location of built-upon area requirement as well as the deed restrictions and protective covenants requirements shall be granted in any of the following instances:

- A. When there is a lack of practical alternatives for a road crossing, railroad crossing, bridge, airport facility, or utility crossing as long as it is located, designed, constructed, and maintained to minimize disturbance, provide maximum nutrient removal, protect against erosion and sedimentation, have the least adverse effects on aquatic life and habitat, and protect water quality to the maximum extent practicable through the use of SCMs.
- B. When there is a lack of practical alternatives for a stormwater management facility; a stormwater management pond; or a utility, including, but not limited to, water, sewer, or gas construction and maintenance corridor, as long as it is located 15 feet landward of all perennial and intermittent surface waters and as long as it is located, designed, constructed, and maintained to minimize disturbance, provide maximum nutrient removal, protect against erosion and sedimentation, have the least adverse effects on aquatic life and habitat, and protect water quality to the maximum extent practicable through the use of SCMs.
- C. A lack of practical alternatives may be shown by demonstrating that, considering the potential for a reduction in size, configuration, or density of the proposed activity and all alternative designs, the basic project purpose cannot be practically accomplished in a manner which would avoid or result in less adverse impact to surface waters.

These statutory exceptions were included in SL 2006-246, § 11.
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ARTICLE 4: MAINTENANCE

158.400 - GENERAL STANDARDS FOR MAINTENANCE.

1. Function of SCMs As Intended

The *owner* of each *structural and non-structural SCM* installed pursuant to this ordinance shall maintain and operate it so as to preserve and continue its function in controlling stormwater quality and quantity at the degree or amount of function for which the *structural SCM* was designed.

2. Annual Maintenance Inspection and Report

- A. The person responsible for maintenance of any *structural and non-structural SCM* installed pursuant to this ordinance shall submit to the Stormwater Administrator 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 the following:
- i. The name and address of the land *owner*;
 - ii. The recorded book and page number of the lot of each *structural and non-structural SCM*;
 - iii. A statement that an inspection was made of all *structural and non-structural SCMs*;
 - iv. The date the inspection was made;
 - v. A statement that all inspected *structural and non-structural SCMs* are performing properly and are in compliance with the terms and conditions of the approved maintenance agreement required by this ordinance; and
 - vi. The original signature and seal of the engineer, surveyor, or landscape architect.
- B. All inspection reports shall be on forms supplied by the Stormwater Administrator. An original inspection report shall be provided to the Stormwater Administrator beginning one year from the date of as-built certification and each year thereafter on or before the date of the as-built certification.

158.401 - OPERATION AND MAINTENANCE AGREEMENT.

1. In General

- A. Prior to the conveyance or transfer of any lot or building site to be served by a *structural SCM* pursuant to this ordinance, and prior to issuance of any permit for *development* or *redevelopment* requiring a *structural SCM* pursuant to this ordinance, the applicant or *owner* of the site must execute an operation and maintenance agreement that shall be binding on all subsequent *owners* of the site, portions of the site, and lots or parcels served by the *structural SCM* in a form acceptable to the Stormwater Administrator. Until the transference of all property, sites, or lots served by the *structural SCM*, the original *owner* or applicant shall have primary responsibility for carrying out the provisions of the maintenance agreement.
- A. The operation and maintenance agreement shall require the *owner* or *owners* to maintain, repair and, if necessary, reconstruct the *structural SCM*, and shall state the terms, conditions, and schedule of maintenance for the *structural SCM*. In addition, it shall grant to the Town a right of entry in the event that the Stormwater Administrator has reason to believe it has become necessary to inspect, monitor, maintain, repair, or reconstruct the *structural SCM*; however, in no case shall the right of entry, of itself, confer an obligation of the Town to assume responsibility for the *structural SCM*. In the event the Town directs the correction, repair, replacement, or maintenance of the system or structure in writing and the actions are not satisfactorily performed within a reasonable time (but not greater than 120 days), the Town (or its contractors) may, after reasonable notice, enter the land and perform all the necessary work and may assess the owner of the facility with the cost of the work performed or the Town can seize all or part of the escrow or other fund set aside by the applicant or owner for perpetual maintenance. The owner served by the facility shall be jointly responsible to the Town for the maintenance of the facility and liable for any costs incurred by the Town pursuant to the Operation and Maintenance Agreement. All properties are jointly subject to the imposition of the liens for such costs.
- B.
- C. The operation and maintenance agreement must be approved by the Stormwater Administrator prior to plan approval, and it shall be referenced on the final plat and shall be recorded with the county Register of Deeds upon final plat approval. A copy of the recorded maintenance agreement shall be given to the Stormwater Administrator within fourteen (14) days following its recordation.

2. Special Requirement for Homeowners' and Other Associations

For all *structural SCMs* required pursuant to this ordinance and that are to be or are owned and maintained by a homeowners' association, property owners' association, or similar entity, the required operation and maintenance agreement shall include all of the following provisions:

- A. Acknowledgment that the association shall continuously operate and

maintain the stormwater control and management facilities.

- B. Establishment of an escrow account acceptable to the Town, which can be spent solely for sediment removal, structural, biological or vegetative replacement, major repair, or reconstruction of the *structural SCMs*. If *structural SCMs* are not performing adequately or as intended or are not properly maintained, the Town, in its sole discretion, may remedy the situation, and in such instances the Town 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 *structural SCMs*, provided that the Town shall first consent to the expenditure.

- C. Granting to the Town a right of entry to inspect, monitor, maintain, repair, and reconstruct *structural SCMs*.
- D. Allowing the Town to recover from the association and its members any and all costs the Town expends to maintain or repair the *structural SCMs* or to correct any operational deficiencies. Failure to pay the Town all of its expended costs, after forty-five days written notice, shall constitute a breach of the agreement. In case of a deficiency, the Town 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. Interest, collection costs, and attorney fees shall be added to the recovery.
- E. A statement that this agreement shall not obligate the Town to maintain or repair any *structural SCMs*, and the Town shall not be liable to any person for the condition or operation of *structural SCMs*.
- F. A statement that this agreement shall not in any way diminish, limit, or restrict the right of the Town to enforce any of its ordinances as authorized by law.
- G. A provision indemnifying and holding harmless the Town for any costs and injuries arising from or related to the structural SCM, unless the Town has agreed in writing to assume the maintenance responsibility for the SCM and has accepted dedication of any and all rights necessary to carry out that maintenance.

158.402 - INSPECTION PROGRAM.

1. Inspections and inspection programs by the Town 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, groundwater, and material or water in SCMs; and evaluating the condition of SCMs.

2. If the *owner* or occupant of any property refuses to permit such inspection, the Stormwater Administrator 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 Stormwater Administrator while carrying out his or her official duties.

158.403 - PERFORMANCE SECURITY FOR INSTALLATION.

1. Required

The Town requires the submittal of a performance security 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 *structural SCMs* are installed by the permit holder as required by the approved stormwater management plan.

2. Amount

The amount of an installation performance security shall be the total estimated construction cost of the SCMs approved under the permit, plus 25%.

3. Uses of Performance Security

- A. Forfeiture Provisions

The performance security 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 ordinance, approvals issued pursuant to this ordinance, or an operation and maintenance agreement established pursuant to this ordinance.

- B. Default

Upon default of the *owner* to construct, maintain, repair and, if necessary, reconstruct any *structural SCM* in accordance with the applicable permit or operation and maintenance agreement, the Stormwater Administrator shall obtain and use all or any portion of the security 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. In the event of a default triggering the use of installation performance security, the Town shall not return any of the unused deposited cash funds or other security, which shall be retained for maintenance.

4. Costs in Excess of Performance Security

If the Town takes action upon such failure by the applicant or *owner*, the Town may collect from the applicant or *owner* the difference between the amount of the reasonable cost of such action and the amount of the security held, in addition to any other penalties or damages due.

5. Refund

Within sixty days of the final approval, the installation performance security shall be refunded to the applicant or terminated, except any amount attributable to the cost (plus 25%) of landscaping installation and ongoing maintenance associated with the SCMs covered by the security. Any such landscaping shall be inspected one (1) year after installation with replacement for compliance with the approved plans and specifications and, if in compliance, the portion of the financial security attributable to landscaping shall be released.

158.404 - NOTICE TO OWNERS.

1. Deed Recordation and Indications On Plat

The applicable operations and maintenance agreement and conservation easement, pertaining to every *structural and non-structural SCM* shall be referenced on the final plat and shall be recorded with the county Register of Deeds upon final plat approval. If no subdivision plat is recorded for the site, then the operations and maintenance agreement, conservation easement, or dedication and acceptance into public maintenance, whichever is applicable shall be recorded with the county Register of Deeds so as to appear in the chain of title of all subsequent purchasers under generally accepted searching principles.

2. Signage

Where appropriate in the determination of the Stormwater Administrator to assure compliance with this ordinance, *structural SCMs* shall be posted with a conspicuous sign stating who is responsible for required maintenance and annual inspection. The sign shall be maintained so as to remain visible and legible.

158.405 - RECORDS OF INSTALLATION AND MAINTENANCE ACTIVITIES.

The *owner* of each *structural SCM* shall keep records of inspections, maintenance, and repairs for at least five years from the date of creation of the record and shall submit the same upon reasonable request to the Stormwater Administrator.

158.406- NUISANCE.

The *owner* of each stormwater SCM, whether *structural* or *non-structural SCM*, shall maintain it so as not to create or result in a nuisance condition.

158.407- MAINTENANCE EASEMENT.

1. Every *structural SCM* installed pursuant to this ordinance shall be made accessible for adequate maintenance and repair by a maintenance easement accessible to a public right of way. The easement shall be recorded and its terms shall specify who may make use of the easement and for what purposes.
2. Maintenance access easements shall not have lateral or incline slopes that exceed 3:1 (horizontal to vertical).

SECTION 5: ENFORCEMENT AND VIOLATIONS

158.500 – GENERAL.

1. Authority to Enforce

The provisions of this ordinance shall be enforced by the Stormwater Administrator, his or her designee, or any authorized agent of the Town. Whenever this section refers to the Stormwater Administrator, it includes his or her designee as well as any authorized agent of the Town.

2. Violation Unlawful

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

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, SCM, practice, or condition in violation of this ordinance 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 maintains a condition that results in or constitutes a violation of this ordinance, or fails to take appropriate action, so that a violation of this ordinance 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 article, 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 ordinance, or fails to take appropriate action, so that a violation of this ordinance 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.

158.501 - REMEDIES AND PENALTIES.

The remedies and penalties provided for violations of this ordinance, 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 Stormwater Administrator 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.

B. Disapproval of Subsequent Permits and Development Approvals

As long as a violation of this ordinance continues and remains uncorrected, the Stormwater Administrator or other authorized agent may withhold, and the Town Planning Board may disapprove, any request for permit or *development* approval or authorization provided for by this ordinance or the zoning, subdivision, and/or building regulations, as appropriate, for the land on which the violation occurs.

C. Injunction, Abatements, etc.

The Stormwater Administrator, with the written authorization of the Town 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 ordinance. Any person violating this ordinance 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 North Carolina G.S. § 160A-193, the Stormwater Administrator, with the written

authorization of the Town Manager, may cause the violation to be corrected and the costs to be assessed as a lien against the property.

E. Stop Work Order

The Stormwater Administrator may issue a stop work order to the person(s) violating this ordinance. The stop work order shall remain in effect until the person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violation or violations described therein. The stop work order may be withdrawn or modified to enable the person to take the necessary remedial measures to cure such violation or violations.

2. Civil Penalties

Violation of this ordinance may subject the violator to a civil penalty to be recovered in a civil action in the nature of a debt if the violator does not pay the penalty within 30 days after notice of the violation is issued by the Stormwater Administrator. Civil penalties may be assessed up to the full amount of penalty allowed by law.

3. Criminal Penalties

Violation of this ordinance may be enforced as a misdemeanor subject to the maximum fine permissible under North Carolina law.

158.502 – PROCEDURES.

1. Initiation/Complaint

Whenever a violation of this ordinance occurs, or is alleged to have occurred, any person may file a written complaint. Such complaint shall state fully the alleged violation and the basis thereof, and shall be filed with the Stormwater Administrator, who shall record the complaint. The complaint shall be investigated promptly by the Stormwater Administrator.

2. Inspection

The Stormwater Administrator shall have the authority, upon presentation of proper credentials, to enter and inspect any land, building, structure, or premises to ensure compliance with this ordinance.

3. Notice of Violation and Order to Correct

- A. When the Stormwater Administrator finds that any building, structure, or land is in violation of this ordinance, the Stormwater Administrator shall notify, in writing, the property *owner* or other person violating this ordinance. The notification shall indicate the nature of the violation, contain the address or other description of the site upon which the violation is occurring, order the necessary action to abate the violation, and give a deadline for correcting the

violation. If civil penalties are to be assessed, the notice of violation shall also contain a statement of the civil penalties to be assessed, the time of their accrual, and the time within which they must be paid or be subject to collection as a debt.

- B. The Stormwater Administrator may deliver the notice of violation and correction order personally, by the Town Police Department, by Town Code Enforcement Officer, 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.
- C. If a violation is not corrected within a reasonable period of time, as provided in the notification, the Stormwater Administrator may take appropriate action under this ordinance to correct and abate the violation and to ensure compliance with this ordinance.

4. 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 Stormwater Administrator 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 Stormwater Administrator may extend the time limit as is reasonably necessary to allow timely correction of the violation, up to, but not exceeding 30 days. The Stormwater Administrator may grant 15-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 ordinance. The Stormwater Administrator 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.

5. Enforcement After Time to Correct

After the time has expired to correct a violation, including any extension(s) if authorized by the Stormwater Administrator, the Stormwater Administrator shall determine if the violation is corrected. If the violation is not corrected, the Stormwater Administrator may act to impose one or more of the remedies and penalties authorized by this ordinance.

6. Emergency Enforcement

If delay in correcting a violation would seriously threaten the effective enforcement of this ordinance or pose an immediate danger to the public health, safety, or welfare, then the Stormwater Administrator may order the immediate cessation of a violation. Any person so ordered shall cease any violation immediately. The Stormwater

Administrator may seek immediate enforcement, without prior written notice, through any remedy or penalty authorized by this article.

This Ordinance will take effect on January 1, 2021.

Duly adopted this the 16th day of November, 2020 while in regular session.

Jody McLeod
Mayor

ATTEST:

Kimberly A. Moffett, CMC, NCCMC,
Town Clerk



Town Council Agenda Cover Sheet

Meeting Date

November 16, 2020

Agenda Location

Public Hearings

Item Title

Stormwater and Erosion Control Plan Review and Permit Fees

Presenter

Joshua Baird – Town Engineer

Susan Locklear – Stormwater Engineer

Summary/Description

In transitioning the Erosion Control and Stormwater programs from the County to the Town, a fee schedule needs to be established for the plan review and permits associated with the programs. Staff proposes the fees to be adopted with an effective date of January 1, 2021 which coincides with program implementation and ordinance effective dates.

Requested Action

Approval

Funding Source (If Applicable):

N/A

Cost: N/A Yes ☐ No ☒

Additional Documents to be Included in Agenda Packet

Proposed Fees

Erosion Control Fee Comparison Table

Stormwater Fee Comparison Table

Meeting Timeline

Click or tap here to enter text.

EROSION CONTROL	FEE
Erosion Control Plan Review (includes 2 reviews) overall development	\$225/ac
Subsequent Plan Review Fee-per submittal beyond 2nd	\$100
Erosion Control Plan Review Revision Fee	\$100
Erosion Control Permit - development (valid for 2 years)	\$125/ac
Erosion Control Permit Renewal Fee (1 year extension)	\$500
Single Family Erosion Control Permit	\$75/lot
STORMWATER	FEE
Stormwater Plan Review (includes 2 reviews) - up to 7 acres	\$535/ac
Stormwater Plan Review (includes 2 reviews) - greater than 7 acres	\$535 + \$100/each additional acre over 7 acres
Subsequent Plan Review Fee-per submittal beyond 2nd	\$100
Stormwater Plan Review Revision Fee	\$250
Stormwater Permit	\$400/ac
Stormwater Permit Modification *** ***does not allow for change in phase lines	\$250

Jurisdiction	Erosion Control Plan Review Fee	Erosion Control Permit
Johnston County	\$330 per acre for first 10 acres an additional \$110 per acre for each additional acre	n/a
Wake County	\$250/acre	\$250/acre
Fuquay-Varina	\$250/acre	\$250/acre
Wake Forest	n/a	\$500/acre
Raleigh	\$147/acre	\$297/acre
Clayton (proposed)	\$225/acre	\$125/acre

EROSION CONTROL FEES				
10 ACRE SITE				
Jurisdiction	Erosion Control Plan Review Fee	Erosion Control Permit	Permit- builder(s)*	TOTAL REVENUE Erosion Control
Johnston County***	\$3,300	\$0	\$2,805	\$6,105
Wake County***	\$2,500	\$2,500	\$4,250	\$9,250
Fuquay-Varina***	\$2,500	\$2,500	\$4,250	\$9,250
Wake Forest**	\$0	\$5,000	\$2,730	\$7,730
Raleigh	\$1,470	\$2,970		\$4,440
Clayton (proposed)	\$2,250	\$1,250	\$3,188	\$6,688

* Assume 15% open space...8 .5 acres of lots...Density 5 units/ac

** Single lot - \$65; lots 1/2 acre or more \$500/ac

***Builders obtain individual permits and pay same fees as developer based on acres disturbed

EROSION CONTROL FEES				
15 ACRE SITE				
Jurisdiction	Erosion Control Plan Review Fee	Erosion Control Permit	Permit- builder(s)*	TOTAL REVENUE Erosion Control
Johnston County***	\$3,850	\$0	\$3,603	\$7,453
Wake County***	\$3,750	\$3,750	\$6,375	\$13,875
Fuquay-Varina***	\$3,750	\$3,750	\$6,375	\$13,875
Wake Forest**	\$0	\$7,500	\$4,095	\$11,595
Raleigh	\$2,205	\$4,455		\$6,660
Clayton (proposed)	\$3,375	\$1,875	\$4,781	\$10,031

* Assume 15% open space...12.75 acres of lots...Density 5 units/ac

** Single lot - \$65; lots 1/2 acre or more \$500/ac

***Builders obtain individual permits and pay same fees as developer based on acres disturbed

Jurisdiction	Stormwater Plan Review Fee - residential	Stormwater Plan Review Fee - commercial	Stormwater Permit
Johnston County	\$935 per acre for first 10 acres an additional \$90 per acre for each additional acre	\$935 per acre for first 5 acres an additional \$125 per acre for each additional acre	n/a
Wake County	\$500/acre	\$250-485/acre	\$150/acre.... \$250-485/acre
Clayton (proposed)	\$535 per acre (0-7 ac) \$100 each additional ac	\$535 per acre (0-7 ac) \$100 each additional ac	400/ac

STORMWATER FEES - RESIDENTIAL							
10 ACRE SITE				15 ACRE SITE			
Jurisdiction	Stormwater Plan Review Fee	Stormwater Permit	TOTAL REVENUE Stormwater	Jurisdiction	Stormwater Plan Review Fee	Stormwater Permit	TOTAL REVENUE Stormwater
Johnston County	\$9,350	\$0	\$9,350	Johnston County	\$9,800	\$0	\$9,800
Wake County	\$5,000	\$1,500	\$6,500	Wake County	\$7,500	\$2,250	\$9,750
Clayton (proposed)	\$4,045	\$4,000	\$8,045	Clayton (proposed)	\$4,545	\$6,000	\$10,545

STORMWATER FEES - COMMERCIAL							
5 ACRE SITE				10 ACRE SITE			
Jurisdiction	Stormwater Plan Review Fee	Stormwater Permit	TOTAL REVENUE Stormwater	Jurisdiction	Stormwater Plan Review Fee	Stormwater Permit	TOTAL REVENUE Stormwater
Johnston County	\$4,675	\$0	\$4,675	Johnston County	\$5,300	\$0	\$5,300
Wake County	\$1,250	\$1,250	\$2,500	Wake County	\$3,750	\$3,750	\$7,500
Clayton (proposed)	\$2,675	\$2,000	\$4,675	Clayton (proposed)	\$4,045	\$4,045	\$8,090

Town of Clayton
Amendment to the Comprehensive List of Fees and Charges

BE IT HEREBY APPROVED BY THE TOWN COUNCIL FOR THE TOWN OF CLAYTON, NORTH CAROLINA, THAT THE COMPREHENSIVE LIST OF FEES AND CHARGES WILL BE AMENDED TO INCLUDE THE FOLLOWING:

STORMWATER/EROSION CONTROL:

EROSION CONTROL

Erosion Control Plan Review (includes 2 reviews) overall development	<u>FEE</u> \$225/ac
Subsequent Plan Review Fee-per submittal beyond 2 nd	\$100
Erosion Control Plan Review Revision Fee	\$100
Erosion Control Permit – development (valid for 2 years)	\$125/ac
Erosion Control Permit Renewal Fee (1 year extension)	\$500
Single Family Erosion Control Permit	\$75/lot

STORMWATER

Stormwater Plan Review (includes 2 reviews) – up to 7 acres	<u>FEE</u> \$535/ac
Stormwater Plan Review (includes 2 reviews) – greater than 7 acres	\$535 + 100/each additional acre over 7 acres
Subsequent Plan Review Fee-per submittal beyond 2 nd	\$100
Stormwater Plan Review Revision Fee	\$250
Stormwater Permit	\$400/ac
Stormwater Permit Modification***	\$250

***does not allow for change in phase lines

All above rates will take effect on January 1, 2021.

Duly adopted this the 16th day of November, 2020 while in regular session.

Jody McLeod
Mayor

ATTEST:

Kimberly A. Moffett, CMC, NCCMC
Town Clerk



Town Council Agenda Cover Sheet

Meeting Date

November 16, 2020

Agenda Location

Old Business

Item Title

Resolution Authorizing Execution of an Equipment Lease Purchase Agreement

Presenter

Robert McKie, Finance Director

Summary/Description

The Finance Director will present an updated resolution that authorizes staff to execute an installment financing contract for a ladder truck with Community First National Bank for an amount not to exceed \$871,621 at an interest rate of 2.334% with a ten-year term.

Requested Action

Approval

Funding Source (If Applicable):

Debt Proceeds

Cost: \$871,621 **Yes** ☒ **No** ☐

Additional Documents to be Included in Agenda Packet

Equipment Lease Purchase Agreement Resolution
Equipment Lease Purchase Agreement

Meeting Timeline

Click or tap here to enter text.

Gilmore & Bell, P.C.
Draft-November 2, 2020

\$871,621
EQUIPMENT LEASE PURCHASE AGREEMENT
DATED AS OF NOVEMBER 24, 2020,
BETWEEN
COMMUNITY FIRST NATIONAL BANK, AS LESSOR, AND THE
TOWN OF CLAYTON, NORTH CAROLINA, AS LESSEE

CLOSING DATE: NOVEMBER 24, 2020

LIST OF CLOSING DOCUMENTS

**Document
Number**

1. Equipment Lease Purchase Agreement, with the following exhibits attached:
Exhibit A: Equipment Schedule.
Exhibit B: Payment Schedule.
2. Lessee's Payment Instructions, with the following exhibits attached:
Exhibit A: Invoice relating to the Equipment (including payment instructions).
Exhibit B: Performance Bond.
Exhibit C: Acceptance Certificate.
3. Lessee's Closing Certificate, with the following exhibits attached.
Exhibit A: Evidence of authorization from Lessee's governing body.
Exhibit B: List of Outstanding Obligations (since June 30, 2019).
4. Essential Use Certificate.
5. Opinion of Lessee's Counsel.
6. IRS Form 8038-G.
7. Evidence of Insurance; Certificate of Origin for Titled Vehicle.
8. Notice of Assignment.
9. Assignment.
10. Lender Certificate from Capital One Public Funding, LLC, together with related correspondence to Lessee.
11. UCC-1 Financing Statements:
A. Respecting the Equipment.
B. Respecting the Assignment.
12. Lessee's Form W-9.

