



REVISED AGENDA | REGULAR TOWN COUNCIL MEETING

January 09, 2024 at 6:00 PM

Council Chambers - Apex Town Hall, 73 Hunter Street

The meeting will adjourn when all business is concluded or 10:00 PM, whichever comes first

Town Council and Administration

Mayor: Jacques K. Gilbert | Mayor Pro-Tempore: Edward Gray

Council Members: Brett D. Gantt; Audra Killingsworth; Terry Mahaffey; Arno Zegerman

Interim Town Manager: Shawn Purvis

Assistant Town Managers: Demetria John and Marty Stone

Town Clerk: Allen Coleman | Town Attorney: Laurie L. Hohe

COMMENCEMENT

Call to Order | Invocation | Pledge of Allegiance

CONSENT AGENDA

All Consent Agenda items are considered routine, to be enacted by one motion with the adoption of the Consent Agenda, and without discussion. If a Council Member requests discussion of an item, the item may be removed from the Consent Agenda and considered separately. The Mayor will present the Consent Agenda to be set prior to taking action on the following items:

CN1 2024 Town Council Meeting Calendar Amendments

Allen Coleman, Town Clerk

CN2 Agreement - Badger Meter, Inc. - New Water Meters - Meter System Upgrade Project

Michael Deaton, P.E., Director, Water Resources Department

CN3 Agreement - North Carolina Department of Transportation (NCDOT) and Town of Apex - Extend Completion Date for Apex Peakway Project

Russell Dalton, P.E., Traffic Engineering Manager, Transportation and Infra. Dev. Dept.

CN4 Annexation No. 745 - The Preserve at Holt - 5.367 acres

Allen Coleman, Town Clerk

CN5 REVISED Appointment(s) - Board of Adjustment

Allen Coleman, Town Clerk

CN6 Capital Project Ordinance Amendment No. 2024-10 - GoApex Bus Stop Improvements (Four Locations) and Sidewalk Connection Project

Jenna Shouse, Senior Long-Range Planner, Planning Department

CN7 Council Meeting Minutes - Various

Allen Coleman, Town Clerk

CN8 Human Resources (HR) Policy Updates - Town's Personnel Policies

Karen Spurlin, Assistant Director, Human Resources Department

CN9 Ordinance - Authorizing Creation of and Establishing Procedures for the Petty Cash and Cash Change Funds

Antwan Morrison, Director, Finance Department

CN10 Resolution - Amendment to Designated Deputy Finance Officers

Antwan Morrison, Director, Finance Director

CN11 Rezoning Case No. 23CZ16 - Friendship Station Sec 3 PUD Amendment - Statement and Ordinance

Liz Loftin, Senior Planner, Planning Department

CN12 Speed Limit Revision - North Carolina Department of Transportation (NCDOT) - Olive Chapel Road between New Hill Olive Chapel Road and Apex Peakway, 45mph

Russell Dalton, P.E., Traffic Engineering Manager, Transportation and Infra. Dev. Dept.

CN13 Tax Report - November 2023

Allen Coleman, Town Clerk

PRESENTATIONS

PR1 Fiscal Year 2023 Audit - Annual Comprehensive Financial Report (ACFR)

Antwan Morrison, Director, Finance Department

PR2 Proclamation - Honoring the Legacy of Dr. Martin Luther King Jr. 2024

Jacques K. Gilbert, Mayor

PR3 Proclamation - Human Trafficking Prevention Month - January 2024

Jacques K. Gilbert, Mayor

REGULAR MEETING AGENDA

Mayor Gilbert will call for additional Agenda items from Council or Staff and set the Regular Meeting Agenda prior to Council actions.

PUBLIC FORUM

Public Forum allows the public an opportunity to address the Town Council. The speaker is requested not to address items that appear as Public Hearings scheduled on the Regular Agenda. The Mayor will recognize those who would like to speak at the appropriate time. Large groups are asked to select a representative to speak for the entire group.

Comments must be limited to 3 minutes to allow others the opportunity to speak.

PUBLIC HEARINGS

PH1 Fiscal Year 2024-2025 Annual Operating Budget - First Public Hearing

Amanda Grogan, Director, Budget and Performance Management Department

PH2 Unified Development Ordinance Amendments - January 2024

Amanda Bunce, Current Planning Manager, Planning Department

NEW BUSINESS

UPDATES BY INTERIM TOWN MANAGER

CLOSED SESSION

Council will enter into closed session pursuant to:

CS1 Steve Adams, Real Estate/Utilities Acquisition Specialist

NCGS § 143-318.11(a)(5)

"To establish, or to instruct the public body's staff or negotiating agents concerning the position to be taken by or on behalf of the public body in negotiating (i) the price and other material terms of a contract or proposed contract for the acquisition of real property by purchase, option, exchange, or lease; or (ii) the amount of compensation and other material terms of an employment contract or proposed employment contract."

CS2 Brian Meyer, Deputy Town Attorney

RE: ExperienceOne Homes LLC v. Town of Apex

NCGS §143-318.11(a)(3):

"To consult with an attorney employed or retained by the public body in order to preserve the attorney-client privilege between the attorney and the public body."