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EQUIPMENT LEASE PURCHASE AGREEMENT

THIS EQUIPMENT LEASE PURCHASE AGREEMENT (the “Agreement”), is dated as of November 24, 2020, between **COMMUNITY FIRST NATIONAL BANK**, a national banking association organized and existing under the laws of the United States of America, as Lessor (“Lessor”), and the **TOWN OF CLAYTON, NORTH CAROLINA**, a municipal corporation existing under the laws of the State of North Carolina, as Lessee (“Lessee”), wherein the parties hereby agree as follows:

Section 1. Definitions. The following terms will have the meanings indicated below unless the context clearly requires otherwise:

“Agreement” means this Equipment Lease Purchase Agreement and any other schedule or exhibit made a part hereof by the parties hereto, together with any amendments to this Agreement.

“Code” means the Internal Revenue Code of 1986, as amended.

“Commencement Date” is the date when the term of this Agreement and Lessee’s obligation to pay Rental Payments hereunder commences, which date is November 24, 2020.

“Equipment” means the property described on the Equipment Schedule attached hereto as **Exhibit A**, and all replacements, substitutions, repairs, restorations, modifications, attachments, accessions, additions and improvements thereof or thereto.

“Event of Default” means an Event of Default described in **Section 35**.

“Issuance Year” is the calendar year in which the Commencement Date occurs.

“Lease Term” means the Original Term and all Renewal Terms, but ending on the occurrence of the earliest event specified in **Section 6**.

“Lessee” means the entity described as such in the first paragraph of this Agreement, its successors and its assigns.

“Lessor” means the entity described as such in the first paragraph of this Agreement, its successors and its assigns.

“Maximum Lease Term” means the Original Term and all Renewal Terms through the Renewal Term including the last Rental Payment Date set forth on the Payment Schedule.

“Net Proceeds” means the amount remaining from the gross proceeds of any insurance claim or condemnation award after deducting all expenses (including attorneys’ fees) incurred in the collection of such claim or award.

“Original Term” means the period from the Commencement Date until the end of the fiscal year of Lessee in effect at the Commencement Date.

“Payment Schedule” means the schedule of Rental Payments and Purchase Price set forth on **Exhibit B**.

“Purchase Price” means the amount set forth on the Payment Schedule that Lessee may, at its option, pay to Lessor to purchase the Equipment.

“Renewal Terms” means the optional renewal terms of this Agreement, each having a duration of one year and a term co-extensive with Lessee’s fiscal year.

“Rental Payment Dates” means the dates set forth on the Payment Schedule on which Rental Payments are due.

“Rental Payments” means the basic rental payments payable by Lessee pursuant to **Section 9**.

“State” means the State of North Carolina.

“Vendor” means the manufacturer of the Equipment as well as the agents or dealers of the manufacturer from whom the Equipment is or has been purchased, as listed on **Exhibit A**.

Section 2. Representations and Covenants of Lessee. Lessee represents, warrants and covenants for the benefit of Lessor as follows:

(a) Lessee is a municipal corporation duly organized and existing under the constitution and laws of the State. Lessee will do or cause to be done all things in its control to preserve and keep in full force and effect its existence as a municipal corporation. Lessee has a substantial amount of one or more of the following sovereign powers: (a) the power to tax, (b) the power of eminent domain, and (c) police power.

(b) Lessee is authorized under the constitution and laws of the State to enter into this Agreement and the transaction contemplated hereby and to perform all of its obligations hereunder.

(c) Lessee has been duly authorized to execute and deliver this Agreement by proper action and approval of its governing body at a meeting duly called, regularly convened and attended throughout by a requisite majority of the members thereof or by other appropriate official approval.

(d) This Agreement constitutes the legal, valid and binding obligation of Lessee enforceable in accordance with its terms, except to the extent limited by applicable bankruptcy, insolvency, reorganization or other laws affecting creditors' rights generally.

(e) No event or condition that constitutes, or with the giving of notice or the lapse of time or both would constitute, an Event of Default exists at the Commencement Date.

(f) Lessee has, in accordance with the requirements of law, fully budgeted and appropriated sufficient funds for the current fiscal year to make the Rental Payments scheduled to come due during the Original Term and to meet its other obligations for the Original Term, and such funds have not been expended for other purposes.

(g) Lessee has complied with such public bidding requirements as may be applicable to this Agreement and the acquisition by Lessee of the Equipment hereunder.

(h) There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body, pending or threatened against or affecting Lessee, nor to the best knowledge of Lessee is there any basis therefor, wherein an unfavorable decision, ruling or finding would materially adversely affect the transactions contemplated by this Agreement or any other document, agreement or certificate which is used or contemplated for use in the consummation of the transactions contemplated by this Agreement or materially adversely affect the financial condition or properties of Lessee.

(i) All authorizations, consents and approvals of governmental bodies or agencies required in connection with the execution and delivery by Lessee of this Agreement or in connection with the carrying out by Lessee of its obligations hereunder have been obtained.

(j) The entering into and performance of this Agreement or any other document or agreement contemplated hereby to which Lessee is or is to be a party will not violate any judgment, order, law or regulation applicable to Lessee or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance on any assets of Lessee or the Equipment pursuant to any indenture, mortgage, deed of trust, bank loan or credit agreement or other instrument to which Lessee is a party or by which it or its assets may be bound, except as herein provided.

(k) The Equipment described in this Agreement is essential to the function of Lessee or to the service Lessee provides to its citizens. Lessee has an immediate need for, and expects to make immediate use of, substantially all the Equipment, which need is not temporary or expected to diminish in the foreseeable future. The Equipment will be used by Lessee only for the purpose of performing one or more of Lessee's governmental or proprietary functions consistent with the permissible scope of Lessee's authority.

(l) Neither the payment of the Rental Payments hereunder nor any portion thereof is (i) secured by any interest in property used or to be used in a trade or business of a non-exempt person (within the meaning of Section 103 of the Code) or in payments in respect of such property or (ii) derived from payments in respect of property, or borrowed money, used or to be used in a trade or business of a non-exempt person (within the meaning of Section 103 of the Code). No portion of the Equipment will be used directly or indirectly in any trade or business carried on by any non-exempt person (within the meaning of Section 103 of the Code).

(m) Lessee will comply with all applicable provisions of the Code, including without limitation Sections 103 and 148 thereof, and the applicable regulations of the Treasury Department to maintain the exclusion of the interest components of Rental Payments from gross income for purposes of federal income taxation.

(n) Lessee will use the proceeds of this Agreement as soon as practicable and with all reasonable dispatch for the purpose for which this Agreement has been entered into. No part of the proceeds of this Agreement will be invested in any securities, obligations or other investments or used, at any time, directly or indirectly, in a manner which, if such use had been reasonably anticipated on the date of issuance of this Agreement, would have caused any portion of this Agreement to be or become "arbitrage bonds" within the meaning of Section 103(b)(2) or Section 148 of the Code and the applicable regulations of the Treasury Department.

(o) Lessee has never failed to pay payments coming due under any bond issue, lease purchase agreement or other indebtedness obligation of Lessee.

(p) The useful life of the Equipment will not be less than the Maximum Lease Term.

(q) The application, statements and credit or financial information submitted by Lessee to Lessor are true and correct and made to induce Lessor to enter into this Agreement, and Lessee has experienced no material change in its financial condition since the date(s) of such information.

(r) Lessee has provided Lessor with audited financial statements through June 30, 2019. Lessee has experienced no material change in its financial condition or in the revenues expected to be utilized to meet Rental Payments due under this Agreement since June 30, 2019.

(s) Lessee shall pay the excess (if any) of the actual costs of acquiring the Equipment under the Agreement over the amount disbursed by Lessor on the date hereof.

(t) Lessee hereby confirms that this Agreement will not be designated as a "qualified tax-exempt obligation" as defined in Section 265(b)(3)(B) of the Code.

Section 3. Certification as to Arbitrage. Lessee hereby represents as follows:

(a) The estimated total costs of the Equipment, together with any costs of entering into this Agreement that are expected to be financed under this Agreement, will not be less than the total principal portion of the Rental Payments.

(b) The Equipment has been ordered or is expected to be ordered within six months of the Commencement Date, and the Equipment is expected to be delivered and installed, and the Vendor fully paid, within eighteen months of the Commencement Date.

(c) Lessee has not created or established, and does not expect to create or establish, any sinking fund or other similar fund (i) that is reasonably expected to be used to pay the Rental Payments, or (ii) that may be used solely to prevent a default in the payment of the Rental Payments.

(d) The Equipment has not been and is not expected to be sold or otherwise disposed of by Lessee, either in whole or in major part, prior to the last maturity of the Rental Payments.

(e) To the best of our knowledge, information and belief, the above expectations are reasonable.

Section 4. Lease of Equipment. Lessor hereby demises, leases and lets the Equipment to Lessee, and Lessee rents, leases and hires the Equipment from Lessor, in accordance with the provisions of this Agreement, for the Lease Term.

Section 5. Lease Term. The Original Term of this Agreement will commence on the Commencement Date and will terminate on the last day of Lessee's current fiscal year. The Lease Term may be continued, solely at the option of Lessee, at the end of the Original Term or any Renewal Term for an additional Renewal Term up to the Maximum Lease Term. At the end of the Original Term and at the end of each Renewal Term until the Maximum Lease Term has been completed, Lessee will be deemed to have exercised its option to continue this Agreement for the next Renewal Term unless Lessee has terminated this Agreement pursuant to **Section 6** or **Section 31**. The terms and conditions during any Renewal Term will be the same as the terms and conditions during the Original Term, except that the Rental Payments will be as provided in the Payment Schedule.

Section 6. Termination of Lease Term. The Lease Term will terminate upon the earliest of any of the following events:

- (a) the expiration of the Original Term or any Renewal Term of this Agreement and the nonrenewal of this Agreement in the event of nonappropriation of funds pursuant to **Section 8**;
- (b) the exercise by Lessee of the option to purchase the Equipment under the provisions of **Section 31** and payment of the Purchase Price and all amounts payable in connection therewith;
- (c) a default by Lessee and Lessor's election to terminate this Agreement under **Section 36**; or
- (d) the payment by Lessee of all Rental Payments authorized or required to be paid by Lessee hereunder during the Maximum Lease Term.

Section 7. Continuation of Lease Term. Lessee currently intends, subject to the provisions of **Section 8** and **Section 12**, to continue the Lease Term through the Original Term and all of the Renewal Terms and to pay the Rental Payments hereunder. Lessee reasonably believes that legally available funds in an amount sufficient to make all Rental Payments during the Original Term and each of the Renewal Terms can be obtained. The responsible financial officer of Lessee will do all things lawfully within his or her power to obtain and maintain funds from which the Rental Payments may be made, including making provision for such Rental Payments to the extent necessary in each proposed annual budget submitted for approval in accordance with applicable procedures of Lessee and to exhaust all available reviews and appeals in the event such portion of the budget is not approved. Notwithstanding the foregoing, the decision whether or not to budget or appropriate funds or to extend this Agreement for any Renewal Term is solely within the discretion of the then current governing body of Lessee.

Section 8. Nonappropriation. Lessee is obligated only to pay such Rental Payments under this Agreement as may lawfully be made from funds budgeted and appropriated for that purpose during Lessee's then current fiscal year. In the event sufficient funds will not be appropriated or are not otherwise legally available to pay the Rental Payments required to be paid in the next occurring Renewal Term, as set forth in the Payment Schedule, this Agreement will be deemed to be terminated at the end of the then current Original Term or Renewal Term. Lessee agrees to deliver notice to Lessor of such termination at least 90 days prior to the end of the then current Original Term or Renewal Term, but failure to give such notice will not extend the Lease Term beyond such Original Term or Renewal Term. If this Agreement is terminated in accordance with this Section, Lessee agrees, at Lessee's cost and expense, to peaceably deliver the Equipment to Lessor at the location or locations specified by Lessor.

Section 9. Rental Payments. Lessee will pay Rental Payments, exclusively from legally available funds, in lawful money of the United States of America to Lessor in the amounts and on the dates set forth on the Payment Schedule, such payment to be made by wire or other form of electronic payment in accordance with written instructions provided by Lessor or, with Lessor's consent, by such other commercially reasonable method of payment. Rental Payments will be in consideration for Lessee's use of the Equipment during the fiscal year in which such payments are due. Any Rental Payment not received within five (5) days after its due date will bear interest at the rate of 5% per annum or the maximum amount permitted by law, whichever is less, from such date until paid.

In the event that it is determined that any of the interest components of Rental Payments may not be excluded from gross income for purposes of federal income taxation as a result of any act or failure to act by Lessee, Lessee agrees to pay to Lessor promptly after any such determination and on each Rental Payment Date thereafter an additional amount determined by Lessor to compensate Lessor for the loss of such excludability (including without limitation, compensation relating to interest expense, penalties or additions to tax), which determination shall be conclusive absent manifest error.

Section 10. Interest Component. As set forth on the Payment Schedule, a portion of each Rental Payment is paid as, and represents payment of, interest.

Section 11. Rental Payments To Be Unconditional. Except as provided in Section 8, the obligations of Lessee to make Rental Payments and to perform and observe the other covenants and agreements contained herein shall be absolute and unconditional in all events without abatement, diminution, deduction, set-off or defense, for any reason, including without limitation any failure by any Vendor to deliver or install the Equipment or otherwise perform any of its obligations for whatever reason, including bankruptcy, insolvency, reorganization or similar event with respect to any Vendor or under any Vendor agreement, disputes with Lessor or the Vendor of any of the Equipment, any defects, malfunctions, breakdowns or infirmities in the Equipment or any accident, condemnation or unforeseen circumstances.

Section 12. Rental Payments to Constitute a Current Expense of Lessee. The obligation of Lessee to pay Rental Payments hereunder will constitute a current expense of Lessee, are from year to year and do not constitute a mandatory payment obligation of Lessee in any fiscal year beyond the then current fiscal year of Lessee. Lessee's obligation hereunder will not in any way be construed to be an indebtedness of Lessee in contravention of any applicable constitutional, charter or statutory limitation or requirement concerning the creation of indebtedness by Lessee, nor will anything contained herein constitute a pledge of the general credit, tax revenues, funds or moneys of Lessee.

THE PARTIES INTEND THAT THIS TRANSACTION COMPLY WITH N.C. GEN. STAT. SECTIONS 160A-20 AND 115C-528, AS APPLICABLE. NO PROVISION OF THIS AGREEMENT SHALL BE CONSTRUED OR INTERPRETED AS CREATING A PLEDGE OF LESSEE'S FAITH AND CREDIT WITHIN THE MEANING OF ANY CONSTITUTIONAL DEBT LIMITATION. NO PROVISION OF THIS AGREEMENT SHALL BE CONSTRUED OR INTERPRETED AS A DELEGATION OF GOVERNMENTAL POWERS OR AS AN IMPROPER DONATION OR A LENDING OF LESSEE'S CREDIT WITHIN THE MEANING OF THE STATE CONSTITUTION. NO DEFICIENCY JUDGMENT MAY BE RENDERED AGAINST LESSEE IN VIOLATION OF N.C. GEN. STAT. SECTION 160A-20 OR 115C-528. No provision of this Agreement shall be construed to pledge or to create a lien on any class or source of Lessee's moneys (other than the funds held under this Agreement), nor shall any provision of this Agreement restrict the future issuance of any of Lessee's bonds or obligations payable from any class or source of Lessee's moneys (except to the extent this Agreement restricts the incurrence of additional obligations secured by the Equipment). To the extent of any conflict between this Section and any other provision of this Agreement, this Section will take priority.

Nothing in this Section is intended to impair or prohibit execution of remedies if the Rental Payments are not paid when due or otherwise upon the occurrence of an Event of Default under this Agreement.

Section 13. Delivery, Installation and Acceptance of the Equipment. Lessee will order the Equipment, cause the Equipment to be delivered and installed at the location specified on **Exhibit A** and pay any and all delivery and installation costs in connection therewith. When the Equipment has been delivered and installed, Lessee will immediately accept the Equipment and evidence said acceptance by executing and delivering to Lessor an acceptance certificate in form and substance acceptable to Lessor. After it has been delivered and accepted, the permanent base where the Equipment is garaged will not be changed from the location specified on **Exhibit A** without Lessor's consent, which consent will not be unreasonably withheld.

Section 14. Enjoyment of Equipment. Lessor hereby covenants to provide Lessee with quiet use and enjoyment of the Equipment during the Lease Term, and Lessee will peaceably and quietly have and hold and enjoy the Equipment during the Lease Term, without suit, trouble or hindrance from Lessor, except as otherwise expressly set forth in this Agreement.

Section 15. Right of Inspection. Lessor will have the right at all reasonable times during regular business hours to enter into and upon the property of Lessee for the purpose of inspecting the Equipment.

Section 16. Use of the Equipment. Lessee will not install, use, operate or maintain the Equipment improperly, carelessly, in violation of any applicable law or in a manner contrary to that contemplated by this Agreement. Lessee will obtain all permits and licenses, if any, necessary for the installation and operation of the Equipment. In addition, Lessee agrees to comply in all respects (including, without limitation, with respect to the use, maintenance and operation of each item of the Equipment) with all applicable laws, regulations and rulings of any legislative, executive, administrative or judicial body; provided, however, that Lessee may contest in good faith the validity or application of any such law, regulation or ruling in any reasonable manner that does not, in the opinion of Lessor, adversely affect the interest of Lessor in and to the Equipment or its interest or rights under this Agreement.

Section 17. Maintenance of Equipment. Lessee agrees that it will, at Lessee's own cost and expense, maintain, preserve and keep the Equipment in good repair, working order and condition. Lessor will have no responsibility to maintain, or repair or to make improvements or additions to the Equipment. If requested to do so by Lessor, Lessee will enter into a maintenance contract for the Equipment with Vendor.

Section 18. Title to the Equipment. During the Lease Term, title to the Equipment and any and all additions, repairs, replacements or modifications will vest in Lessee, subject to the rights of Lessor under this Agreement; provided that title will thereafter immediately and without any action by Lessee vest in Lessor, and Lessee will immediately surrender possession of the Equipment to Lessor upon (a) any termination of this Agreement other than termination pursuant to **Section 31** or (b) the occurrence of an Event of Default. It is the intent of the parties hereto that any transfer of title to Lessor pursuant to this Section will occur automatically without the necessity of any bill of sale, certificate of title or other instrument of conveyance. Lessee will, nevertheless, execute and deliver any such instruments as Lessor may request to evidence such transfer. Lessee irrevocably designates, makes, constitutes and appoints Lessor and its assignee as Lessee's true and lawful attorney (and agent in-fact) with power, at such time of termination or times thereafter as Lessor in its sole and absolute discretion may determine, in Lessee's or Lessor's or such assignee's name, to endorse the name of Lessee upon any bill of sale, document, instrument, invoice, freight bill, bill of lading or similar document relating to the Equipment in order to vest title in Lessor and transfer possession to Lessor.

Section 19. Security Interest. To secure the payment of all of Lessee's obligations under this Agreement and to the extent permitted by law, Lessor retains a security interest constituting a first lien on the Equipment and on all additions, attachments and accessions thereto and substitutions therefor and proceeds therefrom. Lessee agrees to execute such additional documents in form satisfactory to Lessor, that Lessor deems necessary or appropriate to establish and maintain its security interest. Lessee agrees that financing statements may be filed with respect to the security interest in the Equipment.

Lessee will, at Lessee's expense, file an application for and obtain the first certificate of title for any Equipment constituting a vehicle, designating Lessee as owner and Lessor as first lienholder, and a certificate of registration issued in Lessee's name. Lessee will, at Lessee's expense, take such action as shall be necessary from time to time to avoid suspension or revocation of any certificates of title and to renew and maintain all certificates of registration. If Lessee is required to obtain any new certificate of title or of registration, Lessee will, at Lessee's expense and with written notice to Lessor of such action, obtain such new certificate of title or of registration in the form described above. Lessee will provide Lessor with all license, registration and vehicle identification numbers relating to each vehicle and will arrange for the registration and titling of all such vehicles. Lessee will notify Lessor of any changes to the certificate of registration or license plate within 10 days of such change.

Section 20. Personal Property. Lessor and Lessee agree that the Equipment is and will remain personal property. The Equipment will not be deemed to be affixed to or a part of the real estate on which it may be situated, notwithstanding that the Equipment or any part thereof may be or hereafter become in any manner physically affixed or attached to such real estate or any building thereon. Upon the request of Lessor, Lessee will, at Lessee's expense, furnish a waiver of any interest in the Equipment from any party having an interest in any such real estate or building.

Section 21. Liens, Taxes, Other Governmental Charges and Utility Charges. Lessee will keep the Equipment free and clear of all liens, charges and encumbrances, except those created under this Agreement. The parties to this Agreement contemplate that the Equipment will be used for a governmental or proprietary purpose of Lessee and, therefore, that the Equipment will be exempt from all property taxes and other similar charges. If the use, possession or acquisition of the Equipment is found to be subject to taxation in any form, Lessee will pay all taxes and governmental charges lawfully assessed or levied against or with respect to the Equipment. Lessee will pay all utility and other charges incurred in the use and maintenance of the Equipment. Lessee will pay such taxes and charges as the same become due; provided that, with respect to any such taxes and charges that may lawfully be paid in installments over a period of years, Lessee will be obligated to pay only such installments that accrue during the Lease Term.

Section 22. Insurance. At its own expense, Lessee will maintain (a) casualty insurance insuring the Equipment against loss or damage by fire and all other risks covered by the standard extended coverage endorsement then in use in the State and any other risks reasonably required by Lessor in an amount at least equal to the then applicable Purchase Price of the Equipment, (b) liability insurance that protects Lessor from liability in all events in form and amount satisfactory to Lessor, and (c) workers' compensation coverage as required by the laws of the State; provided that, with Lessor's prior written consent, Lessee may self-insure against the risks described in clauses (a) and (b). All insurance proceeds from casualty losses will be payable as hereinafter provided. Lessee will furnish to Lessor certificates evidencing such coverage throughout the Lease Term. On or prior to the Commencement Date of this Agreement, Lessee shall also provide or cause to be provided to Lessor a performance bond from the Vendor, naming Lessor and its successors and assigns as a dual obligee and issued by a surety company rated "A" or better by AM Best in an amount equal to the Equipment.

All such casualty and liability insurance will be with insurers that are acceptable to Lessor, will name Lessor as a loss payee and an additional insured and will contain a provision to the effect that such insurance will not be cancelled or modified materially without first giving written notice thereof to Lessor at least ten days in advance of such cancellation or modification. All such casualty insurance will contain a provision making any losses payable to Lessee and Lessor, as their respective interests may appear.

Section 23. Advances. In the event Lessee fails to maintain the insurance required by this Agreement, pay taxes or charges required to be paid by it under this Agreement or fails to keep the Equipment in good repair and operating condition, Lessor may (but will be under no obligation to) purchase the required policies of insurance and pay the cost of the premiums on the thereof, pay such taxes and charges and make such Equipment repairs or replacements as are necessary and pay the cost thereof. All amounts so advanced by Lessor will become additional rent for the then current Original Term or Renewal Term. Lessee agrees to pay such amounts with interest thereon from the date paid at the rate of 10% per annum or the maximum permitted by law, whichever is less.

Section 24. Financial Information. Upon request, Lessee shall furnish or cause to be furnished to Lessor, at Lessee's expense, as soon as available after the close of each fiscal year, the audited financial statement of Lessee at the close of and for such fiscal year, all in reasonable detail, with supporting schedules, audited by and with the report of Lessee's auditor (the "Audit"), which may be in electronic .pdf format. In the event the Audit is filed on the MSRB's "EMMA" website, to satisfy this requirement Lessee may email a link to the posted Audit to Lessor. The electronic Audit or EMMA link may be sent to the following email address (or such other address as Lessor supplies to Lessee in writing): Yvonne2.foley@capitalone.com (Yvonne Foley). In the event that the Audit is not available, Lessee will furnish unaudited financial statements to Lessor in the manner described in this Section, and will then supply the Audit immediately upon the availability thereof.

Section 25. Release and Indemnification. To the extent permitted by law, Lessee will indemnify, protect and hold harmless Lessor from and against any and all liability, obligations, losses, claims and damages whatsoever, and expenses in connection therewith (including, without limitation, counsel fees and expenses and any federal income tax and interest and penalties connected therewith imposed on interest received) arising out of or as the result of (a) the entering into this Agreement, (b) the ownership of any item of the Equipment, (c) the manufacturing, ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any item of the Equipment, (d) any accident in

connection with the operation, use, condition, possession, storage or return of any item of the Equipment resulting in damage to property or injury or death to any person or (e) the breach of any covenant herein or any material misrepresentation contained herein. The indemnification arising under this paragraph will continue in full force and effect notwithstanding the full payment of all obligations under this Agreement or the termination of the Lease Term for any reason.