CS3 Laurie Hohe, Town Attorney

RE: Town of Apex v. CJS Assemblage LLC

NCGS §143-318.11(a)(3):

"To consult with an attorney employed or retained by the public body in order to preserve the attorney-client privilege between the attorney and the public body."

CS4 Councilmember Terry Mahaffey

NCGS §143-318.11(a)(3):

"To consult with an attorney employed or retained by the public body in order to preserve the attorney-client privilege between the attorney and the public body."

CS5 ADDED Councilmember Arno Zegerman

NCGS §143-318.11(a)(3):

"To consult with an attorney employed or retained by the public body in order to preserve the attorney-client privilege between the attorney and the public body."

ADJOURNMENT

| Agenda Item | cover sheet

for consideration by the Apex Town Council

Item Type: CONSENT AGENDA

Meeting Date: January 9, 2024

Item Details

Presenter(s): Allen Coleman, Town Clerk

Department(s): Town Clerk's Office

Requested Motion

Motion to amend the 2024 Town Council Meeting Calendar.

Approval Recommended?

Yes

Item Details

In accordance with North Carolina General Statute 143-318.12, a schedule of regular meetings shall be filed with the Town Clerk to the Town Council. The schedule must show the date, time, and place of each meeting.

It is proposed that the 2024 Town Council Meeting Calendar be amended as follows:

- **CHANGE** - Planning Committee Meeting
 - Date From: Thursday, March 14, 2024
 - Date To: Thursday, March 7, 2024
 - Time and Location Remain Unchanged
- **ADD** - Rules Committee Meeting
 - Date: Thursday, February 29, 2024
 - Time: 3:00 PM - 4:30 PM
 - Location: Apex Town Hall 73 Hunter Street, Apex, North Carolina | Exec. Conf Room

Attachments

- CN1-A1: Revised - 2024 Council Meeting Calendar No. 1
- CN1-A2: Revised - 2024 Text Calendar No. 1



Town Council 2024 Meeting Calendar

PROPOSED

January						
S	M	T	W	T	F	S
	1	2	3	4	5	6
7	8	T9	10	11	T12	13
14	15	T16	17	18	19	20
21	22	T23	24	T25	26	27
28	29	H30	31			
9th Pre-Budget Public Hearing/ Regular Mtg						
12th Annual Council Retreat (Option B)						
16th Work Session						
25th Personnel Committee						
30th Joint Collaboration Meeting/Holly Springs						

February						
S	M	T	W	T	F	S
			1	1	2	3
4	5	6	T7	8	9	10
11	12	T13	14	T15	T16	17
18	19	T20	21	T22	23	24
25	26	T27	28	T29		
7th Economic Development Committee						
15-16 Annual Council Retreat (Option A)						
20th Work Session						
22nd Finance Committee						
29th Rules Committee						

March						
S	M	T	W	T	F	S
					1	2
3	4	5	6	T7	8	9
10	11	T12	13	14	15	16
17	18	P19	20	T21	22	23
24	25	T26	27	28	29	30
31						
7th Planning Committee						
7th Personnel Committee						
19th Work Session						
21st Joint Finance/Personnel Committee Mtg						

April						
S	M	T	W	T	F	S
	1	T2	3	T4	5	6
7	8	T9	10	11	12	13
14	15	T16	17	18	T19	20
21	22	T23	24	25	26	27
28	29	30				
2nd Finance Committee						
4th Finance Committee						
16th Work Session						
19th Rules Committee						

May						
S	M	T	W	T	F	S
			1	T2	3	4
5	6	7	8	9	10	11
12	13	T14	T15	T16	17	18
19	20	T21	22	T23	24	25
26	27	T28	29	H30	31	
2nd Budget Work Session						
15th Economic Development Committee						
16th Planning Committee						
21st Work Session						
23rd Budget Work Session						
30th Joint Collaboration Meeting/Cary						

June						
S	M	T	W	T	F	S
						1
2	3	4	5	6	7	8
9	10	T11	12	13	T14	15
16	17	T18	19	20	T21	22
23	24	T25	26	27	28	29
30						
14th Rules Committee						
18th Work Session						
21st Personnel Committee						

July						
S	M	T	W	T	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

August						
S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	T9	10
11	12	T13	14	15	16	17
18	19	T20	T21	22	23	24
25	26	T27	28	29	30	31
9th Finance Committee						
20th Work Session						
21st Economic Development Committee						

September						
S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	T10	11	T12	13	14
15	16	T17	18	19	T20	21
22	23	T24	25	T26	27	28
29	H30					
12th Planning Committee						
17th Work Session						
20th Rules Committee						
26th Personnel Committee						
30th Joint Collaboration Meeting w/Morrisville						

October						
S	M	T	W	T	F	S
		T1	2	3	4	5
6	7	T8	9	10	11	12
13	14	P15	16	T17	T18	19
20	21	22	23	24	T25	26
27	H28	29	T30	31		
1st Closed Session - Evaluation (Appointed)						
15th Work Session						
17th Closed Session - Evaluation (Appointed)						
18th Finance Committee						
25th Council Strategic Planning Update						
28th Joint Collaboration Meeting / Wake County						
30th Economic Development Committee						

November						
S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	11	T12	13	T14	T15	16
17	18	T19	20	T21	22	23
24	25	26	27	28	29	30
14th Planning Committee						
15th Rules Committee						
19th Work Session						

December						
S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	T10	11	12	13	14
15	16	T17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				
13th Personnel Committee						
17th Work Session						

Holidays	13
Regular Meetings	21
Work Sessions	11
Committee Meetings	23
Budget Hearings/Work Sessions	3
Joint Collaboration Meetings	4

CS - Evaluation (Appointed)	2
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Retreat/Strategic Planning	4
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Total Meetings 68

MEETING LOCATION(S)

- P Police Department
- T Town Hall
- S Senior Center
- H Halle Cultural Arts Center
- O Other

68 Meeting days
2 Two meetings same day
68 Total Meetings

SPECIAL NOTE

Meeting Times, Location, Etc. are noted on the next page titled: "Apex Town Council Meeting Calendar for Year 2024 - Text"

Questions should be directed to the Town Clerk's Office
919-249-1260 or allen.coleman@apexnc.org



PROPOSED AMENDMENT
TOWN OF APEX TOWN COUNCIL
MEETING CALENDAR FOR YEAR 2024
TEXT Calendar

In accordance with North Carolina General Statute 143-318.12, a schedule of regular meetings shall be filed with the Town Clerk to the Town Council. The schedule must show the date, time, and place of each meeting. Questions should be directed to the Office of the Town Clerk by phone at 919-249-1260 or by email to allen.coleman@apexnc.org.

Special Accommodation Notice: Anyone needing special accommodations to attend the meeting(s) below and/or if this information is needed in an alternative format, please contact the Town Clerk's Office. The Town Clerk is located at 73 Hunter Street in Apex Town Hall on the 2nd Floor, (email) allen.coleman@apexnc.org or (phone) 919-249-1260.

Meeting Date	Type	Start Time	Location
Tuesday, January 9	Regular Town Council Meeting	6:00 PM	Apex Town Hall 73 Hunter Street Apex, NC 27502
Friday, January 12	Town Council Retreat	2:00 PM	Apex Town Hall 73 Hunter Street Apex, NC 27502
Tuesday, January 16	Town Council Work Session	3:30 PM	Apex Town Hall 73 Hunter Street Apex, NC 27502
Tuesday, January 23	Regular Town Council Meeting	6:00 PM	Apex Town Hall 73 Hunter Street Apex, NC 27502
Thursday, January 25	Personnel Committee Meeting	4:30 PM	Apex Town Hall 73 Hunter Street Apex, NC 27502
Tuesday, January 30	Joint Collaboration Meeting w/ Town of Holly Springs	5:30 PM	Halle Cultural Arts Center 237 North Salem Street Apex, NC 27502
Wednesday, February 7	Economic Development Committee Meeting	4:00 PM	Apex Town Hall 73 Hunter Street Apex, NC 27502
Tuesday, February 13	Regular Town Council Meeting	6:00 PM	Apex Town Hall 73 Hunter Street

			Apex, NC 27502
Thursday, February 15 <i>and</i> Friday, February 16	Town Council Annual Retreat / Strategic Planning/ Budget Work Session	8:30 AM both dates	Apex Town Hall 73 Hunter Street Apex, NC 27502
Tuesday, February 20	Town Council Work Session	3:30 PM	Apex Town Hall 73 Hunter Street Apex, NC 27502
Thursday, February 22	Finance Committee Meeting	9:00 AM	Apex Town Hall 73 Hunter Street Apex, NC 27502
Tuesday, February 27	Regular Town Council Meeting	6:00 PM	Apex Town Hall 73 Hunter Street Apex, NC 27502
Thursday, February 29	Rules Committee Meeting	3:00 PM	Apex Town Hall 73 Hunter Street Apex, NC 27502
Thursday, March 7	Planning Committee Meeting	9:00 AM	Apex Town Hall 73 Hunter Street Apex, NC 27502
Thursday, March 7	Personnel Committee Meeting	4:30 PM	Apex Town Hall 73 Hunter Street Apex, NC 27502
Tuesday, March 12	Regular Town Council Meeting	6:00 PM	Apex Town Hall 73 Hunter Street Apex, NC 27502
Thursday, March 14	Planning Committee Meeting	9:00 AM	Apex Town Hall 73 Hunter Street Apex, NC 27502
Tuesday, March 19	Town Council Work Session Public Safety	3:30 PM	Apex Police Department 205 Saunders Street Apex, NC 27502
Thursday, March 21	Joint Personnel and Finance Committee Meeting	4:30 PM	Apex Town Hall 73 Hunter Street Apex, NC 27502
Tuesday, March 26	Regular Town Council Meeting	6:00 PM	Apex Town Hall 73 Hunter Street Apex, NC 27502
Tuesday, April 2	Finance Committee Meeting	9:00 AM	Apex Town Hall 73 Hunter Street Apex, NC 27502