Section 26. Risk of Loss. Lessee assumes, from and including the Commencement Date, all risk of loss of or damage to the Equipment from any cause whatsoever. No such loss of or damage to the Equipment nor defect therein nor unfitness or obsolescence thereof will relieve Lessee of the obligation to make Rental Payments or to perform any other obligation under this Agreement.

Section 27. Damage, Destruction, Condemnation; Use of Proceeds. If (a) the Equipment or any portion thereof is destroyed, in whole or in part, or is damaged by fire or other casualty, or (b) title to, or the temporary use of, the Equipment or any part thereof or the interest of Lessee or Lessor in the Equipment or any part thereof will be taken under the exercise of the power of eminent domain by any governmental body or by any person, firm or corporation acting under governmental authority, Lessee and Lessor will cause the Net Proceeds of any insurance claim or condemnation award to be applied to the prompt replacement, repair, restoration, modification or improvement of the Equipment, unless Lessee has exercised its option to purchase the Equipment pursuant to **Section 31**. Any balance of the Net Proceeds remaining after such work has been completed will be paid to Lessee.

Section 28. Insufficiency of Net Proceeds. If the Net Proceeds are insufficient to pay in full the cost of any repair, restoration, modification or improvement referred to in **Section 27**, Lessee will either (a) complete such replacement, repair, restoration, modification or improvement and pay any costs thereof in excess of the amount of the Net Proceeds, or (b) purchase Lessor's interest in the Equipment pursuant to **Section 31**. The amount of the Net Proceeds, if any, remaining after completing such repair, restoration, modification or improvement or after purchasing the Equipment will be retained by Lessee. If Lessee will make any payments pursuant to this Section, Lessee will not be entitled to any reimbursement therefor from Lessor nor will Lessee be entitled to any diminution of the amounts payable under **Section 9**.

Section 29. Disclaimer of Warranties. *LESSOR MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY OR FITNESS FOR PARTICULAR USE OR PURPOSE OF THE EQUIPMENT OR AGAINST INFRINGEMENT, OR ANY OTHER WARRANTY OR REPRESENTATION WITH RESPECT THERETO. IN NO EVENT SHALL LESSOR BE LIABLE FOR ANY ACTUAL, INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGE IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT OR THE EXISTENCE, FURNISHING, FUNCTIONING OR LESSEE'S USE OR MAINTENANCE OF ANY EQUIPMENT OR SERVICES PROVIDED FOR IN THIS AGREEMENT.*

Section 30. Vendor's Warranties. Lessee may have rights under the contract evidencing the purchase of the Equipment; Lessee is advised to contact the Vendor for a description of any such rights. Lessee hereby assigns to Lessor during the Lease Term all warranties running from Vendor to Lessee. Lessor hereby irrevocably appoints Lessee its agent and attorney-in-fact during the Lease Term, so long as Lessee will not be in default hereunder, to assert from time to time whatever claims and rights (including without limitation warranties) related to the Equipment that Lessor may have against the Vendor. Lessee's sole remedy for the breach of any such warranty, indemnification or representation will be against the Vendor, and not against Lessor. Any such matter will not have any effect whatsoever on the rights and obligations of Lessor with respect to this Agreement, including the right to receive full and timely payments hereunder. Lessee expressly acknowledges that Lessor makes, and has made, no representations or warranties whatsoever as to the existence or availability of such warranties by the Vendor.

Section 31. Purchase Option; Prepayment.

(a) Lessee will have the option to purchase the Equipment, upon giving written notice to Lessor at least 30 days before the date of purchase, at the following times and upon the following terms:

(i) On any Rental Payment Date, upon payment in full of the Rental Payment then due hereunder plus all other amounts due hereunder plus the then-applicable Purchase Price to Lessor; or

(ii) In the event of substantial damage to or destruction or condemnation (other than by Lessee or any entity controlled by or otherwise affiliated with Lessee) of substantially all of the Equipment, on the day Lessee specifies as the purchase date in Lessee's notice to Lessor of its exercise of the purchase option, upon payment in full of the Rental Payment and all other amounts then due hereunder plus (A) the Purchase Price designated on the Payment Schedule for such purchase date if such purchase date is a Rental Payment Date or the Purchase Price for the immediately preceding Rental Payment Date if such purchase date is not a Rental Payment Date, and (B) if such day is not a Rental Payment Date, an amount equal to the portion of the interest component of the Rental Payment scheduled to come due on the following Rental Payment Date accrued from the immediately preceding Rental Payment Date to such purchase date, computed on the basis of a 360-day year of twelve 30-day months.

Upon the exercise of the option to purchase set forth above, title to the Equipment will be vested in Lessee, free and clear of any claim by or through Lessor.

Section 32. Determination of Fair Purchase Price. Lessee and Lessor hereby agree and determine that the Rental Payments hereunder during the Original Term and each Renewal Term represent the fair value of the use of the Equipment and that the amount required to exercise Lessee's option to purchase the Equipment pursuant to **Section 31** represents, as of the end of the Original Term or any Renewal Term, the fair purchase price of the Equipment. Lessee hereby determines that the Rental Payments do not exceed a reasonable amount so as to place Lessee under a practical economic compulsion to renew this Agreement or to exercise its option to purchase the Equipment hereunder. In making such determinations, Lessee and Lessor have given consideration to (a) the costs of the Equipment, (b) the uses and purposes for which the Equipment will be employed by Lessee, (c) the benefit to Lessee by reason of the acquisition and installation of the Equipment and the use of the Equipment pursuant to the terms and provisions of this Agreement, and (d) Lessee's option to purchase the Equipment. Lessee hereby determines and declares that the acquisition and installation of the Equipment and the leasing of the Equipment pursuant to this Agreement will result in equipment of comparable quality and meeting the same requirements and standards as would be necessary if the acquisition and installation of the Equipment were performed by Lessee other than pursuant to this Agreement. Lessee hereby determines and declares that the Maximum Lease Term does not exceed the useful life of the Equipment.

Section 33. Assignment by Lessor. Lessor's interest in, to and under this Agreement and the Equipment may be assigned and reassigned in whole or in part to one or more assignees by Lessor without the necessity of obtaining the consent of Lessee; and such assignment, transfer or conveyance shall be made only to (i) an affiliate of Lessor or (ii) banks, insurance companies or other financial institutions or their affiliates, but no such assignment, transfer or conveyance shall be effective as against Lessee unless and until Lessor has delivered to Lessee written notice thereof that discloses the name(s) and address(es) of the assignee(s) or the Lease Servicer (as hereafter provided). Nothing herein shall limit the right of Lessor or its assignees to sell, assign or grant participation interests in this Agreement to one or more entities listed in (i) or (ii); provided that if such assignment is made pursuant to a participation, custodial or similar agreement under which multiple ownership interests in this Agreement are created, it shall establish a single entity, owner, servicer or other fiduciary or agent to act on behalf of all of the holders of such participation interests (herein referred to as the "Lease Servicer") with respect to the rights and interests of such holders hereunder, including the exercise of rights and remedies thereunder upon the occurrence of an event of default or an event of non-appropriation, and further including the maintenance of a register by which a record of the names and addresses of such holders as of any particular time is kept and agrees, upon request of Lessee, to furnish such information to Lessee. Lessee will retain all notices of assignment as a register of all assignees and will make all payments to the assignee, assignees or Lease Servicer designated in such register. Lessee agrees to execute all documents, including notices of assignment and chattel mortgages or financing statements that may be reasonably requested by Lessor or any assignee to protect its interest in the Equipment and in this Agreement and agrees to the filing of financing statements with respect to the Equipment and this Agreement. Lessee will not have the right to and will not assert against any assignee any claim, counterclaim, defense, set-off or other right Lessee may have against Lessor.

Section 34. Assignment and Subleasing by Lessee. None of Lessee's right, title and interest in, to and under this Agreement and the Equipment may be assigned or encumbered by Lessee for any reason, except that Lessee may sublease all or part of the Equipment if Lessee obtains the prior written consent of

Lessor and an opinion of nationally recognized counsel in the area of tax exempt municipal obligations satisfactory to Lessor that such subleasing will not adversely affect the exclusion of the interest components of the Rental Payments from gross income for federal income tax purposes. Any such sublease of all or part of the Equipment will be subject to this Agreement and the rights of Lessor in, to and under this Agreement and the Equipment.

Section 35. Events of Default Defined. Subject to the provisions of **Section 8**, any of the following will be "Events of Default" under this Agreement:

(a) Failure by Lessee to pay any Rental Payment or other payment required to be paid hereunder at the time specified herein;

(b) Failure by Lessee to observe and perform any covenant, condition or agreement on its part to be observed or performed, other than as referred to in **Section 35(a)**, for a period of 30 days after written notice, specifying such failure and requesting that it be remedied, is given to Lessee by Lessor, unless Lessor will agree in writing to an extension of such time prior to its expiration; provided, however, if the failure stated in the notice cannot be corrected within the applicable period, Lessor will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by Lessee within the applicable period and diligently pursued until the default is corrected;

(c) Any statement, representation or warranty made by Lessee in or pursuant to this Agreement or its execution, delivery or performance will prove to have been false, incorrect, misleading or breached in any material respect on the date when made;

(d) Any provision of this Agreement will at any time for any reason cease to be valid and binding on Lessee, or will be declared to be null and void, or the validity or enforceability thereof will be contested by Lessee or any governmental agency or authority if the loss of such provision would materially adversely affect the rights or security of Lessor, or Lessee will deny that it has any further liability or obligation under this Agreement;

(e) Lessee will (i) apply for or consent to the appointment of a receiver, trustee, custodian or liquidator of Lessee, or of all or a substantial part of the assets of Lessee, (ii) be unable, fail or admit in writing its inability generally to pay its debts as they become due, (iii) make a general assignment for the benefit of creditors, (iv) have an order for relief entered against it under applicable federal bankruptcy law, or (v) file a voluntary petition in bankruptcy or a petition or an answer seeking reorganization or an arrangement with creditors or taking advantage of any insolvency law or any answer admitting the material allegations of a petition filed against Lessee in any bankruptcy, reorganization or insolvency proceeding; or

(f) An order, judgment or decree will be entered by any court of competent jurisdiction, approving a petition or appointing a receiver, trustee, custodian or liquidator of Lessee or of all or a substantial part of the assets of Lessee, in each case without its application, approval or consent, and such order, judgment or decree will continue unstayed and in effect for any period of 30 consecutive days.

Section 36. Remedies on Default. Whenever any Event of Default exists, Lessor will have the right, at its sole option without any further demand or notice, to take one or any combination of the following remedial steps:

(a) By written notice to Lessee, Lessor may declare all Rental Payments and other amounts payable by Lessee hereunder to the end of the then current Original Term or Renewal Term to be due;

(b) With or without terminating this Agreement, Lessor may enter the premises where the Equipment is located and retake possession of the Equipment or require Lessee at Lessee's expense to promptly return any or all of the Equipment to the possession of Lessor at a place specified by Lessor, and sell or lease the Equipment or, for the account of Lessee, sublease the Equipment, holding Lessee liable for the difference between (i) the Rental Payments and other amounts payable by Lessee hereunder plus the applicable Purchase Price, and (ii) the net proceeds of any such sale, lease or sublease (after deducting all expenses of Lessor in exercising its remedies under this Agreement, including without limitation, all expenses of taking possession, storing, reconditioning and selling or leasing the Equipment and all brokerage, auctioneers' and attorneys' fees) provided that the amount of Lessee's liability under this subparagraph (b)

shall not exceed the Rental Payments and other amounts otherwise due hereunder plus the remaining Rental Payments and other amounts payable by Lessee to the end of the then current Original Term or Renewal Term; and

(c) Lessor may take whatever other action at law or in equity may appear necessary or desirable to enforce its rights as the owner of the Equipment.

In addition, subject to Section 8 hereof, Lessee will remain liable for all covenants and indemnities under this Agreement and for all legal fees and other costs and expenses, including court costs, incurred by Lessor with respect to the enforcement of any of the remedies listed above or any other remedy available to Lessor.

NOTWITHSTANDING ANY OTHER PROVISIONS HEREIN, IT IS THE INTENT OF THE PARTIES HERETO TO COMPLY WITH SECTION 160A-20 OF THE GENERAL STATUTES OF NORTH CAROLINA, AS AMENDED. NO DEFICIENCY JUDGMENT MAY BE ENTERED AGAINST LESSEE IN FAVOR OF LESSOR OR ANY OTHER PERSON IN VIOLATION OF SECTION 160A-20, INCLUDING, WITHOUT LIMITATION, ANY DEFICIENCY JUDGMENT FOR AMOUNTS THAT MAY BE OWED HEREUNDER WHEN THE SALE OF ALL OR ANY PORTION OF THE EQUIPMENT UNDER THIS AGREEMENT IS INSUFFICIENT TO PRODUCE ENOUGH MONEYS TO PAY IN FULL ALL REMAINING OBLIGATIONS UNDER THIS CONTRACT. THE OBLIGATIONS OF LESSEE TO MAKE ANY PAYMENTS UNDER SECTION 36 ARE EXPRESLLY LIMITED BY THIS SUBSECTION.

Section 37. No Remedy Exclusive. No remedy herein conferred upon or reserved to Lessor is intended to be exclusive and every such remedy will be cumulative and will be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default will impair any such right or power or will be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle Lessor to exercise any remedy reserved to it in this Agreement it will not be necessary to give any notice, other than such notice as may be required in this Agreement.

Section 38. Notices. All notices, certificates or other communications hereunder will be sufficiently given and will be deemed given when delivered or mailed by registered mail, postage prepaid, to the parties at the addresses immediately after the signatures to this Agreement (or at such other address as either party hereto will designate in writing to the other for notices to such party), to any assignee at its address as it appears on the register maintained by Lessee.

Section 39. Binding Effect. This Agreement will inure to the benefit of and will be binding upon Lessor and Lessee and their respective successors and assigns.

Section 40. Severability. In the event any provision of this Agreement will be held invalid or unenforceable by any court of competent jurisdiction, such holding will not invalidate or render unenforceable any other provision hereof.

Section 41. Entire Agreement. This Agreement constitutes the entire agreement between Lessor and Lessee.

Section 42. Amendments. This Agreement may be amended, changed or modified in any manner by written agreement of Lessor and Lessee. Any waiver of any provision of this Agreement or any right or remedy hereunder must be affirmatively and expressly made in writing and will not be implied from inaction, course of dealing or otherwise.

Section 43. Execution in Counterparts. This Agreement may be simultaneously executed in several counterparts, each of which will be an original and all of which will constitute but one and the same instrument.

Section 44. Captions. The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

Section 45. Applicable Law. This Agreement will be governed by and construed in accordance with the laws of the State.

Section 46. Electronic Transactions. The parties agree that the transaction described herein may be conducted and related documents may be stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

Section 47. Lessee's Notice Filings Related to this Agreement for SEC Rule 15c2-12. In connection with Lessee's compliance with any continuing disclosure undertakings (each, a "Continuing Disclosure Agreement") entered into by Lessee on and after February 27, 2019, pursuant to SEC Rule 15c2-12 promulgated pursuant to the Securities and Exchange Act of 1934, as amended (the "Rule"), Lessor acknowledges that Lessee may be required to file with the Municipal Securities Rulemaking Board's Electronic Municipal Market Access system, or its successor ("EMMA"), notice that Lessee has incurred obligations under this Agreement and notice of certain subsequent events reflecting financial difficulties in connection with this Agreement. Lessee agrees that it shall not file or submit, or permit to be filed or submitted, with EMMA any documentation that includes the following unredacted sensitive or confidential information about Lessor or its affiliates: address and account information of Lessor or its affiliate, e-mail addresses, telephone numbers, fax numbers, names and signatures of officers, employees and signatories of Lessor or its affiliates, unless otherwise required for compliance with the Rule or otherwise required by law. Lessee acknowledges that Lessor is not responsible for Lessee's compliance or noncompliance with the Rule or any Continuing Disclosure Agreement.

Section 48. E-Verify. Lessor hereby certifies that Lessor understands that "E-Verify" is a federal program operated by the United States Department of Homeland Security and other federal agencies, to verify the work authorization of newly hired employees pursuant to federal law in accordance with Section 64-25(5) of the General Statutes of North Carolina, as amended. To the extent applicable, the Lessor uses E-Verify to verify the work authorization of its employees in accordance with Section 64-26(a) of the General Statutes of North Carolina, as amended. To the extent applicable, the Lessor will require that any subcontractor that it uses in connection with the transactions contemplated by this Agreement certify to such subcontractor's compliance with E-Verify.

[Signature page follows.]

IN WITNESS WHEREOF, Lessor and Lessee have caused this Agreement to be executed in their corporate names by their duly authorized officers as of the date first above written.

COMMUNITY FIRST NATIONAL BANK

By: _____

Name: _____

Title: _____

Mailing Address: 215 S. Seth Child Road
Manhattan, KS 66502

TOWN OF CLAYTON, NORTH CAROLINA

By: _____

Name: Robert W. McKie, Jr.

Title: Finance Director

Mailing Address: P.O. Box 879
Clayton, NC 27528-0879

Physical Address:
111 E. Second Street
Clayton, NC 27520

CERTIFICATION

I, the undersigned, do hereby certify (i) that the officer of Lessee who executed the foregoing Agreement on behalf of Lessee and whose genuine signature appears thereon, is the duly qualified and acting officer of Lessee as stated beneath his or her signature and has been authorized to execute the foregoing Agreement on behalf of Lessee, and (ii) that the fiscal year of Lessee is from July 1 to June 30.

DATED: November 24, 2020.

By: _____

Name: Nancy T. Medlin

Title: Deputy Town Manager

EXHIBIT A TO EQUIPMENT LEASE PURCHASE AGREEMENT

EQUIPMENT SCHEDULE

Equipment Description:

The Equipment consists of one (1) Pierce Arrow XT Tower Fire Truck for use by Lessee's fire department, together with any and all substitutions, replacements or exchanges therefor, and any and all insurance and/or proceeds thereof.

Equipment Location:

The Equipment will be primarily located at the following facility:

Town of Clayton Fire Department - Station 1
325 W. Horne Street
Clayton, NC 27520

Vendor:

Atlantic Emergency Solutions, 12351 Randolph Ridge Lane, Manassas, VA 20109

EXHIBIT B To EQUIPMENT LEASE PURCHASE AGREEMENT

PAYMENT SCHEDULE

Principal Amount: \$871,621

Interest Rate: 2.334%

Rental Payments will be made in accordance with **Section 9** and this Payment Schedule.

Rental Payment Date	Total Rental Payment	Interest Portion	Principal Portion	Purchase Price
11/24/2021	\$98,737.98	\$ 20,343.63	\$ 78,394.35	\$828,921.85
11/24/2022	98,737.98	18,513.91	80,224.07	745,087.70
11/24/2023	98,737.98	16,641.48	82,096.50	659,296.85
11/24/2024	98,737.98	14,725.35	84,012.63	571,503.66
11/24/2025	98,737.98	12,764.49	85,973.49	481,661.36
11/24/2026	98,737.98	10,757.87	87,980.11	389,722.14
11/24/2027	98,737.98	8,704.42	90,033.56	295,637.07
11/24/2028	98,737.98	6,603.03	92,134.95	199,356.05
11/24/2029	98,737.98	4,452.60	94,285.38	100,827.83
11/24/2030	<u>98,737.98</u>	<u>2,252.02</u>	<u>96,485.96</u>	0.00
Totals	<u>\$987,379.80</u>	<u>\$115,758.80</u>	<u>\$871,621.00</u>	

TOWN OF CLAYTON, NORTH CAROLINA

By: _____
Name: Robert W. McKie, Jr.
Title: Finance Director

* Lessee's option to purchase is subject to provisions of Section 31 of the Agreement.

LESSEE'S PAYMENT INSTRUCTIONS

Community First National Bank
215 S. Seth Child Road
Manhattan, KS 66502

Re: Equipment Lease Purchase Agreement dated as of November 24, 2020, between the Town of Clayton, North Carolina, as lessee ("Lessee"), and Community First National Bank, as lessor ("Lessor") (the "Agreement")

Ladies and Gentlemen:

The undersigned officer of the Town of Clayton, North Carolina, does hereby instruct and direct Lessor to disburse or cause to be disbursed the proceeds of the Agreement as follows:

<u>Payee</u>	<u>Amount</u>	<u>Description</u>
Atlantic Emergency Solutions (See attached for payment instructions.)	\$871,621	One (1) Pierce Arrow XT Tower fire truck (the "Equipment")

Attached hereto as **Exhibit A** is the invoice relating to the Equipment, together with payment instructions for the payee referenced above. The performance bond required to be delivered to Lessor pursuant to **Section 22** of the Agreement, including dual obligee rider showing Lessor and/or its assignee as additional insured, is attached hereto as **Exhibit B**.

Lessee agrees to sign the form of Acceptance Certificate attached hereto as **Exhibit C** and deliver the same to Lessor or its assignee upon acceptance of the Equipment.

Dated: November 24, 2020.

TOWN OF CLAYTON, NORTH CAROLINA

By: _____
Name: Robert W. McKie, Jr.
Title: Finance Director

**EXHIBIT A TO
LESSEE'S PAYMENT INSTRUCTIONS**

**INVOICE SHOWING \$871,621 AMOUNT DUE
(INCLUDING WIRE INSTRUCTIONS AND SIGNED W-9) FROM PAYEE**

[To be provided by Vendor prior to Closing.]

**EXHIBIT B TO
LESSEE'S PAYMENT INSTRUCTIONS**

PERFORMANCE BOND

PERFORMANCE BOND RESPECTING THE EQUIPMENT, INCLUDING DUAL OBLIGEE RIDER
SHOWING THE FOLLOWING PARTY AS ADDITIONAL OBLIGEE:

Capital One Public Funding, LLC and its successors and assigns
1307 Walt Whitman Road, 3rd Floor
Melville, NY 11747

[To be provided by Vendor prior to Closing.]

**EXHIBIT C TO
LESSEE'S PAYMENT INSTRUCTIONS**

ACCEPTANCE CERTIFICATE

[For signature and delivery after delivery and acceptance of the Equipment.]

Community First National Bank
215 S. Seth Child Road
Manhattan, KS 66502

Re: Equipment Lease Purchase Agreement dated as of November 24, 2020, between the Town of Clayton, North Carolina, as lessee ("Lessee"), and Community First National Bank, as lessor ("Lessor") (the "Agreement")

Ladies and Gentlemen:

In accordance with the Agreement, the undersigned Lessee hereby certifies and represents to, and agrees with, Lessor as follows:

- (1) The Equipment (as defined in the Agreement) has been delivered and accepted.
- (2) Lessee has conducted such inspection and/or testing of the Equipment as it deems necessary and appropriate and hereby acknowledges that it accepts the Equipment for all purposes.
- (3) Lessee is currently maintaining the insurance coverage required by **Section 22** of the Agreement.
- (4) No event or condition that constitutes, or with notice or lapse of time, or both, would constitute, an Event of Default (as defined in the Agreement) exists at the date hereof.

DATED: _____, 20__.

TOWN OF CLAYTON, NORTH CAROLINA

By: _____
Name: Robert W. McKie, Jr.
Title: Finance Director

LESSEE'S CLOSING CERTIFICATE

Re: Equipment Lease Purchase Agreement dated as of November 24, 2020, between the Town of Clayton, North Carolina, as lessee ("Lessee"), and Community First National Bank, as lessor ("Lessor") (the "Agreement")

We, the undersigned, the duly appointed, qualified and acting Finance Director and Deputy Town Manager, respectively, of the above-captioned Lessee do hereby certify as follows:

(1) Lessee did, at a regular meeting of the governing body of Lessee held November 16, 2020, by motion duly made, seconded and carried, in accordance with all requirements of law, approve and authorize the execution and delivery of the above-referenced Agreement on its behalf by the following named representative of Lessee:

Robert W. McKie, Jr. Finance Director

Printed Name

Title

Signature

[This signature line to be signed by person who executed the Agreement on behalf of Lessee.]

(2) The above-named representative of Lessee held at the time of such authorization and holds at the present time the office designated above and the signature set forth opposite his or her name is the true and correct specimen of his or her genuine signature.

(3) The meeting of the governing body of Lessee at which the Agreement was approved and authorized to be executed was duly called, regularly convened and attended throughout by the requisite majority of the members thereof or by other appropriate official approval, and the action approving the Agreement and authorizing the execution thereof has not been altered or rescinded. Attached hereto as **Exhibit A** is a true and correct copy of the resolution or other documents constituting such official action.

(4) No event or condition that constitutes, or with the giving of notice or the lapse of time or both would constitute, an Event of Default (as such term is defined in the Agreement) exists at the date hereof.

(5) All insurance required in accordance with the Agreement is currently maintained by Lessee.

(6) Lessee has, in accordance with the requirements of law, fully budgeted and appropriated sufficient funds for the current fiscal year to make the Rental Payments scheduled to come due during the Original Term and to meet its other obligations for the Original Term (as such terms are defined in the Agreement), and such funds have not been expended for other purposes.

(7) There is no proceeding pending or threatened in any court or before any governmental authority or arbitration board or tribunal that, if adversely determined, would adversely affect the transactions contemplated by the Agreement or the interest of Lessor or its assigns, as the case may be, in the Equipment.

(8) The Equipment has not been the subject of a referendum that failed to receive the approval of the voters of Lessee within the preceding four years.

(9) Since June 30, 2019 (date of Lessee's last audited financial statements), Lessee has not entered into any direct or contingent bond debt, lease, installment purchase or loan obligation, other than those listed on **Exhibit B** attached hereto.

(10) The correct billing address for Rental Payments is as follows:

Town of Clayton, North Carolina
P.O. Box 879
Clayton, NC 27528-0879
Attention: Finance Director

Dated: November 24, 2020.

By: _____
Name: Robert W. McKie, Jr.
Title: Finance Director

By: _____
Name: Nancy T. Medlin
Title: Deputy Town Manager

**EXHIBIT A TO
LESSEE'S CLOSING CERTIFICATE**

**COPY OF LESSEE'S AUTHORIZATION DOCUMENT
(per Section 3)**

[See attached form of authorizing resolution for adoption, if no resolution previously adopted.]

RESOLUTION

The undersigned, being the officer identified below of the Town of Clayton, North Carolina (the "Lessee"), hereby certifies that the following is a true and correct copy of a resolution adopted by the governing body of the Lessee at a meeting duly held on November 16, 2020.

* * * *

WHEREAS, the Town of Clayton, North Carolina (the "Lessee") is a political subdivision duly organized under the constitution and laws of the State of North Carolina; and

WHEREAS, it is hereby determined that a true and real need exists for the acquisition of one Pierce Arrow XT tower fire truck for use by the Lessee's fire department (the "Equipment"); and

WHEREAS, it is necessary and desirable and in the best interest of the Lessee, as lessee, to enter into an Equipment Lease Purchase Agreement (the "Agreement") with Community First National Bank, as lessor (the "Lessor"), and certain related documents, for the purposes described therein, including the leasing of the Equipment;

NOW, THEREFORE, BE IT RESOLVED, BY THE GOVERNING BODY OF THE TOWN OF CLAYTON, NORTH CAROLINA, AS FOLLOWS:

Section 1. The Agreement, in substantially the same form as presented to this meeting, and the terms and performance thereof are hereby approved, and the Finance Director of the Lessee (or its designee) is hereby authorized to execute and deliver the Agreement on behalf of the Lessee, with such changes therein as shall be approved by such officer, such approval to be conclusively evidenced by such officer's execution thereof.

Section 2. The Lessee shall, and the officers, agents and employees of the Lessee are hereby authorized and directed to take such further action and execute such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Resolution, and to carry out, comply with and perform the duties of the Lessee with respect to the Agreement.

Section 3. The Lessee has made certain capital expenditures in connection with the acquisition of the Equipment prior to the date hereof, and the Lessee expects to make additional capital expenditures in connection with the acquisition of the Equipment in the future. The Lessee intends to reimburse itself for all or a portion of such expenditures, to the extent permitted by law, with the proceeds of the Agreement or other tax-exempt obligations to be delivered by the Lessee. The maximum principal amount of the Agreement or other tax-exempt obligations expected to be delivered for the Equipment is not expected to exceed \$871,621.

Section 4. This Resolution shall take effect and be in full force immediately after its adoption by the governing body of the Lessee.

* * *

I further certify that the foregoing resolution has not been modified, amended or repealed and is in full force and effect as of the date hereof.

WITNESS my hand this 16th day of November, 2020.

TOWN OF CLAYTON, NORTH CAROLINA

By: _____
Kimberly A. Moffett, Town Clerk

**EXHIBIT B TO
LESSEE'S CLOSING CERTIFICATE**

**LIST OF OUTSTANDING OBLIGATIONS SINCE JUNE 30, 2019
(DATE OF LESSEE'S LAST AUDITED FINANCIAL STATEMENTS)
(per Section 9)**

Please list all direct or contingent bond debt, lease, installment purchase or loan obligations (including estimated outstanding principal amount) that Lessee has entered into since June 30, 2019. If this statement is not applicable, please state "None."

ESSENTIAL USE CERTIFICATE

November 24, 2020

Community First National Bank
215 S. Seth Child Road
Manhattan, KS 66502

Re: Equipment Lease Purchase Agreement dated as of November 24, 2020, between the Town of Clayton, North Carolina, as lessee ("Lessee"), and Community First National Bank, as lessor ("Lessor") (the "Agreement")

Ladies and Gentlemen:

I, Robert W. McKie, Jr., a duly elected, appointed, or designated representative of the Town of Clayton, North Carolina ("Lessee"), am qualified to answer the questions set forth below regarding the Equipment to be acquired by Lessee in connection with the above-referenced Agreement:

1. *What is the specific use of the Equipment?*
2. *What increased capabilities will the Equipment provide?*
3. *Why is the Equipment essential to your ability to deliver governmental services?*
4. *Does the Equipment replace existing equipment?*
(If so, please explain why you are replacing the existing equipment)
5. *Why did you choose this specific Equipment?*
6. *For how many years do you expect to utilize the Equipment?*
7. *What revenue source will be utilized to make Rental Payments due under the Agreement?*

Very truly yours,

TOWN OF CLAYTON, NORTH CAROLINA

By: _____
Name: Robert W. McKie, Jr.
Title: Finance Director

[OPINION OF LESSEE COUNSEL—PLEASE FURNISH ON ATTORNEY'S LETTERHEAD]

November 24, 2020

Community First National Bank
215 S. Seth Child Road
Manhattan, KS 66502

Re: Equipment Lease Purchase Agreement dated as of November 24, 2020, between the Town of Clayton, North Carolina, as lessee ("Lessee"), and Community First National Bank, as lessor ("Lessor") (the "Agreement")

Ladies and Gentlemen:

As legal counsel to Lessee, I have examined (a) an executed counterpart of the Agreement, which, among other things, provides for the lease by Lessee from Lessor of the Equipment, (b) an executed copy of the resolution of Lessee which, among other things, authorizes Lessee to execute the Agreement, and (c) such other opinions, documents and matters of law as I have deemed necessary in connection with the following opinions.

Based on the foregoing, I am of the following opinions:

1. Lessee is a public body corporate and politic, duly organized and existing under the laws of the State of North Carolina, and has a substantial amount of one or more of the following sovereign powers: (a) the power to tax, (b) the power of eminent domain, and (c) police power.
2. Lessee has the requisite power and authority to purchase the Equipment and to execute and deliver the Agreement and to perform its obligations under the Agreement.
3. The Agreement and the other documents either attached thereto or required therein have been duly authorized, approved and executed by and on behalf of Lessee, and the Agreement is a valid and binding obligation of Lessee enforceable in accordance with its terms.
4. The authorization, approval and execution of the Agreement and all other proceedings of Lessee relating to the transactions contemplated thereby have been performed in accordance with all open meeting laws, public bidding laws and all other applicable state and federal laws.
5. There is no proceeding pending or threatened in any court or before any governmental authority or arbitration board or tribunal that, if adversely determined, would adversely affect the transactions contemplated by the Agreement or the security interest of Lessor or its assigns, as the case may be, in the Equipment.
6. The Equipment to be leased pursuant to the Agreement constitutes personal property and when subjected to use by Lessee will not be or become a fixture under applicable law.
7. The authorization, execution, delivery and performance of the Agreement by Lessee do not require submission to, approval of, or other action by any governmental authority or agency which action has not been taken and is final and non-appealable.

All capitalized terms herein will have the same meanings as in the Agreement. Lessor, its successors and assigns and any counsel rendering an opinion on the exclusion of the interest components of Rental Payments from gross income for purposes of federal income taxation are entitled to rely on this opinion.

Very truly yours,

8038-G QUESTIONNAIRE FOR COMPLETION BY LESSEE

(Lessor Counsel will prepare and file Form 8038-G with IRS after receiving this completed and signed questionnaire.)

Name of Lessee: Town of Clayton, North Carolina
Address of Lessee: P.O. Box 879, Clayton, NC 27528-0879
Contact Person: Robert W. McKie, Jr., Finance Director
Telephone number: (919) 359-9336
Email address: rmckie@townofclaytonnc.org
Lessee's FEIN: 56-6001203

GENERAL

The Form 8038-G (the form used by Lessees to report the issuance of a tax-exempt obligation) asks specific questions about written procedures to: (1) monitor private use of assets financed with proceeds of a tax-exempt obligation and, as necessary, to take remedial actions to correct any violations of federal tax restrictions on the use of financed assets; and (2) monitor the yield on the investment of gross proceeds of tax-exempt obligations and, as necessary, make payments of arbitrage rebate earned to the United States. In addition, the Form 8038-G asks Lessees to report whether any proceeds will be used to reimburse the Lessee for an expenditure paid prior to issuance. This questionnaire is designed to obtain the information necessary to complete Form 8038-G upon execution and delivery of the Lease.

At this time, the consequences of not having adopted written procedures to monitor private use of financed assets and yield on the investment of gross proceeds of tax-exempt obligations are unknown. Further information is available at <http://www.gilmorebell.com> under the "Resources" header. If you have any questions, please consult your regular bond or legal counsel.

Part 1 – Written Tax Compliance Procedures

Note: If either of these questions is not answered, we will assume the Lessee has not adopted the described procedures.

1. Has the Lessee established written procedures designed to monitor compliance with federal tax restrictions for the term of the lease? Among other matters, the written procedures should identify a particular individual within Lessee's organization to monitor compliance with the federal tax requirements related to use of the financed assets and describe actions to be taken in the event failure to comply with federal tax restrictions is contemplated or discovered.
Yes ___ No ___ If Yes, please attach a copy.
2. Has the Lessee established written procedures to monitor the yield on the investment of proceeds of the Lease on deposit in any escrow account prior to being spent and to ensure that any positive arbitrage rebate earned is paid to the United States?
Yes ___ No ___ If Yes, please attach a copy.

Part 2 – Reimbursement of Prior Expenditures

1. As of the funding date, were any of the proceeds of the Lease used to reimburse Lessee for expenditures paid to acquire the financed assets prior to the funding date of the Lease? **Yes ___ No ___** *If yes, please attach a spreadsheet listing the expenditure(s) together with the date paid, vendor paid and purpose of the expenditure or other proof of the expenditure(s) containing this information (i.e. invoices, receipts, cancelled checks).*

Items 2 and 3 need to be completed ONLY if the answer to item 1 above is YES.

2. Please attach a copy of Lessee's resolution of intent to finance the financed assets, which includes date of adoption.
3. What is the amount of proceeds of the Lease reimbursed to Lessee? \$ _____

Date: November 24, 2020.

TOWN OF CLAYTON, NORTH CAROLINA

By: _____
Robert W. McKie, Jr., Finance Director

- INSURANCE CERTIFICATES (PROPERTY AND LIABILITY) RESPECTING THE EQUIPMENT WITH THE FOLLOWING PARTY SHOWN AS LOSS PAYEE AND ADDITIONAL INSURED:

Capital One Public Funding, LLC and its successors and assigns
1307 Walt Whitman Road 3rd Floor
Melville, NY 11747

[To be provided by Lessee after acceptance of the Equipment.]

- CERTIFICATE OF ORIGIN FOR TITLED VEHICLE RESPECTING THE EQUIPMENT WITH THE FOLLOWING PARTY SHOWN AS LIENHOLDER:

Capital One Public Funding, LLC and its successors and assigns
1307 Walt Whitman Road 3rd Floor
Melville, NY 11747

[To be provided by Lessee after acceptance of the Equipment.]

NOTICE OF ASSIGNMENT

November 24, 2020

Town of Clayton, North Carolina
P.O. Box 879
Clayton, NC 27528-0879

Re: Equipment Lease Purchase Agreement dated as of November 24, 2020, between the Town of Clayton, North Carolina, as lessee ("Lessee"), and Community First National Bank, as lessor ("Lessor") (the "Agreement")

Ladies and Gentlemen:

Please be advised that the undersigned Lessor has assigned all of its right, title and interest in, to and under the Agreement, the Equipment leased thereunder, and the right to receive Rental Payments thereunder and the payment of the Purchase Price thereunder to Capital One Public Funding, LLC, a New York limited liability company ("Assignee"), whose mailing address is 1307 Walt Whitman Road, 3rd Floor, Melville, NY 11747, and whose tax identification number is 11-2209667.

All Rental Payments and payment of the Purchase Price due under the Agreement should be made to the Assignee at the address below or as otherwise instructed by Assignee:

CAPITAL ONE PUBLIC FUNDING, LLC
1307 WALT WHITMAN ROAD, 3RD FLOOR
MELVILLE, NY 11747

Lessee acknowledges that Assignee is acting solely as Assignee for its own loan account and not as a fiduciary for Lessee or in the capacity of broker, dealer, placement agent, municipal securities underwriter, municipal advisor or fiduciary. Assignee has not provided, and will not provide, financial, legal (including securities law), tax, accounting or other advice to or on behalf of Lessee (including to any financial advisor or any placement agent engaged by Lessee) with respect to the structuring, issuance, sale or delivery of the Agreement. Lessee acknowledges that Assignee has no fiduciary duty pursuant to Section 15B of the Securities Exchange Act of 1934 to Lessee with respect to the transactions relating to the structuring, issuance, sale or delivery of the Agreement and the discussions, undertakings and procedures leading thereto. Each of Lessee, its financial advisor and its placement agent has sought and shall seek and obtain financial, legal (including securities law), tax, accounting and other advice (including as it relates to structure, timing, terms and similar matters and compliance with legal requirements applicable to such parties) with respect to the Agreement from its own financial, legal, tax and other advisors (and not from Assignee or its affiliates) to the extent that Lessee, its financial advisor or its placement agent desires, should or needs to obtain such advice. Assignee expresses no view regarding the legal sufficiency of its representations for purposes of compliance with any legal requirements applicable to any other party, including but not limited to Lessee's financial advisor or placement agent, or the correctness of any legal interpretation made by counsel to any other party, including but not limited to counsel to Lessee's financial advisor or placement agent, with respect to any such matters. Lessee acknowledges that the transaction between Lessee and Assignee is an arm's length commercial transaction in which Assignee is acting and has acted solely as a principal and for its own interest, and Assignee has not made recommendations to Lessee with respect to the transaction relating to the Agreement.

[The remainder of this page left blank intentionally.]

Please acknowledge your receipt of this notice and your agreement to make payments due under the Agreement to Assignee by the signature of a duly authorized officer in the space set forth below.

Sincerely,

COMMUNITY FIRST NATIONAL BANK, LESSOR

By: _____

Name: _____

Title: _____

Address: 215 S. Seth Child Road
Manhattan, KS 66502

ACKNOWLEDGED AND AGREED TO:

TOWN OF CLAYTON, NORTH CAROLINA,
LESSEE

By: _____

Name: Robert W. McKie, Jr.

Title: Finance Director

ASSIGNMENT

[On file with Lessor.]

LENDER CERTIFICATE

[See separate letter and form of Lender Certificate from Capital One Public Funding, LLC.]

UCC-1 FINANCING STATEMENTS
RESPECTING THE EQUIPMENT AND THE ASSIGNMENT

[To be prepared and filed by counsel to Lessor.]

LESSEE'S FORM W-9

[Lessee to provide signed Form W9]

WHEREAS, the Town of Clayton, North Carolina (the "Lessee") is a political subdivision duly organized under the constitution and laws of the State of North Carolina; and

WHEREAS, it is hereby determined that a true and real need exists for the acquisition of one Pierce Arrow XT tower fire truck for use by the Lessee's fire department (the "Equipment"); and

WHEREAS, it is necessary and desirable and in the best interest of the Lessee, as lessee, to enter into an Equipment Lease Purchase Agreement (the "Agreement") with Community First National Bank, as lessor (the "Lessor"), and certain related documents, for the purposes described therein, including the leasing of the Equipment;

NOW, THEREFORE, BE IT RESOLVED, BY THE GOVERNING BODY OF THE TOWN OF CLAYTON, NORTH CAROLINA, AS FOLLOWS:

Section 1. The Agreement, in substantially the same form as presented to this meeting, and the terms and performance thereof are hereby approved, and the Finance Director of the Lessee (or its designee) is hereby authorized to execute and deliver the Agreement on behalf of the Lessee, with such changes therein as shall be approved by such officer, such approval to be conclusively evidenced by such officer's execution thereof.

Section 2. The Lessee shall, and the officers, agents and employees of the Lessee are hereby authorized and directed to take such further action and execute such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Resolution, and to carry out, comply with and perform the duties of the Lessee with respect to the Agreement.

Section 3. The Lessee has made certain capital expenditures in connection with the acquisition of the Equipment prior to the date hereof, and the Lessee expects to make additional capital expenditures in connection with the acquisition of the Equipment in the future. The Lessee intends to reimburse itself for all or a portion of such expenditures, to the extent permitted by law, with the proceeds of the Agreement or other tax-exempt obligations to be delivered by the Lessee. The maximum principal amount of the Agreement or other tax-exempt obligations expected to be delivered for the Equipment is not expected to exceed \$871,621.

Section 4. This Resolution shall take effect and be in full force immediately after its adoption by the governing body of the Lessee.

Duly adopted this the 16th day of November, 2020 while in regular session.

Jody McLeod, Mayor

* * *

The undersigned, being the officer identified below of the Town of Clayton, North Carolina (the "Lessee"), hereby certifies that the above is a true and correct copy of a resolution adopted by the governing body of the Lessee at a meeting duly held on November 16, 2020.

I further certify that the above resolution (#2020-42) has not been modified, amended or repealed and is in full force and effect as of the date hereof.

WITNESS my hand this 16th day of November, 2020.

TOWN OF CLAYTON, NORTH CAROLINA

By: _ Kimberly A. Moffett, Town Clerk



Town Council Agenda Cover Sheet

Meeting Date

November 16, 2020

Agenda Location

New Business

Item Title

Amendment to By-Laws – Library Advisory Board

Presenter

Joy Garretson, Library Director

Summary/Description

Per the unanimous recommendation of the Library Advisory Board on October 15, 2020, the board recommends changing the wording in the By-Laws regarding how often the board meets. Approval of this will require the amendment of Section 32.060 of the Code of Ordinance to reflect this change.

Requested Action

Approval

Funding Source (If Applicable):

N/A

Cost: N/A Yes ☐ No ☒

Additional Documents to be Included in Agenda Packet

Cover

Amended By-Laws – Strikethrough Version

Amended By-Laws – Clean Version

Resolution

Meeting Timeline

Click or tap here to enter text.

LIBRARY BOARD

§ 32.060 ESTABLISHMENT.

(A) *Establishment.* There is hereby established a Library Board of Trustees to be known as the Library Board.

(B) *Purpose.* The Library Board shall serve as an advisory body for the Library Department and the town. The Board shall serve as a liaison between the Library Department, Town Manager, Town Council, and citizens of the community. The Board shall consult with and advise the Library Director, Town Manager, Deputy Town Manager and Town Council in matters affecting library policies, programs, finances, and related issues.

(C) *Charges.*

(1) Recommend to the Library Director programs, policies, capital projects, library facility changes, and regulations for the operation of the library;

(2) Advise the Town Manager and Deputy Town Manager concerning the appointment of a Library Director;

(3) The Library Director will receive recommendations from the Board in the preparation of the annual budget of the library. The Library Director will provide an overview of the adopted budget to the Board; and

(4) Advise the town administration on library matters generally.

(D) *Members.*

(1) *Appointment.* The Library Board shall consist of ten members appointed by the Town Council. Seven members shall be chosen from within the corporate limits of the town and three from within the extra-territorial jurisdiction (ETJ). Prerequisite for appointment is all members have a library card.

(2) *Ex officio member.* The Town Council shall appoint a member to serve as an ex officio member and will serve concurrently with his term of office. The ex officio member will not have a vote on items coming before the Library Board.

(3) *Length of appointment.* A term for a three-year appointment begins January 1 and expires December 31. Appointments that are vacated shall be filled by the Town Council for the completion of the unexpired term.

(4) *Attendance of members.* An appointed member who, with no excuse, misses more than three consecutive regular meetings or a total of four such meetings during the year may lose his status as a member of the Board until reappointed or replaced by the Town Council. Absences to be excused should be reported to the Chair. Absences due to sickness, deaths or other emergencies of like nature shall be regarded as approved absences and shall not affect the member's status on the Board except in the event of a long illness or other prolonged absence or a total of four misses, when a member may be replaced. Following three consecutive unexcused absences or a total of four excused absences during the year of one of its members, the Chair shall request the Town Council to declare the seat vacant and bring the Library Board back to full membership.

(E) *Meetings.*

(1) As a public body, the Library Board shall hold ~~monthly~~ meetings at least once bi-monthly (once every two months) or as needed and determined by the Chair, Co-Chair or designee, and All of its-the meetings shall be open to the public (G.S. § 143-318.10).

(a) The meeting schedule is to be adopted before the end of the calendar year and filed with the Town Clerk and posted on the Town of Clayton website. (G.S. § 143-318.12).

(b) If the Board needs to amend its calendar, it must do so at least 48 hours before the meeting.

(2) The election of officers for the ensuing year shall take place at the regular Library Board meeting in January of each year. In the event an officer's appointment to the Library Board is terminated, a replacement to this office shall be elected by the Board from its membership at the meeting following the termination. Officers:

(a) *Chair.* Facilitate the meetings of the Library Board with a published agenda.

(b) *Vice Chair.* In the absence of the Chair, the Vice-Chair will facilitate the meeting of the Library Board with a published agenda.

(c) *Recorder.* The Clayton Town Clerk or designee will record and transcribe the attendance and the minutes of the official meetings of the Library Board.

1. In accordance with G.S. § 143-318.10(e), the Library Board shall keep full and accurate minutes of all official meetings.

2. Minutes are to include the date, time and place of the meeting, members present and absent, a summary of points discussed, motions of the Board, and adjournment.

(3) Officers shall be elected for one-year terms with eligibility for re-election up to three consecutive terms. Mid-year replacement of officers shall serve for the period remaining in that term. New officers shall take office at the first meeting following the regular January meeting.

(4) In collaboration with the State Library of North Carolina, the Library Director shall complete the annual report on library operations (G.S. § 153A-266) to the Town of Clayton and an annual report to the Department of Cultural Resources as required by G.S. § 125-5. The Library Director will provide an overview of the report to the Board.

(5) Special meetings may be called by the Chair, Vice-Chair, or three or more members of the Board. In accordance with G.S. § 143-318.12, a written notice of the meeting stating its purpose is to be posted on the principal bulletin board or door of its usual meeting room; and mailed, emailed, or delivered to each media or individual requesting notice; and it must be posted on the town website prior to the scheduled meeting time.

(6) A quorum shall consist of a simple majority of the total membership of the Library Board. A quorum of the Library Board shall be in attendance before action of an official nature can be taken.

(F) *Committees.* The Chair shall have the authority, subject to the approval of the Library Board, to appoint such committees as may be deemed desirable to complete the work of the

Board. Committees may be composed of Board members, library staff members, and perhaps others. No committee, either standing or special, can be given power to act for the Board; rather the committee investigates a particular matter and makes recommendations to the full Board. Committees will adhere to the open meetings and public records laws as followed by the Board.