Thursday, April 4	Finance Committee Meeting	9:00 AM	Apex Town Hall 73 Hunter Street Apex, NC 27502
Tuesday, April 9	Regular Town Council Meeting	6:00 PM	Apex Town Hall 73 Hunter Street Apex, NC 27502
Tuesday, April 16	Town Council Work Session	3:30 PM	Apex Town Hall 73 Hunter Street Apex, NC 27502
Friday, April 19	Rules Committee Meeting	3:00 PM	Apex Town Hall 73 Hunter Street Apex, NC 27502
Tuesday, April 23	Regular Town Council Meeting	6:00 PM	Apex Town Hall 73 Hunter Street Apex, NC 27502
Thursday, May 2	Budget Work Session	2:00 PM	Apex Town Hall 73 Hunter Street Apex, NC 27502
Tuesday, May 14	Regular Town Council Meeting	6:00 PM	Apex Town Hall 73 Hunter Street Apex, NC 27502
Wednesday, May 15	Economic Development Committee Meeting	4:00 PM	Apex Town Hall 73 Hunter Street Apex, NC 27502
Thursday, May 16	Planning Committee Meeting	9:00 AM	Apex Town Hall 73 Hunter Street Apex, NC 27502
Tuesday, May 21	Town Council Work Session	3:30 PM	Apex Town Hall 73 Hunter Street Apex, NC 27502
Thursday, May 23	Budget Work Session	2:00 PM	Apex Town Hall 73 Hunter Street Apex, NC 27502
Tuesday, May 28	Regular Town Council Meeting	6:00 PM	Apex Town Hall 73 Hunter Street Apex, NC 27502
Thursday, May 30	Joint Collaboration Meeting w/ Town of Cary	5:30 PM	Halle Cultural Arts Center 237 North Salem Street Apex, NC 27502
Tuesday, June 11	Regular Town	6:00 PM	Apex Town Hall

	Council Meeting		73 Hunter Street Apex, NC 27502
Friday, June 14	Rules Committee Meeting	3:00 PM	Apex Town Hall 73 Hunter Street Apex, NC 27502
Tuesday, June 18	Town Council Work Session	3:30 PM	Apex Town Hall 73 Hunter Street Apex, NC 27502
Friday, June 21	Personnel Committee Meeting	2:30 PM	Apex Town Hall 73 Hunter Street Apex, NC 27502
Tuesday, June 25	Regular Town Council Meeting	6:00 PM	Apex Town Hall 73 Hunter Street Apex, NC 27502
Friday, August 9	Finance Committee Meeting	9:00 AM	Apex Town Hall 73 Hunter Street Apex, NC 27502
Tuesday, August 13	Regular Town Council Meeting	6:00 PM	Apex Town Hall 73 Hunter Street Apex, NC 27502
Tuesday, August 20	Town Council Work Session	3:30 PM	Apex Town Hall 73 Hunter Street Apex, NC 27502
Wednesday, August 21	Economic Development Committee Meeting	4:00 PM	Apex Town Hall 73 Hunter Street Apex, NC 27502
Tuesday, August 27	Regular Town Council Meeting	6:00 PM	Apex Town Hall 73 Hunter Street Apex, NC 27502
Tuesday, September 10	Regular Town Council Meeting	6:00 PM	Apex Town Hall 73 Hunter Street Apex, NC 27502
Thursday, September 12	Planning Committee Meeting	9:00 AM	Apex Town Hall 73 Hunter Street Apex, NC 27502
Tuesday, September 17	Town Council Work Session	3:30 PM	Apex Town Hall 73 Hunter Street Apex, NC 27502
Friday, September 20	Rules Committee Meeting	3:00 PM	Apex Town Hall 73 Hunter Street Apex, NC 27502

Tuesday, September 24	Regular Town Council Meeting	6:00 PM	Apex Town Hall 73 Hunter Street Apex, NC 27502
Thursday, September 26	Personnel Committee	4:30 PM	Apex Town Hall 73 Hunter Street Apex, NC 27502
Monday, September 30	Joint Collaboration Meeting w/Town of Morrisville	5:30 PM	Halle Cultural Arts Center 237 North Salem Street Apex, NC 27502
Tuesday, October 1	Closed Session Appointed Personnel Evaluation	5:00 PM	Apex Town Hall 73 Hunter Street Apex, NC 27502
Tuesday, October 8	Regular Town Council Meeting	6:00 PM	Apex Town Hall 73 Hunter Street Apex, NC 27502
Tuesday, October 15	Town Council Work Session Public Safety	3:30 PM	Apex Town Hall 73 Hunter Street Apex, NC 27502
Thursday, October 17	Closed Session Appointed Personnel Evaluation	5:00 PM	Apex Town Hall 73 Hunter Street Apex, NC 27502
Friday, October 18	Finance Committee Meeting	9:00 AM	Apex Town Hall 73 Hunter Street Apex, NC 27502
Tuesday, October 22	Regular Town Council Meeting	6:00 PM	Apex Town Hall 73 Hunter Street Apex, NC 27502
Friday, October 25	Council Strategic Planning Update	2:00 PM	Apex Town Hall 73 Hunter Street Apex, NC 27502
Monday, October 28	Joint Collaboration Meeting Wake County	5:30 PM	Halle Cultural Arts Center 237 North Salem Street Apex, NC 27502
Wednesday, October 30	Economic Development Committee Meeting	4:00 PM	Apex Town Hall 73 Hunter Street Apex, NC 27502
Tuesday, November 12	Regular Town	6:00 PM	Apex Town Hall

	Council Meeting		73 Hunter Street Apex, NC 27502
Thursday, November 14	Planning Committee Meeting	9:00 AM	Apex Town Hall 73 Hunter Street Apex, NC 27502
Friday, November 15	Rules Committee Meeting	3:00 PM	Apex Town Hall 73 Hunter Street Apex, NC 27502
Tuesday, November 19	Town Council Work Session	3:30 PM	Apex Town Hall 73 Hunter Street Apex, NC 27502
Thursday, November 21	Regular Town Council Meeting	6:00 PM	Apex Town Hall 73 Hunter Street Apex, NC 27502
Tuesday, December 10	Regular Town Council Meeting	6:00 PM	Apex Town Hall 73 Hunter Street Apex, NC 27502
Friday, December 13	Personnel Committee Meeting	2:30 PM	Apex Town Hall 73 Hunter Street Apex, NC 27502
Tuesday, December 17	Town Council Work Session	3:30 PM	Apex Town Hall 73 Hunter Street Apex, NC 27502

| Agenda Item | cover sheet

for consideration by the Apex Town Council

Item Type: CONSENT AGENDA

Meeting Date: January 9, 2024

Item Details

Presenter(s): Michael Deaton, P.E., Director

Department(s): Water Resources

Requested Motion

Motion to award an agreement with Badger Meter, Inc. as Sole Source Vendor for the purchase of new water meters required for the Meter System Upgrade Project, and authorize the Interim Town Manager, or their designee, to execute on behalf of the Town.

Approval Recommended?

Yes

Item Details

To advance the Town's Meter System Upgrade Project and provide continued support to our water meter replacement program, over 6,300 water meters need to be purchased. Approximately, 94% of the Town's existing water customers have meters that are manufactured by Badger Meter, Inc. During the development of the Meter System Upgrade Project, it was determined that having one (1) type of water meter manufacturer (Badger) would be the most efficient and cost-effective solution, as well as provide the highest level of customer service to Apex water customers. Additionally, Badger water meter is compatible with the recently selected Sensus network for the project. A water meter order of this magnitude in size and cost requires approval for a sole source vendor to meet state and municipal purchasing policy.

Attachments

- CN2 - A1: Town of Apex Sole Source Justification Letter - Agreement - Badger Meter, Inc. - New Water Meters - Meter System Upgrade Project
- CN2-A2: Badger Sole Source Justification Letter - Agreement - Badger Meter, Inc. - New Water Meters - Meter System Upgrade Project
- CN2-A3: Badger Meter Quote - Agreement - Badger Meter, Inc. - New Water Meters - Meter System Upgrade Project
- CN2-A4: Agreement - Badger Meter, Inc. - New Water Meters - Meter System Upgrade Project





SOLE SOURCE JUSTIFICATION FOR WATER METERS

BADGER METERS

The Water Resources Department recommends a single source vendor, Badger Meter, for water meter purchases. Justification for this recommendation are as follows:

- 94% of the existing installed water meter inventory are Badger meters. The other 6% are Elster meters. Elster meters and older Badger meters that are not compatible with the Sensus SmartPoint 520 radio transceiver modules will need to be replaced (7,184 water meters or approximately 28% of our existing installed meters) in preparation for the Meter System Upgrade.
- Badger meters are less expensive than other competitor meters and are compatible with the Sensus SmartPoint modules.
- Competitor meters do not fit properly in most existing residential meter boxes without modification. The additional cost of material and labor to replace the meters and meter boxes would be cost and time prohibitive.
- Staying with one manufacturer will decrease billing issues due to truncation errors.
- Badger meters can only be purchased directly from Badger Meter, so multiple bids cannot be obtained.



4545 W Brown Deer Road
PO Box 245036
Milwaukee, Wisconsin 53224-9536
414-355-0400 | 800-876-3837
www.badgermeter.com

November 13, 2023

Ms. Jessica Sloan
Program Coordinator
Town of Apex
73 Hunter Street, P.O. Box 250
Apex, NC 27502

RE: Sole Source Letter

Dear Ms. Sloan:

This letter will confirm that Badger Meter is the sole source of E-Series® Ultrasonic meters for the City of Apex.

In the event you have any questions regarding this correspondence, we can be reached by telephone at 800-876-3837 or by email at proposals@badgermeter.com.

Sincerely,

BADGER METER, INC.

A handwritten signature in black ink, appearing to read 'Matthew B. Gieseke', written over a light blue circular stamp.