(Adopted 10-2-89; Am. adopted 2-4-91; Am. Ord. 2012-12-01, passed 12-3-12; Am. Ord. 2013-03-01, passed 3-4-13; Am. Ord. 2014-10-03, passed 10-6-14; Am. Ord. 2015-12-01, passed 12-7-15; Am. Ord. 2017-08-06, passed 8-7-17; Am. Ord. 2018-07-02, passed 7-16-18; Am. Ord. 2019-12-03, passed 12-16-19)

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Board. Committees may be composed of Board members, library staff members, and perhaps others. No committee, either standing or special, can be given power to act for the Board; rather the committee investigates a particular matter and makes recommendations to the full Board. Committees will adhere to the open meetings and public records laws as followed by the Board.

(Adopted 10-2-89; Am. adopted 2-4-91; Am. Ord. 2012-12-01, passed 12-3-12; Am. Ord. 2013-03-01, passed 3-4-13; Am. Ord. 2014-10-03, passed 10-6-14; Am. Ord. 2015-12-01, passed 12-7-15; Am. Ord. 2017-08-06, passed 8-7-17; Am. Ord. 2018-07-02, passed 7-16-18; Am. Ord. 2019-12-03, passed 12-16-19)

**Resolution to Amend
Town of Clayton
Library Advisory Board By-Laws**

WHEREAS, the Clayton Town Council hereby adopts an amendment to the Library Advisory Board By-Laws with regard to how often the board meets. Such amended will read as follows:

(E) (1) As a public body, the Library Board shall hold meetings at least once bi-monthly (once every two months) or as needed and determined by the Chair, Co-Chair or designee. All of the meetings shall be open to the public (G.S. § 143-318.10).

Duly adopted this the 16th day of November, 2020 while in regular session.

Jody L. McLeod
Mayor

ATTEST:

Kimberly A. Moffett, CMC, NCCMC
Town Clerk

RESOLUTION AUTHORIZING REPRESENTATIVE(S) OF THE MUNICIPALITY BE
DESIGNATED AS DEPUTY FINANCE OFFICERS

Whereas, NCGS 159-25 defines both the Finance Officer and Mayor as being authorized to sign checks on behalf of the town should no other designation be made; and

Whereas, on September 8, 2020, Resolution #2020-32 was adopted appointing certain representatives of the Town of Clayton the authorization to sign and/or countersign checks on behalf of the Town of Clayton; and

Whereas, it is the request of the Town Council to modify and replace Resolution #2020-32 by authorizing the following representatives authority to sign and/or countersign checks on behalf of the Town of Clayton.

<u>Name</u>	<u>Title</u>	<u>Signatures</u>
JD Solomon	Interim Town Manager	_____
Richard Cappola	Deputy Town Manager	_____
Robert W. McKie, Jr.	Finance Director	_____
Kimberly A. Moffett	Town Clerk	_____

This Resolution will be effective immediately and remain until such time it is modified.

Duly adopted this the 16th day of November, 2020 while in regular session.

Jody McLeod
Mayor

ATTEST:

Kimberly A. Moffett, CMC, NCCMC
Town Clerk

**RESOLUTION AUTHORIZING REPRESENTATIVE(S) OF THE MUNICIPALITY BE
DESIGNATED AS DEPUTY FINANCE OFFICERS REGARDING BANKING FOR THE
CLAYTEX FIRE DISTRICT**

Whereas, NCGS 159-25 defines both the Finance Officer and Mayor as being authorized to sign checks on behalf of the town should no other designation be made; and

Whereas, it is the request of the Town Council to authorize the following representatives authority to sign and/or countersign checks on behalf of the Town of Clayton regarding the Claytex Fire District.

<u>Name</u>	<u>Title</u>	<u>Signatures</u>
Richard Cappola	Deputy Town Manager	_____
Robert W. McKie, Jr.	Finance Director	_____

This Resolution will be effective immediately and remain until such time it is modified.

Duly adopted this the 16th day of November, 2020 while in regular session.

Jody McLeod
Mayor

ATTEST:

Kimberly A. Moffett, CMC, NCCMC
Town Clerk



Town Council Agenda Cover Sheet

Meeting Date

November 16, 2020

Agenda Location

New Business

Item Title

Volunteer Advisory Board Appointment Recommendations

Presenter

Kimberly Moffett, Town Clerk

Summary/Description

Recommendations for appointments to upcoming vacancies on the Planning Board, Public Art Advisory Board, and Parks & Recreation Advisory Boards are submitted for your consideration and approval. All board vacancies were advertised and numerous applications received. Everyone who submitted an application was offered an interview. Recommendations were difficult, as there were many excellent applicants. Interviews were conducted by town clerk, board staff liaison and board council liaison. The attached chart indicates name of recommended appointee as well as term expiration.

Requested Action

Approval

Funding Source (If Applicable):

N/A

Cost: N/A Yes ☐ No ☒

Additional Documents to be Included in Agenda Packet

Cover

Recommendation Chart

Meeting Timeline

Click or tap here to enter text.

2020 Appointment Recommendations for Volunteer Advisory Boards

BOARD	POSITION NUMBER	RECOMMENDED APPOINTEE NAME	APPOINTMENT TYPE	RESIDENCY	TERM EXPIRATION
Public Art Advisory Board	PA1	Kim Helmer	Re-Appointment	ETJ	12/31/20
Public Art Advisory Board	PA3	Tammy Murray	Re-Appointment	In-Town	12/31/20
Public Art Advisory Board	PA9	Clark Hipolito	Re-Appointment	In-Town	12/31/20
Planning Board	PB1	Stephen Powers	Re-Appointment	In-Town	12/31/20
Planning Board	PB2	Marty Bizzell	Re-Appointment	ETJ	12/31/20
Planning Board	PB3	Lisa Begley	New Applicant	ETJ	12/31/20
Recreation Advisory Board	REC1	Butch Lawter	Re-Appointment	In-Town	12/31/20
Recreation Advisory Board	REC2	John Saluppo	New Appointment	In-Town	12/31/20
Recreation Advisory Board	REC4	Gina Garera	Re-Appointment	In-Town	12/31/20
Recreation Advisory Board	REC6	Rebecca Bradford	Re-Appointment	ETJ	12/31/20
* - Filling Unexpired Term					



Town Council Agenda Cover Sheet

Meeting Date

November 16, 2020

Agenda Location

New Business

Item Title

Update - Chapter 50 General Utility Regulations

Presenter

Joshua Baird – Town Engineer

Summary/Description

Staff request Town Council approve update to Chapter 50 (General Utility Regulations) based on House Bill 873. House Bill 873 modifies the time for collection of system development fees.

Requested Action

Approval

Funding Source (If Applicable):

N/A

Cost: N/A Yes ☐ No ☒

Additional Documents to be Included in Agenda Packet

HB 873

Proposed Changes

Updated Ordinance

Meeting Timeline

Click or tap here to enter text.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

SESSION LAW 2020-61
HOUSE BILL 873

AN ACT TO CLARIFY THE TIMING OF COLLECTION OF SYSTEM DEVELOPMENT FEES AND TO REQUIRE THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO AMEND A RULE THAT CURRENTLY ALLOWS A SEWER THAT SERVES A SINGLE BUILDING TO BE DEEMED PERMITTED, TO ALLOW A SEWER SHARED WITH AN ACCESSORY BUILDING ON THE SAME PROPERTY TO BE DEEMED PERMITTED AS WELL.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 162A-213(a)a. is recodified as G.S. 162A-213(a)(1).

SECTION 1.(b) G.S. 162A-213(a)b. is recodified as G.S. 162A-213(a)(2).

SECTION 1.(c) G.S. 162A-213(b)a. is recodified as G.S. 162A-213(b)(1).

SECTION 1.(d) G.S. 162A-213(b)b. is recodified as G.S. 162A-213(b)(2).

SECTION 2.(a) G.S. 162A-213, as amended by Section 1 of this act, reads as rewritten:

"§ 162A-213. Time for collection of system development fees.

(a) Land Subdivision. – For new development involving the subdivision of land, the system development fee shall be collected by a local governmental unit at the later of either of the following:

(1) The time of ~~plat recordation~~ application for a building permit.

(2) When water or sewer service is committed by the local governmental unit.

(b) Other New Development. – For all other new development, the local governmental unit shall collect the system development fee at the earlier of either of the following:

(1) The time of application for connection of the individual unit of development to the service or facilities.

(2) When water or sewer service is committed by the local governmental unit.

(c) If the system development fee is collected under subdivision (a)(1) of this section and the local governmental unit that charges or assesses the system development fee is different from the local governmental unit that issues the building permit, the local governmental unit issuing the building permit shall require proof of collection of the system development fee prior to issuance of the building permit.

(d) No system development fee shall be charged or assessed with respect to any new development for which a system development fee under this Article has been collected at the time of plat recordation involving the subdivision of land and the amount of capacity associated with that payment of the system development fee has not increased at the time of application for the building permit. If the amount of capacity is increased at the time of application for a building permit, then a system development fee may be charged for the difference in the amount of the increased capacity minus the system development fee previously paid under this Article."

SECTION 2.(b) This section becomes effective January 1, 2021, and applies to system development fees collected on or after that date.

SECTION 3.(a) G.S. 162A-211 is amended by adding a new subsection to read:



"(a1) Revenue from system development fees calculated using the combined cost method may be expended for previously completed capital improvements for which capacity exists and for capital rehabilitation projects."

SECTION 3.(b) This section becomes effective July 1, 2020, and applies to system development fees expended or encumbered on or after that date.

SECTION 4.(a) Definitions. – For purposes of this section and its implementation, the following definitions apply:

- (1) "Permitting by Regulation for Building Sewer Systems Rule " means 15A NCAC 02T .0303 (Permitting by Regulation).
- (2) "Accessory building" means in one- and two-family dwellings not more than three stories above grade plane in height with a separate means of egress, a building, the use of which is incidental to that of the main building and which is detached and located on the same lot. An accessory building is a building that is roofed over and more than fifty percent (50%) of its exterior walls are enclosed. Examples of accessory buildings are garages, storage buildings, workshops, boat houses, treehouses, and dwelling units, etc. For purposes of this section, "main building" shall only include one- and two-family dwellings.
- (3) "Building sewer" means that part of the drainage system that extends from the end of the building drain and conveys the discharge by gravity or under pressure to a public sewer, private sewer, individual sewage disposal system, or other point of disposal.
- (4) "Lot" means a portion or parcel of land considered as a unit.

SECTION 4.(b) Permitting by Regulation for Building Sewer Systems Rule. – Until the effective date of the revised permanent rule that the Environmental Management Commission is required to adopt pursuant to subsection (d) of this section, the Commission shall implement the Permitting by Regulation for Building Sewer Systems Rule as provided in subsection (c) of this section.

SECTION 4.(c) Implementation. – Notwithstanding the requirements of General Permit No. WQG100000 and the limitation on applicability of 15A NCAC 02T .0303(a)(1), (a)(2), and (a)(3) to a building sewer that serves a single building, if a building sewer that serves a main building is deemed permitted pursuant to 15A NCAC 02T .0113, then a building sewer that serves an accessory building on the same lot that is connected to the building sewer for the main building, and a sewer shared between a main building and an accessory building, shall also be deemed permitted if the building sewer that serves the accessory building, and the sewer shared between the main building and the accessory building, meet the criteria in 15A NCAC 02T .0113 and all criteria required for that system in 15A NCAC 02T .0303, and no additional permit shall be required. This section shall only apply to sewers that serve one main building and one accessory building on the same lot.

SECTION 4.(d) Additional Rule-Making Authority. – The Commission shall adopt a rule to amend the Permitting by Regulation for Building Sewer Systems Rule consistent with subsection (c) of this section. Notwithstanding G.S. 150B-19(4), the rule adopted by the Commission pursuant to this section shall be substantively identical to the provisions of subsection (c) of this section. Rules adopted pursuant to this section are not subject to Part 3 of Article 2A of Chapter 150B of the General Statutes. Rules adopted pursuant to this section shall become effective as provided in G.S. 150B-21.3(b1), as though 10 or more written objections had been received as provided in G.S. 150B-21.3(b2).

SECTION 4.(e) Applicability and Sunset. – This section and rules adopted pursuant to this section shall apply to common sewer lines in existence on, or constructed on or after, the effective date of this act, which are shared by accessory dwelling units or accessory residential

buildings and a primary residence. This section expires when permanent rules adopted as required by subsection (d) of this section become effective.

SECTION 5. Except as otherwise provided, this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 24th day of June, 2020.

s/ Philip E. Berger
President Pro Tempore of the Senate

s/ Tim Moore
Speaker of the House of Representatives

s/ Roy Cooper
Governor

Approved 12:23 p.m. this 30th day of June, 2020

CHAPTER 50: GENERAL UTILITY REGULATIONS

Section

General Provisions

- 50.01 Town Council to adopt rates, rules, and regulations
- 50.02 Water and sewer utility fees

Rates; Billing

- 50.10 Establishment of rates
- 50.11 Security deposit for electric and water service
- 50.12 Sewer charges to start upon completion of sewer tap
- 50.13 Bad check policy
- 50.14 Meter tampering fee
- 50.15 Water and sewer tap replacements

GENERAL PROVISIONS

§ 50.01 TOWN COUNCIL TO ADOPT RATES, RULES, AND REGULATIONS.

The Town Council shall from time to time, as it shall deem wise, adopt rates, rules, and regulations, governing the water, sewerage, and electrical systems of the town, and it shall at all times keep available for inspection by the public a copy of the rates, rules, and regulations in force and on file in the office of the Town Clerk.

('71 Code, § 15-1) (Ord. 13, passed 8-1-32; Am. Ord. 2017-03-01, passed 3-6-17; Am. Ord. 2018-07-07, passed 7-16-18)

§ 50.02 WATER AND SEWER UTILITY FEES.

Except as provided in this section, the town shall charge water and sewer system development fees. These fees shall apply uniformly to all real property within the town's utility service area, and shall be collected in addition to any other fees or charges allowed by the North Carolina General Statutes and set forth in the town's Code of Ordinances, including but not limited to tap fees and rates for water and sewer service, as adopted by the Town Council pursuant to § 50.10, and any fees charged by the town pursuant to Chapters 51 or 52 of the Code of Ordinances.

(A) *Water and sewer system development fees.* The town shall charge system development fees on all ~~New~~ ~~Development~~ that requests to use the town's water distribution system and/or the town's sewer system or the services furnished or to be furnished by the systems in an amount as set forth in the Town of Clayton Comprehensive List of Fees and Charges.

(B) *Nutrient fees.*

(1) The town shall charge nutrient fees to all properties which propose to connect or expand their use of the town's sewer system or the services furnished or to be furnished by the system to recover nutrient related investments made by the town in an amount as set forth in the Town of Clayton Comprehensive List of Fees and Charges.

(2) Residential connections to the town's sanitary sewer system, either inside or outside the town's municipal corporate limits, shall be assessed a nutrient fee calculated on a per dwelling basis for single-family residential dwellings, and on a per unit basis for multi-family residential dwellings, and shall be in an amount as set forth in the Town of Clayton Comprehensive List of Fees and Charges.

(3) All commercial, industrial and institutional connections to the town's sanitary sewer system, either inside or outside the town's municipal corporate limits, shall be assessed a nutrient fee calculated based on the average annual wastewater flow of the property to be served, and shall be in an amount as set forth in the Town of Clayton Comprehensive List of Fees and Charges.

(C) *Payment.* Except as provided in this section, all system development fees ~~and nutrient fees~~ must be paid ~~at the time of plat recordation for subdivisions of land, or at issuance of a wastewater allocation approval for non-subdivision development as required by § 162A-213~~ Time for collection of system development fees. Nutrient fees shall be paid at the same time as System Development Fees.

(D) *Water service districts.* All connections involving a property within a water service district established pursuant to Chapter 153A of the North Carolina General Statutes shall be subject to a

development agreement.

(E) *Definitions.*

NEW DEVELOPMENT, as herein used, shall mean any of the following which increases the capacity necessary to serve that development: (1) the subdivision of land; (2) the construction, reconstruction, redevelopment, conversion, structural alteration, relocation, or enlargement of any structure which increases the number of service units; and (3) any use or extension of the use of land which increases the number of service units.

SYSTEM DEVELOPMENT FEES, as herein used, shall be defined as a charge or assessment for service imposed with respect to **New Development** to fund costs of capital improvements necessitated by and attributable to such **New Development**, to recoup costs of existing facilities which serve such **New Development**, or a combination of those costs. The term includes amortized charges, lump-sum charges, and any other fee that functions as such. **SYSTEM DEVELOPMENT FEES** are developed in accordance with G.S. Chapter 162A, Article 8, and are in the amount as set forth in the Town of Clayton Comprehensive List of Fees and Charges. (Ord. passed 1-16-01; Am. Ord. 2016-08-01, passed 8-1-16; Am. Ord. 2017-03-01, passed 3-6-17; Am. Ord. 2018-07-07, passed 7-16-18)

RATES; BILLING

§ 50.10 ESTABLISHMENT OF RATES.

The rates for water, sewer, and electrical service from the town water, sewer, and electrical systems shall be as amended from time to time by the Town Council and listed in the Town of Clayton Comprehensive List of Fees and Charges.

('71 Code, § 15-3) (Am. Ord. 2017-03-01, passed 3-6-17; Am. Ord. 2018-07-07, passed 7-16-18)

§ 50.11 SECURITY DEPOSIT FOR ELECTRIC AND WATER SERVICE.

Any person desiring municipal electrical and water service shall, before obtaining this service, be required to make such deposit with the town as prescribed from time to time by the Town Council.

('71 Code, § 15-2) (Am. Ord. 2017-03-01, passed 3-6-17; Am. Ord. 2018-07-07, passed 7-16-18)

§ 50.12 SEWER CHARGES TO START UPON COMPLETION OF SEWER TAP.

When a sewer tap is made by the town, the sewer service charge will start immediately upon completion.

('71 Code, § 15-4) (Am. Ord. 2017-03-01, passed 3-6-17; Am. Ord. 2018-07-07, passed 7-16-18)

§ 50.13 BAD CHECK POLICY.

When a customer has a bad check returned in any month, the appropriate returned check charge, as set forth in the Town of Clayton Comprehensive List of Fees and Charges, will apply in addition to any other charges and fees.

(Ord. passed 2-23-87; Amend. adopted 10-2-89; Am. Ord. 2003-07-02, passed 7-21-03; Am. Ord. 2017-03-01, passed 3-6-17; Am. Ord. 2018-07-07, passed 7-16-18)

§ 50.14 METER TAMPERING FEE.

(A) Should any town personnel detect an electric meter or service which has been tampered with, the appropriate charge, as set forth in the Town of Clayton Comprehensive List of Fees and Charges, will be added to the customer's account in addition to any use, reconnection, repair or other applicable fees.

(B) Should any town personnel detect a water meter or service which has been tampered with, the appropriate charge, as set forth in the Town of Clayton Comprehensive List of Fees and Charges, will be added to the customer's account in addition to any use, reconnection, repair or other applicable fees.

(Ord. 98-05-02, passed 5-18-98; Am. Ord. 2003-07-02, passed 7-21-03; Am. Ord. 2017-03-01, passed 3-6-17; Am. Ord. 2018-07-07, passed 7-16-18)

§ 50.15 WATER AND SEWER TAP REPLACEMENTS.

(A) Costs associated with relocation or replacement of water and/or sewer service taps shall be borne by the customer receiving service in accordance with the fee schedule adopted by the town for such improvements.

(B) *Exceptions.* The only exceptions to the above requirement shall be made by the Public Works Director and shall be based on the criteria contained herein. Exceptions to this policy shall be limited based on budgetary allocation and manpower availability.

(1) In cases where replacement of a service tap would tend to reduce the maintenance or service call burden of the town as evidenced by at least two service calls during the preceding 12 months, an exception may be granted.

(2) In cases where a service tap crosses private property not under the ownership of the customer and without clear easement for maintenance and access, an exception may be granted. (Ord. 98-07-02, passed 7-20-98; Am. Ord. 2017-03-01, passed 3-6-17; Am. Ord. 2018-07-07, passed 7-16-18)

CHAPTER 51: WATER AND SEWER SYSTEM EXTENSION POLICY

Section

General Provisions

51.01 General principles

51.02 Reserved

51.03 General extension requirements

Initiation of Extension; Financing

51.20 Application by property owner/developer

51.21 Discretion of town

51.22 Reserved

51.23 Subdivisions

51.24 Other properties

51.25 Reserved

GENERAL PROVISIONS

§ 51.01 GENERAL PRINCIPLES.

The planning and extension of the water and sewer system of the town shall be accomplished in accordance with the following general principles:

(A) Extension shall be made in a manner so as to promote the orderly growth of the community without regard to town boundaries.

(B) Extension of utilities to properties located outside of subdivisions under development shall be financed by the owners of the benefitted property through a development agreement.

(C) The town shall be responsible for the maintenance, operation and control of all water and sewer facilities after dedication and acceptance by the Town Council.

(D) Requests for extension shall be preceded by an application for a specific water and/or verification of sewer capacity in accordance with the procedures established herein.

(Ord. passed 2-18-85; Am. Ord. passed 4-2-90; Am. Ord. 98-02-02, passed 2-16-98; Am. Ord. 2017-03-01, passed 3-6-17; Am. Ord. 2018-07-07, passed 7-16-18)

§ 51.02 RESERVED.

§ 51.03 GENERAL EXTENSION REQUIREMENTS.

The general requirements as to extensions of water and sewer systems shall be in keeping with the following principles:

(A) Each developer of land shall be responsible for providing water and sewer line connections and all necessary pump stations, lift stations, and fire hydrants between their property and the town systems.

(B) Extension of both water and sewer mains shall be required when service is requested. Extension of one utility without the simultaneous extension of the other shall be permitted only in the event that water or sewer mains are available and considered adequate by the town.

(C) In accordance with G.S. § 160A-317, any property proposing to develop within the town limits and within 300 linear feet of any water line or sewer collection line owned, leased as lessee, or operated by the town or on behalf of the town shall extend and connect, unless it is determined by the town, in its sole discretion, that connection to the property is not feasible. The minimum distance for the extension of water mains or sewer mains shall be determined by the town. In general, the minimum distance for extension shall be one platted block, or in the case of water mains, from main line valve to valve, and in the case of sanitary sewers, from manhole to manhole. However, in no case shall water and sewer lines be extended less than the entire length of the developer's property and to adjacent parcels.

(D) The minimum diameter for a water main shall be six inches and the minimum diameter for a sewer main shall be eight inches. All sewer mains shall be installed at a maximum depth to ensure service to as large an area as possible.

(E) Within floodway and floodway fringe zones and areas of special flood hazard, the following requirements shall apply:

(1) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system.

(2) New and replacement sanitary sewer systems shall be designed to minimize and eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters.

(3) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

(F) The water and sewer extension policy and all extension requests shall be administered by the Town Manager, or designee.

(G) No water or sewer service shall be provided to any property outside of the municipal limits of the town, except upon compliance with one of the following:

(1) If the property is contiguous to the municipal limits of the town, the property owners shall immediately petition for and obtain annexation of the property into the municipal limits of the town.

(2) If the property is not then contiguous to the municipal limits of the town, the property owners shall enter into a written agreement with the town for the voluntary annexation thereof at such future date as said property shall be contiguous to the municipal limits of the town, or it is determined by the Town Council that it is in the best interests of the town to satellite annex the property.

(3) The Town Council may negotiate terms for voluntary annexation of tracts which require water and/or sewer system extensions.

(Ord. passed 4-2-90; Am. Ord. 2017-03-01, passed 3-6-17; Am. Ord. 2018-07-07, passed 7-16-18)

INITIATION OF EXTENSION; FINANCING

§ 51.20 APPLICATION BY PROPERTY OWNER/DEVELOPER.

(A) Any property owner or developer desiring to have water or sanitary sewer services extended to and along any public street or other area where no water or sanitary sewer main exists shall apply to the Town Manager, or designee, in writing requesting a specific daily allocation for such services.

(B) The application shall contain plans and analysis in sufficient detail to enable the Town Manager, or designee, to verify the adequate size of facilities necessary for the proposed extension and anticipated future growth.

(C) Prior to approval of any application for water or sewer capacity allocation the provisions of § 51.03(G) must be met.

(D) The town shall not approve any development which proposes to be served for water and/or sewer service by the town utility systems without first receiving an application for water and/or sewer capacity allocation and all other documents, applications, and studies specified in this chapter.