Matthew B. Gieseke
Assistant Secretary and Proposal Lead

Badger Meter Inc.
4545 W Brown Deer Road Milwaukee WI 53223
PO Box 245036 Milwaukee WI 53224-9536

Revised Date
To
Customer ID 00321459

TOWN OF APEX
73 HUNTER ST
P O BOX 250
APEX
North Carolina 275020250

Effective Dates 10-20-2023 - 12-31-2023

Salesperson	Proposal Subject	Shipping Terms / INCO Terms	Payment Terms
007689 ALEX GREER	Apex, NC - Various Meters Quote	PREPAY/NO CHARGE For SHIPMENTS > \$35,000 FCA FACTORY	NET 30 DAYS

Line #	Description	Qty	Unit Net Price USD	Line Totals USD
1	BMI Part No.: 100-6533 Cat String: DS-BAB-PC1P-XXD3-Y2-E1CC-2B1X1-9AE-NN-XX-CF-XX-B0A Description: Disc, M25 5/8"(3/4x7-1/2), CI Btm 430SS-1, PL, (TS-135, SN Yr 9D & PBB, HR-E LCD, 4CXN2 Itron, PL Lid/Shrd-GRY, Trx Scrw, Sidewalk read, 9D-0.01 Gal, SN YR 9D in & out, ILC-5ft, BMI STD, 6 PAC	274	162.00	44,388.00
2	BMI Part No.: 104-9564 Customer Part: W213 Cat String: EB-EAC-PXTX-E5-CC-19AE-K1Y2-XXCF-XX-B0A Description: E-Series B-Alloy, 5/8"x3/4"(7-1/2), Thk Wshr, Enc, 4CXN2 Itron, 9D-0.01 Gal, TS-568, SN Yr 9D & PBB, ILC-5ft, BMI STD,	6025	172.77	1,040,939.25
3	BMI Part No.: 109-2301 Customer Part: W140 Cat String: EB-ECA-PXTX-E5-CC-19AE-K3Y2-XXCF-XX-B0A Description: E-Series B-Alloy, 1"(10-3/4), Thk Wshr, Enc, 4CXN2 Itron, 9D-0.01 Gal, TS-766, SN Yr 9D & PBB, ILC-5ft, BMI STD,	14	303.46	4,248.37
4	BMI Part No.: 100-1831 Customer Part: W146 Cat String: EU-EEA-PXXX-E5-CC-19BE-A6Y2-XXCF-XX-B0A Description: E-Series SS, 2" EL(17), Enc, 4CXN2 Itron, 9D-0.1 Gal, SN Yr 9D & PBB, ILC-5ft, BMI STD,	12	926.00	11,112.00

Thank you for your business!

Estimated ship dates subject to change based upon component availability as a result of global supply chain constraints, or credit review.
This acknowledgment is made subject to the terms & conditions found here: <https://www.badgermeter.com/terms-and-conditions>.
Terms and conditions related to service units, training, and professional : <https://badgermeter.com/service-units-terms-and-conditions>

Line #	Description	Qty	Unit Net Price USD	Line Totals USD
5	BMI Part No.: 105-3430 Cat String: CS-CHA-P-T4XX-X-C1-Y2-E1CC-2B1X1-9C-9A-E-NN-XX-CJ-XX-B0A Description: CSM, 6" Rnd w/TP, 316SS-4, SN Yr 9D & PBB, HR-E LCD, 4CXN2 Itron, PL Lid/Shrd-GRY, Trx Scrw, Sidewalk read, 9D-1 Gal, 9D-0.01 Gal, SN YR 9D in & out, ILC-25ft, BMI STD, 1 PACK,	3	7,160.21	21,480.63

Subtotal - USD	1,122,168.25
Total Price - USD	1,122,168.25

Notes and Assumptions

If applicable, sales tax and freight, if included on the proposal, is an estimate and will be recalculated based on rates and tax status in effect at the time of invoicing.

Actual lead time to be provided at time of order.

To aid in processing your order, please include the Quote number on the PO that is submitted for this proposal.

If you would like to place an order, please contact us at Utilitymke@badgermeter.com or by calling 1-800-876-3837 Option 1.

Thank you for your business!

Estimated ship dates subject to change based upon component availability as a result of global supply chain constraints, or credit review.
This acknowledgment is made subject to the terms & conditions found here: <https://www.badgermeter.com/terms-and-conditions>.
Terms and conditions related to service units, training, and professional : found here: <https://badgermeter.com/service-units-terms-and-conditions>

Agreement for Sale of Meters

1. Definitions. “Buyer” means the Town of Apex, a North Carolina municipal corporation, who is the party purchasing goods or services pursuant to these Terms and Conditions of Sale (“Terms and Conditions”). “Badger Meter” means Badger Meter, Inc., a Wisconsin corporation and all its subsidiaries. “Goods” means the Badger Meter goods, software, services, and advisory services sold or otherwise provided pursuant to these Terms and Conditions and as detailed in the attached Quotation No. 3552289 dated October 20, 2023.

2. Controlling Provisions.

Generally. THIS AGREEMENT CONSTITUTES THE FINAL EXPRESSION OF THE AGREEMENT BETWEEN BADGER METER AND BUYER REGARDING THE GOODS AND IT IS A COMPLETE AND EXCLUSIVE STATEMENT OF THAT AGREEMENT. ANY TERMS, CONDITIONS, NEGOTIATIONS OR UNDERSTANDINGS WHICH ARE NOT CONTAINED IN THIS AGREEMENT SHALL HAVE NO FORCE OF EFFECT UNLESS MADE IN WRITING AND SIGNED BY BUYER AND AN AUTHORIZED OFFICER OF BADGER METER. Badger Meter's sales representatives do not have authority to change this Agreement. Badger Meter reserves the right to correct clerical errors in its documents. It is the express wish of the parties that this document and any related documents be drafted in English. Il est la volonté expresse des parties que ce document et tous les documents s'y rattachant soient rédigés en anglais.

3. Storage. If the Goods are not shipped within fifteen (15) days after notification to Buyer that they are ready for shipping, for any reason beyond Badger Meter's reasonable control, including without limitation Buyer's failure to give shipping instructions, Badger Meter may store such Goods, at Buyer's risk, in a warehouse or yard located on Badger Meter's premises, and Badger Meter may at its sole discretion charge Buyer and Buyer shall pay all handling, transportation and storage costs at the prevailing commercial rates upon submission of invoices on the stored Goods.

4. Prices. Unless stated otherwise in a governing quotation or tender, prices are stated and payable in U.S. dollars or Euros FCA Badger Meter's Facility (pursuant to Incoterms 2010 of the International Chamber of Commerce, as amended or restated from time to time ["Incoterms"]). All prices are subject to change based on Badger Meter's selling prices in effect as of the date of shipment. Quoted prices are firm for acceptance, via an order, within the effective dates provided in the quote, shipping within sixty (60) days past the expiration of the quote. Prices quoted for blanket orders are subject to review and retroactive adjustment, if necessary, based on actual quantities shipped. Written quotations are void unless accepted within the effective dates listed on the quotation and are subject to earlier change upon notice from Badger Meter. Other Badger Meter publications are maintained as sources of information and are not quotations or offers to sell.

5. Taxes. All prices are exclusive of all sales, use, value added, customs and excise taxes, and any other taxes, duties, fees and charges of any kind imposed by any governmental authority in connection with this Agreement. Buyer shall pay or reimburse Badger Meter on demand for all such taxes, duties, fees and charges but Buyer shall not be responsible for any taxes imposed on, or with respect to, Badger Meter's income.

6. Title and Risk of Loss. All Goods are shipped F.C.A. Badger Meter's Facility (pursuant to Incoterms 2010 of the International Chamber of Commerce, as amended or restated from time to time). Buyer is

responsible for all delivery charges for Goods. Title and risk of loss or damage to Goods passes to Buyer when Goods are moved from Badger Meter's dock into the conveyance vehicle for transport.

7. Payment Terms. Buyer shall pay all invoices within thirty (30) days of the invoice date. Badger Meter reserves the right to establish credit limits for Buyer and may require full or partial payment prior to shipment of any Goods or commencement of any services provided hereunder. All payments shall be made via payment methods allowed by Badger Meter according to instructions provided by Badger Meter. For Buyers outside the U.S., Badger Meter may require cash in advance or a Letter of Credit for payment or security in a form acceptable to Badger Meter. If Buyer does not pay Badger Meter any amount due under this Agreement or any other Agreement when such amount is due or if Buyer defaults in the performance of this Agreement, Badger Meter may, without incurring liability to Buyer and without prejudice to Badger Meter's other lawful remedies (a) terminate Badger Meter's obligations under this Agreement, (b) declare immediately and due payable all Buyer's obligations to Badger Meter, (c) change credit terms with respect to any further work or deliveries, (d) suspend or discontinue any further work or deliveries and/or (e) repossess the Goods. Any invoices which Buyer does not pay within the time provided in this Agreement shall bear interest at the lower of (i) one and a half percent (1.5%) per month up to a maximum of eighteen percent (18%) per year; or (ii) the highest rate permitted by applicable law. Buyer shall not set off amounts due to Badger Meter against claims against Badger Meter.

8. Packaging. Badger Meter reserves the right to select the manner in which Goods are packaged. Special requirements for packing will be subject to extra charges.

9. Delivery. Delivery. Shipping dates and completion dates quoted by Badger Meter are made in good faith but are not guaranteed; Badger Meter reserves the right to extend shipping dates as it deems necessary in its sole discretion, without incurring liability to Buyer and to make delivery in installments. Time for delivery shall not be of the essence. In the absence of shipping instructions from Buyer, Badger Meter will use its discretion as to the selection of shipping services and routings. Installation of Goods is the responsibility of the Buyer unless otherwise agreed in writing. Buyer is responsible for following all applicable installation instructions, guides, or other documentation. Badger Meter is not responsible or liable for product that is installed or maintained improperly.