(Ord. passed 4-2-90; Am. Ord. 98-02-02, passed 2-16-98; Am. Ord. 2017-03-01, passed 3-6-17; Am. Ord. 2018-07-07, passed 7-16-18)

§ 51.21 DISCRETION OF TOWN.

The town may extend water and/or sewer lines at its own discretion in the following circumstances:

(A) *To alleviate health problems.* When the Johnston County Health Department certifies to the town that a health problem exists in a certain area, the town may order the extension of water and/or sewer lines if said extension will alleviate the health problem. The town may finance those extensions through the assessment of adjacent property owners under the same procedures set out in § 51.24 or through water and/or sewer fund proceeds.

(B) *To serve petition projects.* Upon receipt of a valid petition, the town may order the extension of a water and/or sewer line to service the areas petitioned even through the property owners between the exiting water and/or sewer lines and the requested service area have not entered into the petition for water and/or sewer service. The properties to be served as a result will be assessed

under the same procedure set out in § 51.24.

(C) *Greater public interest.* The Town Council may, upon one letter of request for service from a property owner in a residential subdivision, or at its own discretion, authorize the construction of a water and/or sewer line where it deems the construction to be in the greater public interest and in the general public welfare. The town may finance these extensions through the same procedures set forth in division (B) of this section.

(Ord. passed 4-2-90; Am. Ord. 2011-09-02, passed 9-6-11; Am. Ord. 2017-03-01, passed 3-6-17; Am. Ord. 2018-07-07, passed 7-16-18)

§ 51.22 RESERVED.

§ 51.23 SUBDIVISIONS.

With respect to the installation of utilities to serve subdivisions, the following policies shall apply:

(A) *Specifications.* All installations shall be made according to such specifications as may be approved by the town or its engineers, including the size of all lines and their locations, grade, and material used.

(B) *Ownership and control.* All lines constructed and connected with the facilities of the town under these policies shall become the property of the town upon their completion, dedication, and acceptance. The town shall have exclusive control of all such lines and shall be responsible for their maintenance, repair, and operation.

(C) *Contracts.* All installations made under a reimbursement agreement shall be accomplished under contracts let after the receipt of sealed competitive bids. The town shall exercise general supervision over the letting of such contracts in order to assure the securing of free competition on such contracts.

(D) *Reimbursement policy.*

(1) A reimbursement agreement may be entered into between the town and each private party installing water and/or sewer lines, which shall become the property of, and operation and maintenance responsibility of the town.

(2) The cost of installing all lines within a subdivision shall be borne initially by the participating developer or developers.

(3) Infrastructure subject to reimbursement shall be:

(a) Those between a subdivision and the facilities of the town and which are so located as to serve other properties; and

(b) Lines within a subdivision which will serve lands outside the subdivision and are of a size in excess of the needs of the subdivision itself. In this case, the cost subject to reimbursement shall be only the extra cost incurred by installing lines larger than needed to serve the subdivision itself; and

(c) The proportionate cost of lines of any size to which direct service connections may be made by property other than those by the initial investor; and

(d) The town shall be reimbursed for its expenses in constructing or providing for water or sewer utility capital improvements adjacent or ancillary to the development if the owner or developer has agreed to be financially responsible for such expenses, and such reimbursement shall be credited against the system development fees owed by the owner or developer.

(4) Only the actual cost of the lines shall be included in the calculations of costs subject to reimbursement. No interest on costs pending reimbursement shall be allowed.

(5) No reimbursement of any cost shall be made after ten years from the date of acceptance by the town of the lines installed under a reimbursement agreement.

(Ord. passed 2-18-85; Am. Ord. passed 4-2-90; Am. Ord. 2017-03-01, passed 3-6-17; Am. Ord. 2018-07-07, passed 7-16-18)

§ 51.24 OTHER PROPERTIES.

In accordance with the general principle that benefitted property should bear the cost of extending water and sewer lines, one or more of the following methods shall be used in providing for the extension of water and sewer lines to serve properties not located within subdivisions currently under development. Properties which are annexed by the town based upon the properties meeting the necessary standards for annexation as set forth in the North Carolina General Statutes (i.e., annexation not based on a petition requesting annexation by the property owners) will have

services extended to them with financing arranged by assessments as described in divisions (A)(1) through (7) below.

(A) *Assessments for costs.*

(1) Lateral water and sewer main extensions will be made by assessment of the cost thereof against property owners to be benefitted thereby in conformity with G.S. Chapter 160A, Article 10. In the event it is necessary or desirable to lay a water main larger than a six-inch main, or a sewer main larger than an eight-inch main, the town will bear the cost of the difference between the cost of the size of main required and that of a six-inch water main or eight-inch sewer main.

(2) Lots at the intersection of streets, except lots in a subdivision which are assessed on a per lot basis as authorized by G.S. Chapter 160A, Article 10, shall be assessed as follows:

(a) If water and sewer mains or both are installed simultaneously on both streets on which the lot abuts, assessment of the cost of the installation shall be based upon the entire frontage on one street plus the frontage on the other street in excess of 150 feet.

(b) If such lot is already served by water or sewer mains in a street on which the lot abuts and a like main is installed in the other abutting street, the cost of such new installation shall be assessed against the lot to the extent that such frontage abutting the new installation exceeds 150 feet.

(c) If water or sewer service is installed in a street abutting a corner lot, and such service is not a duplicating service, and the method of assessment used is the street frontage method, the assessment shall not exceed the number of feet of the shortest side of said lot abutting the street. Upon installation of a duplicating service to said lot, an exemption as specified in division (A)(2) above shall be credited against the longest side of said lot abutting on the public street.

(3) Where one or more water or sewer lines traverse a lot or tract of land and the method of assessment used is the abutting footage on the improvement, the abutting footage for each lot, tract, or parcel assessed according to the assessment roll shall not exceed the straight line distance between the beginning point and the ending point of said line or lines. However, upon the installation of a duplicating service to a traversed lot or tract of land, an exemption of 150 feet shall be allowed for the duplicating service, whether it is installed separately or simultaneously with the original service.

(4) A lot not on a corner abutting two streets which has a water or sewer service in one street shall not be liable for an assessment for a duplicating service in the other street or streets if the subdivision of such lot or sale of any part thereof for an additional building site or sites is prohibited by the zoning or subdivision standard provisions of the town or any restrictive covenants running for a period of not less than five years from the date of the assessment for such installation.

(5) The term **LOT** as used in this section is defined as a parcel of land without regard to whether or not it is shown on any subdivision map as a separate lot and without regard to how or when acquired, except that when an assessment is made on a per lot basis in a subdivision, the term **LOT** shall apply to each separate subdivided lot. However, when a lot in a subdivision is already served by a water or sewer line and the lots in the subdivision are assessed on a per lot basis, the lot so served shall not be assessed a greater amount than the amount which would be assessed against the lot on a linear foot basis after giving credit for the exemptions contained in this section.

(6) The Town Council shall determine which method of assessment authorized by G.S. § 160A-218 would be most equitable to be used in an assessment roll.

(7) When the Town Council determines that the most equitable method of assessment is on the basis of the frontage abutting the project, the Council shall determine the amount of the construction cost to be borne by the abutting property owner and the amount to be borne by the town.

(B) *Reimbursement policy.*

(1) The reimbursement policy outlined in division (A)(2) of this section shall be available for use by an individual property owner who desires service at some distance from existing lines and when assessment of, or contributions from, intervening property does not appear feasible. This method may also be used in financing extensions both inside and outside the town boundaries.

(2) Extensions under any of the above financing methods may be made either by forces of the

town or under contracts let by the town, or by private contracts let under the supervision of the town.

(Ord. passed 2-18-85; Am. Ord. passed 4-2-90; Am. Ord. 2017-03-01, passed 3-6-17; Am. Ord. 2018-07-07, passed 7-16-18)

§ 51.25 RESERVED.

CHAPTER 52: SEWER USE

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GENERAL PROVISIONS

§ 52.001 PURPOSE; POLICY.

(A) This chapter sets forth uniform requirements for direct and indirect contributors into the wastewater collection and treatment system for the Town of Clayton, hereafter referred to as the town, and enables the town to comply with all applicable state and federal laws required by the Clean Water Act (33 USC 1251 et seq.) and the General Pretreatment Regulations (40 CFR 403).

(B) The objectives of this chapter are:

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

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

(D) This chapter shall apply to all users of the municipal wastewater system as authorized by G.S. § 160A-312 or § 153A-275. Except as otherwise provided herein, the Superintendent and/or Director shall administer, implement, and enforce the provisions of this chapter. Any powers granted to or imposed upon the Superintendent or Director may be delegated by the Superintendent or Director to other town personnel. By discharging wastewater into the municipal wastewater system, industrial users located outside the town limits agree to comply with the terms and conditions established in this chapter, as well as any permits, enforcement actions, or orders issued hereunder.

(Ord. passed 11-8-94; Am. Ord. 2013-04-01, passed 4-1-13; Am. Ord. 2018-07-07, passed 7-16-18)

§ 52.002 DEFINITIONS AND ABBREVIATIONS.

(A) For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ACT or **THE ACT.** The Federal Water Pollution Control Act, also known as the Clean Water

Act, as amended, 33 USC 1251 et seq.

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

AUTHORIZED REPRESENTATIVE OF THE INDUSTRIAL USER.

(a) If the industrial user is a corporation, **AUTHORIZED REPRESENTATIVE** shall mean:

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

2. The manager of one or more manufacturing, production, or operation facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25 million (in second quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

(b) If the industrial user is a partnership, association, or sole proprietorship, an **AUTHORIZED REPRESENTATIVE** shall mean a general partner or the proprietor, respectively.

(c) If the industrial user is a federal, state, or local government facility, an **AUTHORIZED REPRESENTATIVE** shall mean a director or highest official appointed or designated to oversee the operation and performance of the activities of the government facility, or their designee.

(d) The individuals described in (a) through (c) above may designate another **AUTHORIZED REPRESENTATIVE** if the authorization is in writing, the authorization specifies the individual or position responsible for the overall operation of the facility from which the discharge originates or having overall responsibility for environmental matters for the company, and the authorization is submitted to the town.

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

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

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

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

CATEGORICAL STANDARDS. National Categorical Pretreatment Standards or Pretreatment Standard.

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

DIRECTOR or **DIRECTOR OF PUBLIC WORKS.** The person designated by the town to manage the operation of the publicly-owned treatment works and the wastewater collection system and who is charged with certain duties and responsibilities by this chapter, or his or her duly authorized representative.

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

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

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

INDIRECT DISCHARGE or **DISCHARGE.** The discharge or the introduction from any non-domestic source regulated under § 307(b), (c), or (d) of the Act, (33 USC 1317), into the POTW (including holding tank waste discharged into the system).

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

INTERFERENCE. The inhibition, or disruption of the collection system, POTW treatment processes, operations, or its sludge process, use, or disposal, which causes or contributes to a

violation of any requirement of the Control Authority's (and/or POTW's if different from the Control Authority) NPDES, collection system, or non-discharge permit or prevents sewage sludge use or disposal in compliance with specified applicable state and federal statutes, regulations, or permits. The term includes prevention of sewage sludge use or disposal by the POTW in accordance with § 405 of the Act, (33 USC 1345) or any criteria, guidelines, or regulations developed pursuant to the Solid Waste Disposal Act (SWDA) (42 USC 6901 et seq.), the Clean Air Act, the Toxic Substances Control Act, the Marine Protection Research and Sanctuary Act (MPRSA) or more stringent state criteria (including those contained in any state sludge management plan prepared pursuant to Title IV of SWDA) applicable to the method of disposal or use employed by the POTW.

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

NATIONAL CATEGORICAL PRETREATMENT STANDARD or CATEGORICAL STANDARD.

Any regulation containing pollutant discharge limits promulgated by EPA in accordance with § 307(b) and (c) of the Act (33 USC 1317) which applies to a specific category of industrial users, and which appears in 40 CFR Chapter 1, Subchapter N, Parts 405-471.

NATIONAL PROHIBITIVE DISCHARGE STANDARD or PROHIBITIVE DISCHARGE STANDARD. Absolute prohibitions against the discharge of certain substances; these prohibitions appear in § 52.010 of this chapter and are developed under the authority of § 307(b) of the Act and 40 CFR 403.5.

NEW SOURCE.

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

1. The building, structure, facility, or installation is constructed at a site at which no other source is located; or
2. The building, structure, facility, or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or
3. The production or wastewater generating processes of the building, structure, facility, or installation are substantially independent of an existing source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the existing source, should be considered.

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

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

1. Begun, or caused to begin as part of a continuous on-site construction program:
 - A. Any placement, assembly, or installation of facilities or equipment; or
 - B. Significant site preparation work including clearing, excavation, or removal of existing buildings, structures or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or
2. Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this definition.

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

NON-DISCHARGE PERMIT. A disposal system permit issued by the state pursuant to G.S. § 143-215.1.

NPDES PERMIT or NATIONAL POLLUTION DISCHARGE ELIMINATION SYSTEM PERMIT.

A permit issued pursuant to § 402 of the Act (33 USC 1342), or pursuant to G.S. § 143-215.1 by the state under delegation from EPA.

PASS-THROUGH. A discharge which exits the Control Authority's (and/or POTW's if different from the Control Authority) into waters of the state in quantities or concentrations which, alone or with discharges from other sources, causes a violation of the POTW's NPDES, non-discharge permit, or collection system permit.

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

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

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

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

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

PRETREATMENT or TREATMENT. The reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging or otherwise introducing such pollutants into a POTW. The reduction or alteration can be obtained by physical, chemical or biological processes, or process changes or other means, except by diluting the concentration of the pollutants, unless allowed by an applicable pretreatment standard.

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

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

PRETREATMENT STANDARDS. Prohibited discharge standards, categorical standards, or local limits which apply to an industrial user.

SEVERE PROPERTY DAMAGE. Substantial physical damage to property, damage to the user's treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass.

SEVERE PROPERTY DAMAGE does not mean economic loss caused by delays in production.

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

SIGNIFICANT NONCOMPLIANCE (SNC) or REPORTABLE NONCOMPLIANCE (RNC). **SIGNIFICANT NONCOMPLIANCE** or **SNC** is the status of noncompliance of a significant industrial user when one or more of the following criteria are met.

(a) Violations of wastewater discharge limits.

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

2. Technical Review Criteria (TRC) violations, defined here as those in which 33% or more of all the measurements taken for the same pollutant parameter during a six-month period equal or exceed the product of the numeric pretreatment standard or requirement including instantaneous limits, as defined by 40 CFR 403.3(1) multiplied by the applicable TRC; (TRC= 1.4 for BOD, TSS, fats, oil and grease, 12. for all other pollutants (except flow and pH));

3. Any other violation of a pretreatment standard or requirement as defined by 40 CFR Part 403.3(1) (daily maximum, long term average, instantaneous limit, or narrative standard) that the Control Authority and/or POTW determines has caused, alone or in combination with other discharges, interference or pass through (including endangering the health of town or contracted personnel or the general public);

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

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

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

(d) Failure to accurately report non-compliance.

(e) Any other violation or group of violations that the control authority and/or POTW determines will adversely affect the operation or implementation of the local pretreatment program.

SIU or SIGNIFICANT INDUSTRIAL USER. An industrial user that discharges wastewater into a publicly owned treatment works and that:

(a) Discharges an average 25,000 gpd or more of process wastewater to the POTW (excluding sanitary, non-contact and boiler blowdown wastewaters); or

(b) Contributes process wastewater which makes up 5% or more of the NPDES, non-discharge permit flow limit or organic capacity of the POTW treatment plant. In this context the organic capacity refers to BOD, TSS, ammonia, total phosphorus, and total nitrogen; or

(c) Is subject to categorical pretreatment standards under 40 CFR Part 403.6 and 40 CFR Chapter I, Subchapter N, Parts 405-471; or

(d) Is designated as such by the Control Authority on the basis that the industrial user has a reasonable potential for adversely affecting the POTW's operation, or for violating any pretreatment standard or requirement, or for contributing to violations of the POTW's effluent limitations and conditions in its NPDES or non-discharge permit, or for limiting the POTW's sludge disposal options.

SLUG LOAD or DISCHARGE. Any discharge at a flow rate or concentration which has a reasonable potential to cause interference or pass-through, or in any other way violates the POTW's regulations, local limits, or industrial user permit conditions. This can include but is not limited to spills and other accidental discharges; discharges of a non-routine, episodic nature; a non-customary batch discharge; or any other discharges that can cause a violation of the prohibited discharge standards in § 52.010 of this chapter.

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

SUPERINTENDENT (WRF SUPERINTENDENT). The person designated by the town to supervise the operation of the publicly-owned treatment works and who is charged with certain duties and responsibilities by this chapter, or his or her duly authorized representative.

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

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

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

WASTEWATER PERMIT. As set forth in § 52.041 of this chapter.

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

(B) The following abbreviations shall have the designated meanings:

- (1) **BOD:** Biochemical oxygen demand.
- (2) **CFR:** Code of Federal Regulations.
- (3) **COD:** Chemical Oxygen Demand.
- (4) **EPA:** Environmental Protection Agency.
- (5) **gpd:** Gallons per day.
- (6) **G.S.:** North Carolina General Statutes (also, **NCGS**).
- (7) **l:** Liter.
- (8) **mg:** Milligrams.
- (9) **mg/l:** Milligrams per liter.
- (10) **NPDES:** National Pollution Discharge Elimination System.
- (11) **O&M:** Operation and Maintenance.
- (12) **POTW:** Publicly-Owned Treatment Works.
- (13) **RCRA:** Resource Conservation and Recovery Act.
- (14) **SIC:** Standard Industrial Classification.
- (15) **SIU:** Significant Industrial User.
- (16) **SWDA:** Solid Waste Disposal Act, 42 USC 6901 et seq.
- (17) **TSS:** Total Suspended Solids.
- (18) **TKN:** Total Kjeldahl Nitrogen.
- (19) **USC:** United States Code.

(Ord. passed 11-8-94; Am. Ord. passed 7-15-96; Am. Ord. 2008-05-02, passed 5-5-08; Am. Ord. 2009-03-02, passed 3-2-09; Am. Ord. 2013-04-01, passed 4-1-13; Am. Ord. 2018-07-07, passed 7-16-18)

GENERAL SEWER USE REQUIREMENTS

§ 52.010 PROHIBITED DISCHARGE STANDARDS.

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

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

- (1) Pollutants which create a fire or explosive hazard in the POTW, including, but not limited to, waste streams with a closed cup flashpoint of less than 140°F (60°C) using the test methods specified in 40 CFR 261.21.
- (2) Solid or viscous substances in amounts which will cause obstruction of the flow in the POTW resulting in interference.
- (3) Petroleum oil, non-biodegradable cutting oil, or products of mineral oil origin, in amounts that will cause interference or pass-through.
- (4) Any wastewater having a pH less than 6.0 or greater than 10.5 or wastewater having any other corrosive property capable of causing damage to the POTW or equipment. (Any pH above

12.5 is considered hazardous under 40 CFR 261.22.)

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

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

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

(8) Any trucked or hauled pollutants, except at discharge points designated by the Superintendent or Director in accordance with § 52.018 of this chapter.

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

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

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

(12) Any wastewater containing any radio- active wastes or isotopes except as specifically approved by the Superintendent or Director in compliance with applicable state or federal regulations.

(13) Storm water, surface water, ground water, artesian well water, roof runoff, subsurface drainage, swimming pool drainage, condensate, deionized water, non-contact cooling water and unpolluted industrial wastewater, unless specifically authorized by the Superintendent or Director.

(14) Fats, oils, or greases of animal or vegetable origin in concentrations greater than 200 mg/l.

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

(16) Any medical wastes, except as specifically authorized by the Superintendent or Director in a wastewater discharge permit.

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

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

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

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

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

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

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

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

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

(1) Advise the user of the potential impact of the contribution on the POTW in accordance with § 52.990; and

(2) Take appropriate actions in accordance with §§ 52.040 and 52.041 for such user to protect the POTW from interference or pass-through.

(Ord. passed 11-8-94; Am. Ord. 2013-04-01, passed 4-1-13; Am. Ord. 2018-07-07, passed 7-16-18)

§ 52.011 NATIONAL CATEGORICAL PRETREATMENT STANDARDS.

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

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

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

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

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

(Ord. passed 11-8-94; Am. Ord. 2018-07-07, passed 7-16-18)

§ 52.012 LOCAL LIMITS.

(A) To implement the general and specific discharge prohibitions listed in this chapter, industrial user-specific local limits will be developed, ensuring that the POTW's maximum allowable headworks loading is not exceeded for particular pollutants of concern for each industrial user. Where specific local limits are not contained for a given parameter or pollutant in an industrial user permit, the following average discharge limits will apply to all users:

200 mg/l	FOG (Fat, Oils, Grease)
20 mg/l	NH ₃ -N (Ammonia-Nitrogen)
250 mg/l	TSS (Total Suspended Solids)
0.003 mg/l	As (Arsenic)
0.003 mg/l	Cd (Cadmium)
0.061 mg/l	Cu (Copper)
0.015 mg/l	CN (Cyanide)
0.049 mg/l	Pb (Lead)
0.0003 mg/l	HG (Mercury)
0.021 mg/l	Ni (Nickel)
0.005 mg/l	Ag (Silver)
0.05 mg/l	Total Cr (Chromium)
0.175 mg/l	Zn (Zinc)
0.1 mg/l	Phenolic Compounds
0.25 mg/l	Total Identifiable Chlorinated Hydrocarbons

(B) Industrial user-specific local limits for appropriate pollutants of concern shall be included in wastewater permits and are considered pretreatment standards. The Superintendent or Director may impose mass limits in addition to, or in place of, the concentration-based limits above.

(Ord. passed 11-8-94; Am. Ord. 2008-05-02, passed 5-5-08; Am. Ord. 2013-04-01, passed 4-1-13; Am. Ord. 2018-07-07, passed 7-16-18)

§ 52.013 STATE REQUIREMENTS.

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

(Ord. passed 11-8-94; Am. Ord. 2018-07-07, passed 7-16-18)

§ 52.014 RIGHT OF REVISION.

The town reserves the right to establish limitations and requirements which are more stringent than those required by either state or federal regulation if deemed necessary to comply with the objectives presented in § 52.001 or the general and specific prohibitions in §§ 52.010 through 52.018 as is allowed by 40 CFR 403.4.

(Ord. passed 11-8-94; Am. Ord. 2018-07-07, passed 7-16-18)

§ 52.015 DILUTION.

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

(Ord. passed 11-8-94; Am. Ord. 2018-07-07, passed 7-16-18) Penalty, see § 52.990 et seq.

§ 52.016 PRETREATMENT OF WASTEWATER.

(A) *Pretreatment facilities.* Users shall provide wastewater treatment as necessary to comply with this chapter and wastewater permits issued under § 52.041, and shall achieve compliance with all National Categorical Pretreatment Standards, local limits, and the prohibitions set out in § 52.010 of this chapter within the time limitations as specified by EPA, the state, or the Superintendent or Director, whichever is more stringent. Any facilities necessary for compliance shall be provided, operated, and maintained at the user's expense. Detailed plans showing the pretreatment facilities and operating procedures shall be approved by the Superintendent or Director before construction of the facility. The review of such plans and operating procedures shall in no way relieve the user from the responsibility of modifying the facility as necessary to produce an effluent acceptable to the town under the provisions of this chapter. Any subsequent changes in the pre-treatment facilities or method of operation shall be reported to and be approved by the Superintendent or Director prior to the user's initiation of the changes.

(B) *Additional pretreatment measures.*

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

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

(3) Grease, oil, and sand interceptors shall be provided when, in the opinion of the Superintendent or Director, they are necessary for the proper handling of wastewater containing excessive amounts of grease and oil, or sand; except that such interceptors shall not be required for residential users. All interception units shall be of a type and capacity approved by the Superintendent or Director and shall be so located to be easily accessible for cleaning and inspection. Such interceptors shall be inspected, cleaned, and repaired regularly, as needed, by the user at the user's expense.

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

(Ord. passed 11-8-94; Am. Ord. 2018-07-07, passed 7-16-18) Penalty, see § 52.990 et seq.

§ 52.017 ACCIDENTAL DISCHARGE/SLUG CONTROL PLANS.

(A) At least once every two years, the Superintendent or Director shall evaluate whether each

significant industrial user needs a plan or other action to control and prevent slug discharges and accidental discharges as defined in § 52.002. All SIUs must be evaluated within one year of being designated an SIU. The Superintendent or Director may require any user to develop, submit for approval, and implement such a plan. Alternatively, the Superintendent or Director may develop such a plan for any user. An accidental discharge/slug control plan shall address, at a minimum, the following:

- (1) Description of discharge practices, including non-routine batch discharges;
- (2) Description of stored chemicals;
- (3) Procedures for immediately notifying the Superintendent or Director of any accidental or slug discharge, as required by § 52.055; and

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

(B) All SIUs are required to notify the POTW immediately of any changes at its facility affecting the potential for spills and other accidental discharge, discharge of a non-routine, episodic nature, a non-customary batch discharge, or a slug load. Also see §§ 52.045 and 52.055.

(Ord. passed 11-8-94; Am. Ord. 2008-05-02, passed 5-5-08; Am. Ord. 2018-07-07, passed 7-16-18)

§ 52.018 HAULED WASTEWATER.

(A) Septic tank waste may be introduced into the POTW only at locations designated by the Superintendent or Director, and at such times as are established by the Superintendent or Director. Such waste shall not violate §§ 52.010 through 52.018 of this chapter or any other requirements established by the town. The Superintendent or Director may require septic tank waste haulers to obtain wastewater discharge permits.

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

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

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

(Ord. passed 11-8-94; Am. Ord. 2018-07-07, passed 7-16-18)

FEES

§ 52.030 PURPOSE.

It is the purpose of this subchapter to provide for the recovery of costs from users of the town's wastewater disposal system for the implementation of the program established herein. The applicable charges or fees shall be set forth in the town's schedule of charges and fees.

(Ord. passed 11-8-94; Am. Ord. 2018-07-07, passed 7-16-18)

§ 52.031 USER CHARGES.

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

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

(B) Each user shall pay its proportionate cost based on volume of flow.

(C) The Town Manager or his or her designee shall review annually the sewage contributions of users, the total costs of debt service, operation and maintenance of the POTW, and will make recommendations to the Town Council for adjustments in the schedule of charges and fees as necessary.

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

(Ord. passed 11-8-94; Am. Ord. 2018-07-07, passed 7-16-18)

§ 52.032 SURCHARGES.

(A) All industrial users of the POTW are subject to industrial waste surcharges on discharges which exceed the following levels:

(1) With the written approval of the Town Manager, waste having the following characteristics may be discharged into the town's sanitary sewer upon payment of an additional charge (surcharge):

(a) Wastes having a BOD of greater than 250 mg/l, but not to exceed 1,500 mg/l.

(b) Wastes containing suspended solids of more than 250 mg/l, but not to exceed 1,000 mg/l.

(c) Waste having COD greater than 500 mg/l, but not to exceed 3,000 mg/l.

(d) Any waste containing constituents in concentrations in excess of the limits set forth in § 52.012, but for which a permit has been issued by the town.

(2) The amount of surcharge will be based upon the mass emission rate (in pounds per day) discharged above the levels listed above. The amount charged per pound of excess will be set forth in the schedule of charges and fees.

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

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

(2) If required by the town or at the individual discharger's option, other flow monitoring devices which measure the actual volume of waste- water discharged to the sewer. Such devices shall be accessible and safely located, and the measuring system shall be installed in accordance with plans approved by the town. The metering system shall be installed and maintained at the user's expense according to arrangements that may be made with the town.

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

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

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

(Ord. passed 11-8-94; Am. Ord. 2018-07-07, passed 7-16-18)

§ 52.033 PRETREATMENT PROGRAM ADMINISTRATION CHARGES.

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

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

(B) Monitoring, inspections and surveillance procedures;

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

(D) Permitting;

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

(Ord. passed 11-8-94; Am. Ord. 2018-07-07, passed 7-16-18)

WASTEWATER DISCHARGE PERMIT APPLICATION AND ISSUANCE

§ 52.040 WASTEWATER DISCHARGERS.

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

(Ord. passed 11-8-94; Am. Ord. 2018-07-07, passed 7-16-18) Penalty, see § 52.990 et seq.

§ 52.041 WASTEWATER PERMITS.

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

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

(C) *Significant industrial user permit application.* Users required to obtain a significant industrial user permit shall complete and file with the town an application in the form prescribed by the Superintendent or Director. Significant industrial users shall apply for a significant industrial user permit within 90 days after notification of the Superintendent's or Director's determination in division (B) above. In support of the application, the user shall submit, in units and terms appropriate for evaluation, the following information:

- (1) Name of industrial user;
- (2) Address of industrial user;
- (3) Standard industrial classification (SIC) code(s) or expected classification and industrial user category;
- (4) Wastewater flows to include: average daily and 30-minute peak wastewater flow rates, including daily, monthly and seasonal variations if any expected;
- (5) Types and concentrations (or mass) of pollutants contained, or expected in the discharge;
- (6) Lists of products manufactured or services supplied;
- (7) Description of activities, facilities and plant processes on the premises, including a description of existing on-site pretreatment facilities and practices;
- (8) Flow diagram or sewer map to include sewer lines, floor drains, and discharge points;
- (9) Raw materials used and stored at the site;
- (10) Number and type of employees, and hours of operation of plant and proposed or actual hours of operation of pretreatment system;
- (11) Description of current and projected waste reduction activities in accordance with G.S. § 143-215.1(g);
- (12) If subject to a categorical standard, a baseline monitoring report in accordance with 40 CFR 403.12(b) and 15A NCAC 2H.0908(a), as outlined in § 52.050 of this chapter;
- (13) Any other information as may be deemed by the Superintendent or Director to be necessary to evaluate the permit application.

(D) *Application signatories and certification.* All wastewater discharge permit applications and user reports must be signed by the current authorized representative of the user on file with the control authority and/or municipality as defined in § 52.002(A)(a)2., and contain the following certification statement:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel

properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

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

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

(2) Within 60 days of receipt the Superintendent or Director shall acknowledge and accept the complete application; or if not complete, shall return the application to the applicant with a statement of what additional information is required.

(F) *Tentative determination and draft permit.*

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

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

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

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

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

(3) The staff shall organize the determinations made pursuant to divisions (F)(1) and (F)(2) above and the town's general permit conditions into a significant industrial user permit.

(G) *Permit supporting documentation.* The Control Authority staff shall prepare the following documents for all significant industrial user permits.

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

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

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

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

(H) *Final action on significant industrial user permit applications.*

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

(2) The Superintendent or Director is authorized to:

(a) Issue a significant industrial user permit containing such conditions as are necessary to effectuate the purposes of this chapter and G.S. § 143-215.1;

(b) Issue a significant industrial user permit containing time schedules for achieving compliance with applicable pretreatment standards and requirements;

(c) Modify any permit upon not less than 60 days notice and pursuant to § 52.041(J);

(d) Revoke any permit pursuant to § 52.990;

(e) Suspend a permit pursuant to § 52.990;

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

(I) *Hearings.*

(1) *Adjudicatory hearing.* An applicant whose permit is denied, or is granted subject to

conditions he deems unacceptable, a permittee/user assessed a civil penalty under § 52.991, or one issued an administrative order under § 52.990, shall have the right to an adjudicatory hearing before a hearing officer designated by the Town Manager upon making written demand, identifying the specific issues to be contested, to the Town Manager within 30 days following receipt of the significant industrial user permit, civil penalty assessment, or administrative order. Unless such written demand is made within the time specified herein, the action shall be final and binding and further appeal is barred. For modified permits, only those parts of the permit being modified may be adjudicated. The conditions/requirements in the newly issued permit, civil penalty, or administrative order shall be stayed pending the adjudicatory hearing, however, the user shall be fully liable for any and all damages to the POTW and any fines and penalties levied against the town which were the result of the user failing to comply with the stayed conditions of the permit, penalty, or order pending the adjudicatory hearing. The hearing officer shall make a final decision on the contested permit, penalty, or order within 45 days of the receipt of the written demand for a hearing. The Town Manager shall transmit a copy of the hearing officer's decision by registered or certified mail as described in division (I)(3) below. The decision is a final decision for the purposes of seeking a judicial review. The terms and conditions of a permit under appeal shall be as follows:

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

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

(c) *Terminated permits.* Upon appeal, including judicial review in the General Courts of Justice, of a terminated permit, no permit is in effect until either the conclusion of judicial review or until the parties reach a mutual resolution.

(2) *Final appeal hearing.* Any decision of a hearing officer made as a result of an adjudicatory hearing held under division (I)(1) above may be appealed to the Town Council upon filing a written demand within ten days of receipt of notice of the decision. Hearings held under this division shall be conducted in accordance with local hearing procedures. Failure to make written demand within the time specified herein shall bar further appeal. The Town Council shall make a final decision on the appeal within 90 days of the date the appeal was filed and shall transmit a written copy of its decision by registered or certified mail as described in division (I)(3) below. The decision is a final decision for the purpose of seeking judicial review.

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

- (a) All notices, motions, and other like pleadings;
- (b) A copy of all documentary evidence introduced;
- (c) A certified transcript of all testimony taken, if testimony is transcribed. If testimony is taken and not transcribed, then a narrative summary of any testimony taken.
- (d) A copy of the final decision of Town Council.

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

(J) *Permit modification.*

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

- (a) Changes in the ownership of the discharge when no other change in the permit is

indicated;

(b) A single modification of any compliance schedule not in excess of four months;

(c) Modification of compliance schedules (construction schedules) in permits for new sources where the new source will not begin to discharge until control facilities are operational. Any changes or new conditions in the permit shall include a reasonable time schedule for compliance.

(2) Within nine months of the promulgation of a National Categorical Pretreatment Standard, the wastewater discharge permit of users subject to such standards shall be revised to require compliance with such standard within the time frame prescribed by such standard. Where a user, subject to a National Categorical Pretreatment Standard, has not previously submitted an application for a wastewater discharge permit as required by § 52.041(B), the user shall apply for a wastewater discharge permit within 180 days after the promulgation of the applicable National Categorical Pretreatment Standard.

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

(K) *Permit conditions.*

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

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

(b) A statement of non-transferability;

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

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

(e) Requirements for notifying the POTW in the event of an accidental discharge or slug load as defined in § 52.002(A);

(f) A statement of applicable civil and criminal penalties for violation of pretreatment standards and requirements and any applicable compliance schedule;

(g) Requirements to implement a plan or other controls for prevention of accidental discharges and/or slug loads as defined in § 52.002(A), if determined by the Wastewater Superintendent or Director to be necessary for the user; and

(h) Requirements for immediately notifying the POTW of any changes at its facility affecting the potential for spills and other accidental discharges, or slug load as defined in § 52.002(A). Also see §§ 52.055 and 52.056.

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

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

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

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

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

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

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

(g) Requirements for installation and maintenance of inspection and sampling facilities and equipment.

(h) Specifications for monitoring programs which may include sampling locations, frequency of sampling, number, types, and standards for tests, and reporting schedules.

(i) Requirements for immediate reporting of any instance of noncompliance and for automatic resampling and reporting within 30 days where self-monitoring indicates a violation.

- (j) Compliance schedules for meeting pretreatment standards and requirements.
 - (k) Requirements for submission of periodic self-monitoring or special notification reports.
 - (l) Requirements for maintaining and retaining plans and records relating to wastewater discharges as specified in § 52.062 and affording the Superintendent or Director, or his or her representatives, access thereto.
 - (m) Requirements for prior notification and approval by the Superintendent or Director of any new introduction of wastewater pollutants or of any significant change in the volume or character of the wastewater prior to introduction into the system.
 - (n) A statement that compliance with the permit does not relieve the permittee of responsibility for compliance with all applicable federal and state pretreatment standards, including those which become effective during the terms of the permit.
 - (o) Requirements for immediate notification of excessive, accidental, or slug discharges, or any discharge which could cause any problems to the system.
 - (p) A statement that compliance with the permit does not relieve the permittee of responsibility for compliance with all applicable federal and state pretreatment standards, including those which become effective during the terms of the permit.
 - (q) Other conditions as deemed appropriate by the Superintendent or Director to ensure compliance with this chapter, and state and federal laws, rules, and regulations.
 - (L) *Permit duration.* Permits shall be issued for a specified time period, not to exceed five years. A permit may be issued for a period less than a year or may be stated to expire on a specific date.
 - (M) *Permit transfer.* Wastewater permits are issued to a specific user for a specific operation. A wastewater discharge permit shall not be re-assigned or transferred or sold to a new owner, new user, different premises, or a new or changed operation.
 - (N) *Permit reissuance.* A significant industrial user shall apply for permit reissuance by submitting a complete permit application in accordance with this § 52.041 a minimum of 180 days prior to the expiration of the existing permit.
- (Ord. passed 11-8-94; Am. Ord. 2008-05-02, passed 5-5-08; Am. Ord. 2013-04-01, passed 4- 1-13; Am. Ord. 2018-07-07, passed 7-16-18)

REPORTING REQUIREMENTS

§ 52.050 BASELINE MONITORING REPORTS.

- (A) Within either 180 days after the effective date of a categorical pretreatment standard, or the final administrative decision on a category determination under 40 CFR 403.6(a)(4), whichever is later, existing categorical users currently discharging to or scheduled to discharge to the POTW shall submit to the Superintendent or Director a report which contains the information listed in division (B), below. At least 90 days prior to commencement of their discharge, new sources, and sources that become categorical users subsequent to the promulgation of an applicable categorical standard, shall submit to the Superintendent or Director a report which contains the information listed in division (B), below. A new source shall report the method of pretreatment it intends to use to meet applicable categorical standards. A new source also shall give estimates of its anticipated flow and quantity of pollutants to be discharged.
- (B) Users described above shall submit the information set forth below.
 - (1) *Identifying information.* The name and address of the facility, including the name of the operator and owner.
 - (2) *Environmental permits.* A list of any environmental control permits held by or for the facility.
 - (3) *Description of operations.* A brief description of the nature, average rate of production, and standard industrial classifications of the operations carried out by such user. This description should include a schematic process diagram which indicates points of discharge to the POTW from the regulated processes.
 - (4) *Flow measurement.* Information showing the measured average daily and maximum daily flow, in gallons per day, to the POTW from regulated process streams and other streams, as necessary, to allow use of the combined waste stream formula set out in 40 CFR 403.6(e).
 - (5) *Measurement of pollutants.*
 - (a) The categorical pretreatment standards applicable to each regulated process.
 - (b) The results of sampling and analysis identifying the nature and concentration, and/or

mass, where required by the standard or by the Superintendent or Director, of regulated pollutants in the discharge from each regulated process. Instantaneous, daily maximum, and long-term average concentrations, or mass, where required, shall be reported. The sample shall be representative of daily operations and shall be analyzed in accordance with procedures set out in § 52.059 of this chapter.

(c) Samplings must be performed in accordance with procedures set out in § 52.060 and 40 CFR 403.12(b) and (g), including 40 CFR 403.12(g)(4).

(6) *Certification.* A statement, reviewed by the user's current authorized representative as defined in § 52.002(A)(a)2., and certified by a qualified professional, indicating whether pretreatment standards are being met on a consistent basis, and, if not, whether additional operation and maintenance (O&M) or additional pretreatment is required to meet the pretreatment standards and requirements.

(7) *Compliance schedule.* If additional pretreatment or O&M will be required to meet the pretreatment standards, the shortest schedule by which the user will provide such additional pretreatment or O&M. The completion date in this schedule shall not be later than the compliance date established for the applicable pretreatment standard. A compliance schedule pursuant to this section must meet the requirements set out in § 52.051.

(8) *Signature and certification.* All baseline monitoring reports must be signed and certified in accordance with § 52.041(D).

(Ord. passed 11-8-94; Am. Ord. 2008-05-02, passed 5-5-08; Am. Ord. 2018-07-07, passed 7-16-18)

§ 52.051 COMPLIANCE SCHEDULE PROGRESS REPORTS.

The following conditions shall apply to the compliance schedule required by § 52.050(b)(7):

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

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

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

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

(Ord. passed 11-8-94; Am. Ord. 2018-07-07, passed 7-16-18)

§ 52.052 REPORTS ON COMPLIANCE WITH CATEGORICAL PRETREATMENT STANDARD DEADLINE.

Within 90 days following the date for final compliance with applicable categorical pretreatment standards, or in the case of a new source following commencement of the introduction of wastewater into the POTW, any user subject to such pretreatment standards and requirements shall submit to the Superintendent or Director a report containing the information described in § 52.050(B)(4) through (6). For users subject to equivalent mass or concentration limits established in accordance with the procedures in 40 CFR 403.6(c), this report shall contain a reasonable measure of the user's long-term production rate. For all other users subject to categorical pretreatment standards expressed in terms of allowable pollutant discharge per unit of production (or other measure of operation), this report shall include the user's actual production during the appropriate sampling period. All compliance reports must be signed and certified in accordance with § 52.041(D).

(Ord. passed 11-8-94; Am. Ord. 2018-07-07, passed 7-16-18)

§ 52.053 PERIODIC COMPLIANCE REPORTS.

(A) All significant industrial users shall, at a frequency determined by the Superintendent or Director but in no case less than once every six months, submit a report indicating the nature and

concentration of pollutants in the discharge which are limited by pretreatment standards and the measured or estimated average and maximum daily applicable flows for the reporting period. Sampling and analysis must be performed in accordance with procedures set out in § 52.059. All periodic compliance reports must be signed and certified in accordance with § 52.041(D).

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

(C) If a user subject to the reporting requirement in this section monitors any pollutant more frequently than required by the Superintendent or Director, using the procedures prescribed in § 52.059, the results of this monitoring shall be included in the report.

(Ord. passed 11-8-94; Am. Ord. 2008-05-02, passed 5-5-08; Am. Ord. 2018-07-07, passed 7-16-18)

§ 52.054 REPORTS OF CHANGED CONDITIONS.

(A) Each user must notify the Superintendent or Director of any planned significant changes to the user's operations or system which might alter the nature, quality, or volume of its wastewater at least 30 days before the change. The permittee shall not begin the changes until receiving written approval from the Control Authority and/or Municipality. See § 52.055 for other reporting requirements.

(B) The Superintendent or Director may require the user to submit such information as may be deemed necessary to evaluate the changed condition, including the submission of a wastewater discharge permit application under § 52.041.

(C) The Superintendent or Director may issue a wastewater discharge permit under § 52.041 or modify an existing wastewater discharge permit under § 52.041 in response to changed conditions or anticipated changed conditions.

(D) For purposes of this requirement, significant changes include, but are not limited to, flow or pollutant increases of 20% or greater, and the discharge of any previously unreported pollutants. (Ord. passed 11-8-94; Am. Ord. 2008-05-02, passed 5-5-08; Am. Ord. 2013-04-01, passed 4-1-13; Am. Ord. 2018-07-07, passed 7-16-18)

§ 52.055 REPORTS OF POTENTIAL PROBLEMS.

(A) In the case of any discharge, including, but not limited to, accidental discharges, discharges of a non-routine, episodic nature, a non-customary batch discharge, or a slug load as defined § 52.002(A) that may cause potential problems for the POTW, the user shall immediately telephone and notify the Superintendent or Director of the incident. This notification shall include the location of the discharge, type of waste, concentration and volume, if known, and corrective actions taken by the user.

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

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

(D) All SIUs are required to notify the POTW immediately of any changes at its facility affecting the potential for spills and other accidental discharge, discharge of a non-routine, episodic nature, a non-customary batch discharge, or a slug load as defined in § 52.002(A).

(Ord. passed 11-8-94; Am. Ord. 2008-05-02, passed 5-5-08; Am. Ord. 2018-07-07, passed 7-16-18)

§ 52.056 REPORTS FROM UNPERMITTED USERS.

All users not required to obtain a wastewater discharge permit shall provide appropriate reports to the Superintendent or Director as the Superintendent or Director may require.
(Ord. passed 11-8-94; Am. Ord. 2018-07-07, passed 7-16-18)

§ 52.057 NOTICE OF VIOLATION; REPEAT SAMPLING AND REPORTING.

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

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

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

- (1) The Superintendent monitors at the user's facility at least once a month;
 - (2) The Superintendent samples the user between their initial sampling and when the POTW receives the results of this initial sampling; or
 - (3) The Superintendent requires the user to perform sampling and submit the results to the POTW Director within the 30 day deadline of the POTW becoming aware of the violation.
- (Ord. passed 11-8-94; Am. Ord. 2008-05-02, passed 5-5-08; Am. Ord. 2018-07-07, passed 7-16-18)

§ 52.058 NOTIFICATION OF THE DISCHARGE OF HAZARDOUS WASTE.

(A) (1) Any user who commences the discharge of hazardous waste shall notify the POTW, the EPA Regional Waste Management Division Director, and the state hazardous waste authorities, in writing, of any discharge into the POTW of a substance which, if otherwise disposed of, would be a hazardous waste under 40 CFR 261, in accordance with 40 CFR 403.12(p). Such notification must include the name of the hazardous waste as set forth in 40 CFR 261, the EPA hazardous waste number, and the type of discharge (continuous, batch, or other). If the user discharges more than 100 kilograms of such waste per calendar month to the POTW, the notification also shall contain the following information to the extent such information is known and readily available to the user:

- (a) An identification of the hazardous constituents contained in the wastes,
- (b) An estimation of the mass and concentration of such constituents in the waste stream discharge during the calendar month, and
- (c) A plan to reduce and eliminate the volume and toxicity of hazardous wastes generated to the degree it has determined to be economically practical.

(2) All notifications must take place no later than ten working days after the discharge commences. Any notification under this division need be submitted only once for each hazardous waste discharge. However, notifications of changed conditions must be submitted under § 52.054. The notification requirement in this section does not apply to pollutants already reported by users subject to categorical pretreatment standards under the self-monitoring requirements of §§ 52.050, 52.052, and 52.053.

(B) This provision does not create a right to discharge any substance not otherwise permitted to be discharged by this chapter, a permit issued thereunder, or any applicable federal or state law.
(Ord. passed 11-8-94; Am. Ord. 2018-07-07, passed 7-16-18)

§ 52.059 ANALYTICAL REQUIREMENTS.

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

performed by a state certified lab for each parameter analyzed, if such certification exists for that parameter.

(Ord. passed 11-8-94; Am. Ord. 2013-04-01, passed 4-1-13; Am. Ord. 2018-07-07, passed 7-16-18)

§ 52.060 GRAB AND COMPOSITE SAMPLE COLLECTION.

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

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

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

(Ord. passed 11-8-94; Am. Ord. 2008-05-02, passed 5-5-08; Am. Ord. 2018-07-07, passed 7-16-18)

§ 52.061 TIMING.

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

(Ord. passed 11-8-94; Am. Ord. 2018-07-07, passed 7-16-18)

§ 52.062 RECORD KEEPING.

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

(Ord. passed 11-8-94; Am. Ord. 2018-07-07, passed 7-16-18)

COMPLIANCE MONITORING

§ 52.070 MONITORING FACILITIES.

(A) The town requires the user to provide and operate at the user's own expense, monitoring facilities to allow inspection, sampling, and flow measurement of the building sewer and internal drainage systems. The monitoring facility should normally be situated on the user's premises, but the town may, when such a location would be impractical or cause undue hardship on the user, allow the facility to be constructed in the public street or sidewalk area and located so that it will not be obstructed by landscaping or parked vehicles. There shall be ample room in or near such sampling manhole or facility to allow accurate sampling and preparation of samples for analysis. The facility, sampling, and measuring equipment shall be maintained at all times in a safe and proper operating condition at the expense of the user.

(B) Whether constructed on public or private property, the sampling and monitoring facilities shall be provided in accordance with the town's requirements and all applicable local construction

standards and specifications. Construction shall be completed within 90 days following written notification by the town.

(Ord. passed 11-8-94; Am. Ord. 2018-07-07, passed 7-16-18)

§ 52.071 INSPECTION AND SAMPLING.

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

(Ord. passed 11-8-94; Am. Ord. 2013-04-01, passed 4-1-13; Am. Ord. 2018-07-07, passed 7-16-18)

§ 52.072 SEARCH WARRANTS.

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

(Ord. passed 11-8-94; Am. Ord. 2013-04-01, passed 4-1-13; Am. Ord. 2018-07-07, passed 7-16-18)

§ 52.073 CONFIDENTIAL INFORMATION.

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

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

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

(Ord. passed 11-8-94; Am. Ord. 2018-07-07, passed 7-16-18)

AFFIRMATIVE DEFENSES TO DISCHARGE VIOLATIONS

§ 52.080 UPSET.

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

(B) A user who wishes to establish the affirmative defense of upset shall demonstrate, through

properly signed, contemporaneous operating logs, or other relevant evidence that:

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

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

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

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

(Ord. passed 11-8-94; Am. Ord. 2018-07-07, passed 7-16-18)

§ 52.081 PROHIBITED DISCHARGE STANDARDS DEFENSE.

A user shall have an affirmative defense to an enforcement action brought against it for non-compliance with the general prohibitions in § 52.010(A) of this chapter or the specific prohibitions in § 52.010(B)(2), (3), (5) through (7), and (9) through (23) of this chapter if it can prove that it did not know, or have reason to know, that its discharge, alone or in conjunction with discharges from other sources, would cause pass-through or interference and that either:

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

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

(Ord. passed 11-8-94; Am. Ord. 2018-07-07, passed 7-16-18)

§ 52.082 BYPASS.

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

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

(2) A user shall submit oral notice to the Superintendent or Director of an unanticipated bypass that exceeds applicable pretreatment standards within 24 hours from the time it becomes aware of the bypass. A written submission shall also be provided within five days of the time the user becomes aware of the bypass. The written submission shall contain a description of the bypass and its cause; the duration of the bypass, including exact dates and times, and, if the bypass has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the bypass. The Superintendent or Director may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.

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

- (a) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

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

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

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

(Ord. passed 11-8-94; Am. Ord. 2018-07-07, passed 7-16-18)

OIL AND GREASE

§ 52.085 PURPOSE.

This subchapter is intended to aid in the prevention of sanitary sewer blockages and obstructions caused by the introduction, discharge and contribution of fats, oils, greases, grease complexes, scum, sludge and other organic polar compounds into the town's wastewater collection system or publicly owned treatment works by commercial, industrial, institutional and all other non-residential activities.

(Ord. passed 10-16-00; Am. Ord. 2018-07-07, passed 7-16-18)

§ 52.086 DEFINITIONS.

For the purpose of this subchapter the following definitions shall apply unless the context clearly indicates or requires a different meaning.

COMMERCIAL ESTABLISHMENT and **INDUSTRIAL ESTABLISHMENT.** Any user that has the potential to use, contribute to or otherwise impact the town's wastewater collection system or POTW. Such establishments include, but are not limited to, maintenance facilities, repair facilities and equipment cleaning facilities.

COOKING ESTABLISHMENT. Any person primarily engaged in the activities of cooking, preparing, serving or otherwise making available for human consumption any form of foodstuff, and which uses one or more of the following cooking or preparation methods in connection with such activities: cooking or preparation by frying (all methods), baking (all methods), grilling, sauteing, rotisserie cooking, broiling (all methods), boiling, blanching, roasting, toasting, poaching, or any type of cooking or preparation that produces a hot non-potable product in or on a receptacle that requires washing, rinsing or other form of cleaning. Such establishments include, but are not limited to, restaurants, cafeterias, extended care facilities, school cafeterias (public and private), and day care facilities where meals for more than six children are prepared, served or otherwise made available for human consumption.

GREASE. All greases, grease complexes, fats, oils, scum, sludges and all other organic polar compounds derived from animal and/or plant sources that contain multiple carbon chain triglyceride molecules. Such substances are detectable and measurable using analytical procedures established in 40 CFR 136.

GREASE TRAP or **GREASE INTERCEPTOR.** A device for separating and retaining waterborne greases before the wastewater which contains such grease exits the grease trap or interceptor into the town's wastewater collection system or POTW. The grease trap or interceptor also collects settleable solids generated by or incidental to commercial, industrial and food preparation activities.

NON-COOKING ESTABLISHMENT. Any person primarily engaged in the rendering or preparation of pre-cooked foodstuffs that do not require or involve any form of cooking. Such establishments include, but are not limited to, establishments that are primarily engaged in the rendering preparation of cold dairy and frozen foodstuffs.

PERSON. Any actual person, corporation, partnership, unincorporated association, and any governmental entity or political subdivision and departments and agencies thereof.

TOWN. Town of Clayton, North Carolina, and its utility service area.

USER. Any person primarily engaged in any commercial, industrial, institutional or other non-residential activity who introduces, contributes or discharges (or causes or permits the introduction, contribution or discharge of) wastewater into the town's wastewater collection system or POTW, including but not limited to any person who introduces, contributes or discharges wastewater into

the wastewater collection system or POTW through any mobile source.

WASTEWATER. Any substance introduced, contributed to, or discharged into the town's wastewater collection system or publicly-owned treatment works (POTW).

(Ord. passed 10-16-00; Am. Ord. 2018-07-07, passed 7-16-18)

§ 52.087 GREASE TRAP AND INTERCEPTOR INSTALLATION; MAINTENANCE; RECORD KEEPING AND REMOVAL.

(A) No later than one year after adoption of this chapter, all users shall install grease traps or interceptors designed to limit the introduction, contribution and discharge of greases into the town's wastewater collection system or POTW. Grease traps and interceptors with appropriate sampling or inspection points shall be installed at the user's expense whenever any user operates a commercial establishment, industrial establishment, or a cooking establishment. Grease traps and interceptors must have a minimum capacity of 1,000 gallons or more as required to effect a grease concentration maximum of 200 mg/l.

(B) Alternative methods of compliance may be approved by the town if the user demonstrates that compliance with this chapter is impossible or impractical at the time of adoption of this chapter as a result of limited space. However, any such proposed alternative method of compliance will be required to meet the performance criteria specified in division (A) of this section, and the user must adequately demonstrate to the satisfaction of the town that the proposed alternative method will satisfy those performance criteria. In addition, any such alternative method must be cleaned at a more frequent interval than is required of grease traps and interceptors under division (E) of this section. Prior to approval of any such proposed alternative method of compliance, documentation of the proposed method's actual performance criteria must be submitted to the town's Enforcement Official or Public Works Director for review and approval.

(C) Grease traps and interceptors may also be required in other facilities, as deemed necessary by the town's designated Enforcement Official or Public Works Director.

(D) Upon the prior written approval of the Public Works Director, non-cooking establishments may be exempted from the requirements of this subchapter after an inspection of the subject premises and submission of adequate supporting documentation, as deemed necessary in the sole and absolute discretion of the Public Works Director. At a minimum, such supporting documentation shall include: blueprints of the subject premises, a full and detailed description of the operations and activities at the subject premises, and a full and detailed list of all potential sources of grease at the subject premises.

(E) Users shall empty and service grease traps and interceptors as often as necessary to comply with the performance criteria in division (A) of this section. The default maximum period of time allowed between servicing of grease traps shall be 60 days; however, individual customers may prepare and submit an alternative schedule for review and approval by the Public Works Director. Alternative schedules may be approved based on evaluation of the flow volume, character of the wastewater, and capacity of the grease trap. Once approved, the user must adhere to the alternative schedule. Under-the-counter types of grease traps and interceptors shall be cleaned at least daily, and shall comply with the performance criteria in division (A) of this section. There shall be no reintroduction of wastewater back into the grease trap or interceptor unless and until the wastewater has been proven to contain 200 mg/l or less of grease. Under no circumstances shall the sludge or scum layer be reintroduced or discharged into the town's wastewater collection system or POTW.

(F) Users shall supply (1) an adequate sampling point downstream of the grease trap or interceptor, prior to mixing with other sanitary flows, and (2) an accessible entry into each chamber of the grease trap or interceptor. The minimum requirement for the sampling point shall be four-inch vertical clean-out.

(G) Users shall retain detailed records on-site for a minimum of three years reflecting all maintenance carried out pursuant to this section. At a minimum, such records shall contain the following information: date of service, name of the employee involved, and a receipt reflecting all services rendered by the waste hauler providing the service.

(H) Users are required to keep the grease trap or interceptor free of inorganic solids such as grit, towels, gloves, cigarettes, eating utensils, and the like, which could clog or settle in the trap or

interceptor, thereby reducing the effective volume or capacity of the trap or interceptor.

(I) Users are required to ensure that all waste material removed from grease traps and interceptors is disposed of in a manner that complies with all federal, state and local statutes, rules, regulations, policies and ordinances.

(J) Except as provided herein, for a period of one year following the adoption of this subchapter, no enforcement actions will be taken under this section for failure to achieve the performance criteria specified in division (A) of this section. If, during such period, (1) an obstruction of any of the town's sanitary sewer main(s) occurs and causes a sewer overflow, spill, leak or other event with any environmental impact, and (2) such overflow, spill, leak or other event may be attributed in part or in whole to a particular user, then the town will seek enforcement action under this chapter, and/or the Pretreatment Enforcement Plan. For purposes of this section, an overflow, spill, leak or other event shall be deemed to have an environmental impact when (1) such overflow or other event involves an amount of wastewater equal to or in excess of 1,000 gallons, or (2) any amount of wastewater reaches any body of surface water.

(Ord. passed 10-16-00; Am. Ord. 2004-05-03, passed 5-17-04; Am. Ord. 2018-07-07, passed 7-16-18)

§ 52.088 ENFORCEMENT.

The town shall enforce this subchapter pursuant to the provisions of this chapter and Chapter 10 of the town's Code of Ordinances and/or the town's Pretreatment Enforcement Plan.

(Ord. passed 10-16-00; Am. Ord. 2018-07-07, passed 7-16-18)

ENFORCEMENT/PENALTIES

§ 52.990 ADMINISTRATIVE REMEDIES.

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

(B) *Consent orders.* The Superintendent or Director is hereby empowered to enter into consent orders, assurances of voluntary compliance, or other similar documents establishing an agreement with the person responsible for the noncompliance. Such orders will include specific action to be taken by the discharger to correct the noncompliance within a time period also specified by the order. Consent orders shall have the same force and effect as an administrative order issued pursuant to § 52.990(D) below.

(C) *Show cause hearing.*

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

(2) The Superintendent or Director shall review the evidence presented at the hearing and determine whether the proposed enforcement action is appropriate.

(3) A show cause hearing under this section is not a prerequisite to the assessment of a civil penalty under § 52.991 nor is any action or inaction taken by the Superintendent or Director under this section subject to an administrative appeal under § 52.041(I).

(D) *Administrative orders.* When the Superintendent or Director finds that an industrial user has violated or continues to violate this chapter, permits or orders issued hereunder, or any other pretreatment requirement, the Superintendent or Director may issue an order to cease and desist

all such violations and direct those persons in noncompliance to do any of the following:

- (1) Immediately comply with all requirements;
- (2) Comply in accordance with a compliance time schedule set forth in the order;
- (3) Take appropriate remedial or preventive action in the event of a continuing or threatened violation;

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

(E) *Emergency suspensions.*

(1) The Superintendent or Director may suspend the wastewater treatment service and wastewater permit when such suspension is necessary in order to stop an actual or threatened discharge which presents or may present an imminent or substantial endangerment to the health or welfare of persons or the environment, interferes with the POTW or causes the POTW to violate any condition of its NPDES or non-discharge permit.

(2) Any user notified of a suspension of the wastewater treatment service or the wastewater permit shall immediately stop or eliminate the contribution. A hearing will be held within 15 days of the notice of suspension to determine whether the suspension may be lifted or the user's waste discharge permit terminated. In the event of a failure to comply voluntarily with the suspension order, the Superintendent or Director shall take such steps as deemed necessary including immediate severance of the sewer connection, to prevent or minimize damage to the POTW system or endangerment to any individuals. The Superintendent or Director shall reinstate the wastewater permit and the wastewater treatment service upon proof of the elimination of the noncompliant discharge. The industrial user shall submit a detailed written statement describing the causes of the harmful contribution and the measures taken to prevent any future occurrence to the Superintendent or Director prior to the date of the above-described hearing.

(F) *Termination of permit or permission to discharge.*

(1) The Superintendent may revoke a wastewater discharge permit or permission to discharge for good cause, including, but not limited to, the following reasons:

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

(2) Noncompliant industrial users will be notified of the proposed termination of their wastewater permit and will be offered an opportunity to show cause under § 52.990 why the proposed action should not be taken.

(Ord. passed 11-8-94; Am. Ord. 2008-05-02, passed 5-5-08; Am. Ord. 2018-07-07, passed 7-16-18)

§ 52.991 CIVIL PENALTIES.

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

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

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

(B) In determining the amount of the civil penalty, the Superintendent shall consider the following:

- (1) The degree and extent of the harm to the natural resources, to the public health, or to public or private property resulting from the violation;
- (2) The duration and gravity of the violation;
- (3) The effect on ground or surface water quantity or quality or on air quality;
- (4) The cost of rectifying the damage;
- (5) The amount of money saved by noncompliance;
- (6) Whether the violation was committed willfully or intentionally;
- (7) The prior record of the violator in complying or failing to comply with the pretreatment program;
- (8) The costs of enforcement to the town.

(C) Appeals of civil penalties assessed in accordance with this section shall be as provided in § 52.041(l).

(Ord. passed 11-8-94; Am. Ord. 2008-05-02, passed 5-5-08; Am. Ord. 2013-04-01, passed 4-1-13; Am. Ord. 2018-07-07, passed 7-16-18)

§ 52.992 OTHER AVAILABLE REMEDIES.

Remedies, in addition to those previously mentioned in this chapter, are available to the Superintendent or Director who may use any single one or combination against a noncompliant user. Additional available remedies include, but are not limited to:

(A) *Criminal violations.* The District Attorney for the Eleventh Judicial District may, at the request of the town, prosecute noncompliant users who violate the provisions of G.S. § 143-215.6B. [Note: Under North Carolina law, it is a crime to negligently violate any term, condition, or requirement of a pretreatment permit, or negligently fail to apply for a pretreatment permit, issued by local governments (G.S. § 143-215.6B(f)), to knowingly and willfully violate any term, condition, or requirement of a pretreatment permit, or knowingly and willfully fail to apply for a pretreatment permit, issued by local governments (G.S. § 143-215.6B(g)), to knowingly violate any term, condition, or requirement of a pretreatment permit issued by local governments, or knowingly fail to apply for a pretreatment permit, knowing at the time that a person is placed in imminent danger of death or serious bodily injury, (G.S. § 143-215.6B(h)), and to falsify information required under Article 21 of Chapter 143 of the General Statutes (G.S. § 143-215.6B(i)).]

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

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

(D) *Public nuisances.* Any violation of the prohibitions or effluent limitations of this chapter or of a permit or order issued hereunder, is hereby declared a public nuisance and shall be corrected or abated as directed by the Superintendent or Director. Any person creating a public nuisance shall be subject to the provisions of Chapter 97 (Health and Sanitation) of the Town of Clayton Code of Ordinances, governing such nuisances, including reimbursing the POTW for any costs incurred in removing, abating or remedying such nuisance.

(Ord. passed 11-8-94; Am. Ord. 2018-07-07, passed 7-16-18)

§ 52.993 REMEDIES NONEXCLUSIVE.

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

(Ord. passed 11-8-94; Am. Ord. 2018-07-07, passed 7-16-18)

§ 52.994 ANNUAL PUBLICATION OF SIGNIFICANT NONCOMPLIANCE.

At least annually, the Superintendent or Director shall publish in a newspaper of general

circulation that provides meaningful public notice within the jurisdiction(s) served by the POTW, a list of those industrial users which were found to be in significant noncompliance, also referred to as reportable noncompliance in 15A NCAC 2H.0903(b)(34), with applicable pretreatment standards and requirements, during the previous 12 months.

(Ord. passed 11-8-94; Am. Ord. 2008-05-02, passed 5-5-08; Am. Ord. 2013-04-01, passed 4- 1-13; Am. Ord. 2018-07-07, passed 7-16-18)

§ 52.995 SEVERABILITY.

If any provision, paragraph, word, section or article of this chapter is invalidated by any court of competent jurisdiction, the remaining provisions, paragraphs, words, sections, and chapters shall not be affected and shall continue in full force and effect.

(Ord. 2008-05-02, passed 5-5-08; Am. Ord. 2018-07-07, passed 7-16-18)

§ 52.996 CONFLICT.

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

(Ord. 2008-05-02, passed 5-5-08; Am. Ord. 2018-07-07, passed 7-16-18)

§ 52.997 EFFECTIVE DATE.

This chapter shall be in full force and effect from and after its passage, approval and publication, as provided by law.

(Ord. 2008-05-02, passed 5-5-08; Am. Ord. 2018-07-07, passed 7-16-18)

TOWN OF CLAYTON
Amendment to the Code of Ordinances: Chapter 50 (General Utility Regulations)

BEING HEREBY ADOPTED BY THE TOWN COUNCIL FOR THE TOWN OF CLAYTON, NORTH CAROLINA, to amend Chapter 50 as follows:

CHAPTER 50: GENERAL UTILITY REGULATIONS

Section

General Provisions

- 50.01 Town Council to adopt rates, rules, and regulations
- 50.02 Water and sewer utility fees

Rates; Billing

- 50.10 Establishment of rates
- 50.11 Security deposit for electric and water service
- 50.12 Sewer charges to start upon completion of sewer tap
- 50.13 Bad check policy
- 50.14 Meter tampering fee
- 50.15 Water and sewer tap replacements

GENERAL PROVISIONS

§ 50.01 TOWN COUNCIL TO ADOPT RATES, RULES, AND REGULATIONS.

The Town Council shall from time to time, as it shall deem wise, adopt rates, rules, and regulations, governing the water, sewerage, and electrical systems of the town, and it shall at all times keep available for inspection by the public a copy of the rates, rules, and regulations in force and on file in the office of the Town Clerk.

('71 Code, § 15-1) (Ord. 13, passed 8-1-32; Am. Ord. 2017-03-01, passed 3-6-17; Am. Ord. 2018-07-07, passed 7-16-18)

§ 50.02 WATER AND SEWER UTILITY FEES.

Except as provided in this section, the town shall charge water and sewer system development fees. These fees shall apply uniformly to all real property within the town's utility service area, and shall be collected in addition to any other fees or charges allowed by the North Carolina General Statutes and set forth in the town's Code of Ordinances, including

but not limited to tap fees and rates for water and sewer service, as adopted by the Town Council pursuant to § 50.10, and any fees charged by the town pursuant to Chapters 51 or 52 of the Code of Ordinances.

(A) *Water and sewer system development fees.* The town shall charge system development fees on all New Development that requests to use the town's water distribution system and/or the town's sewer system or the services furnished or to be furnished by the systems in an amount as set forth in the Town of Clayton Comprehensive List of Fees and Charges.

(B) *Nutrient fees.*

(1) The town shall charge nutrient fees to all properties which propose to connect or expand their use of the town's sewer system or the services furnished or to be furnished by the system to recover nutrient related investments made by the town in an amount as set forth in the Town of Clayton Comprehensive List of Fees and Charges.

(2) Residential connections to the town's sanitary sewer system, either inside or outside the town's municipal corporate limits, shall be assessed a nutrient fee calculated on a per dwelling basis for single-family residential dwellings, and on a per unit basis for multi-family residential dwellings, and shall be in an amount as set forth in the Town of Clayton Comprehensive List of Fees and Charges.

(3) All commercial, industrial and institutional connections to the town's sanitary sewer system, either inside or outside the town's municipal corporate limits, shall be assessed a nutrient fee calculated based on the average annual wastewater flow of the property to be served, and shall be in an amount as set forth in the Town of Clayton Comprehensive List of Fees and Charges.

(C) *Payment.* Except as provided in this section, all system development fees must be paid as required by § 162A-213 Time for collection of system development fees. Nutrient fees shall be paid at the same time as System Development Fees.

(D) *Water service districts.* All connections involving a property within a water service district established pursuant to Chapter 153A of the North Carolina General Statutes shall be subject to a development agreement.

(E) *Definitions.*

NEW DEVELOPMENT, as herein used, shall mean any of the following which increases the capacity necessary to serve that development: (1) the subdivision of land; (2) the construction, reconstruction, redevelopment, conversion, structural alteration, relocation, or enlargement of any structure which increases the number of service units; and (3) any use or extension of the use of land which increases the number of service units.

SYSTEM DEVELOPMENT FEES, as herein used, shall be defined as a charge or assessment for service imposed with respect to New Development to fund costs of capital improvements necessitated by and attributable to such New Development, to recoup costs of existing facilities which serve such New Development, or a combination of those costs. The term includes amortized charges, lump-sum charges, and any other fee that functions as such.

SYSTEM DEVELOPMENT FEES are developed in accordance with G.S. Chapter 162A, Article 8, and are in the amount as set forth in the Town of Clayton Comprehensive List of Fees and Charges.
(Ord. passed 1-16-01; Am. Ord. 2016-08-01, passed 8-1-16; Am. Ord. 2017-03-01, passed 3-6-17; Am. Ord. 2018-07-07, passed 7-16-18)

RATES; BILLING

§ 50.10 ESTABLISHMENT OF RATES.

The rates for water, sewer, and electrical service from the town water, sewer, and electrical systems shall be as amended from time to time by the Town Council and listed in the Town of Clayton Comprehensive List of Fees and Charges.
(‘71 Code, § 15-3) (Am. Ord. 2017-03-01, passed 3-6-17; Am. Ord. 2018-07-07, passed 7-16-18)

§ 50.11 SECURITY DEPOSIT FOR ELECTRIC AND WATER SERVICE.

Any person desiring municipal electrical and water service shall, before obtaining this service, be required to make such deposit with the town as prescribed from time to time by the Town Council.
(‘71 Code, § 15-2) (Am. Ord. 2017-03-01, passed 3-6-17; Am. Ord. 2018-07-07, passed 7-16-18)

§ 50.12 SEWER CHARGES TO START UPON COMPLETION OF SEWER TAP.

When a sewer tap is made by the town, the sewer service charge will start immediately upon completion.
(‘71 Code, § 15-4) (Am. Ord. 2017-03-01, passed 3-6-17; Am. Ord. 2018-07-07, passed 7-16-18)

§ 50.13 BAD CHECK POLICY.

When a customer has a bad check returned in any month, the appropriate returned check charge, as set forth in the Town of Clayton Comprehensive List of Fees and Charges, will apply in addition to any other charges and fees.
(Ord. passed 2-23-87; Amend. adopted 10-2-89; Am. Ord. 2003-07-02, passed 7-21-03; Am. Ord. 2017-03-01, passed 3-6-17; Am. Ord. 2018-07-07, passed 7-16-18)

§ 50.14 METER TAMPERING FEE.

(A) Should any town personnel detect an electric meter or service which has been tampered with, the appropriate charge, as set forth in the Town of Clayton Comprehensive List of Fees and Charges, will be added to the customer's account in addition to any use, reconnection, repair or other applicable fees.

(B) Should any town personnel detect a water meter or service which has been tampered with, the appropriate charge, as set forth in the Town of Clayton Comprehensive List of Fees and Charges, will be added to the customer's account in addition to any use, reconnection, repair or other applicable fees.

(Ord. 98-05-02, passed 5-18-98; Am. Ord. 2003-07-02, passed 7-21-03; Am. Ord. 2017-03-01, passed 3-6-17; Am. Ord. 2018-07-07, passed 7-16-18)

§ 50.15 WATER AND SEWER TAP REPLACEMENTS.

(A) Costs associated with relocation or replacement of water and/or sewer service taps shall be borne by the customer receiving service in accordance with the fee schedule adopted by the town for such improvements.

(B) *Exceptions.* The only exceptions to the above requirement shall be made by the Public Works Director and shall be based on the criteria contained herein. Exceptions to this policy shall be limited based on budgetary allocation and manpower availability.

(1) In cases where replacement of a service tap would tend to reduce the maintenance or service call burden of the town as evidenced by at least two service calls during the preceding 12 months, an exception may be granted.

(2) In cases where a service tap crosses private property not under the ownership of the customer and without clear easement for maintenance and access, an exception may be granted.

(Ord. 98-07-02, passed 7-20-98; Am. Ord. 2017-03-01, passed 3-6-17; Am. Ord. 2018-07-07, passed 7-16-18)

Duly adopted this the 16th day of November, 2020 while in regular session.

Jody McLeod
Mayor

ATTEST:

Kimberly A. Moffett, CMC, NCCMC
Town Clerk

Payment Referrals for Utility Payments

- JoCo Department of Social Services
- Johnston Lee Harnett Community Action
 - NC Hope
 - NC Cares
- One Compassion
- St Anne Catholic Church
- Clayton Area Ministries