Badger Meter ships all products FOB – Factory within the United States (unless otherwise agreed to in writing, upon receipt of shipment, Buyer must inspect the goods for damage, shortage, or non-conformance. Buyer will make note of damage on the carrier's delivery receipt. Claims for shortages or other errors must be made in writing to Badger Meter within seven (7) days after receipt of shipment and claims for concealed damage must be made to Badger Meter within fifteen (15) days after receipt of shipment. When the Buyer's carrier and account are used for transit, the Buyer shall be responsible for any claims made for visible and concealed damage and/or loss of partial or complete shipment.

10. Force Majeure. Badger Meter shall not be liable or responsible to Buyer, nor be deemed to have defaulted or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of Badger Meter including, without limitation, natural hazards outside of human control for which no person or persons can be held responsible, terrorism, pandemic, global supply chain disruptions, acts of Buyer, embargo or other governmental act, regulation or request, fire, accident, strike, slow-down, war, riot, delay in transportation, delayed delivery by

suppliers, or inability to obtain necessary labor and materials. In the event of any such delay, the date of delivery shall be extended for a period equal to the time lost by reason of the delay.

11. Orders; Changes and Cancellations. Buyer's orders or mutually agreed change orders shall be subject to all provisions of this Agreement, whether or not the order or change order so states. No order shall be binding upon Badger Meter until received and accepted by Badger Meter in its sole discretion. Minimum order value is \$200 U.S.D. or EUR 200. Orders submitted to Badger Meter may not be cancelled or amended, or deliveries deferred, by Buyer except with Badger Meter's prior written consent, and then only upon such terms as shall be acceptable to Badger Meter on a product by product basis. Neither Buyer's acceptance of this offer nor any conduct by Badger Meter (including but not limited to shipment of Goods) will oblige Badger Meter to sell to Buyer any quantity of Goods in excess of the quantity that Buyer has committed to purchase from Badger Meter at the time of such acceptance or conduct. Due to continuous efforts to improve and redesign of our products and technology solutions, Badger Meter reserves the right to provide our newest product solutions as an alternative to the quoted or ordered Goods, provided they are in conformance with the requirements of any agreed specifications and do not exceed the prices quoted.

12. Limited Warranties.

Generally. Unless otherwise agreed in a writing signed by an authorized officer of Badger Meter, provided by Badger Meter in a written product-specific warranty or online at <http://www.badgermeter.com/Company/Legal/Warranty-Policy.htm>, or passed through by Badger Meter from the original equipment manufacturer, Badger Meter warrants the Goods (excluding services) supplied hereunder to be free from significant defects in material and workmanship under normal use and service for a period of 18 months from the date of shipment or 12 months from the date of installation, whichever period shall be shorter ("the Warranty Period"). This warranty applies only to the original purchaser of the Goods and does not apply to Goods that are the subject of negligence, accident, or damage by circumstances beyond Badger Meter's control, or any improper operation, maintenance, storage, installation or use. This warranty does not apply to Goods or component parts that were not manufactured by Badger Meter and not covered by a Badger Meter or original equipment manufacturers written warranty, all of which are sold "AS IS" and without warranty by Badger Meter. This warranty applies only to covered defects that are discovered during the Warranty Period. Buyer's failure to provide Badger Meter with written notice of any alleged defect within ten (10) days after its discovery constitutes a waiver of the remedies specified herein. If Badger Meter receives timely notice, and if the Goods are proved to Badger Meter's satisfaction to have a warranted defect, Badger Meter will, at its own discretion, expense and within a reasonable period of time, either (1) repair, correct or cure the warranted defect(s), or (2) replace the specific Goods at issue, or (3) give Buyer a refund of the price it paid for the Goods, prorated where appropriate to adjust for the value of any conforming Goods or services accepted and retained by Buyer. Any parts of Goods repaired or replaced under warranty are warranted only for the balance of the Warranty Period on the original part that was repaired or replaced. These remedies shall be Buyer's exclusive remedies (and the sole and exclusive liability of Badger Meter) for any defects or deficiencies relating to or arising out of Goods sold or services performed. All repairs are made on a C.P.T. factory basis (pursuant to Incoterms). **THE WARRANTIES IN THIS SECTION ARE THE ONLY WARRANTIES GIVEN WITH RESPECT TO GOODS SOLD OR OTHERWISE PROVIDED BY BADGER METER. BADGER METER EXPRESSLY DISCLAIMS ANY AND ALL OTHER REPRESENTATIONS AND WARRANTIES, EXPRESS, IMPLIED OR OTHERWISE, INCLUDING WITHOUT LIMITATION, WARRANTIES AS**

TO FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, NONINFRINGEMENT, AND ANY WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE.

Where Badger Meter provides recommendations to Buyer to address or mitigate issues identified by the Buyer, Buyer acknowledges that Badger Meter will not have access to the full operational aspects and attributes of the Buyer's network. Badger Meter is not a certified consultant and does not provide consulting services unless specifically contracted. All Goods are selected by the Customer and Badger Meter's recommendations do not constitute a requirement for purchase. Badger Meter does not warrant that its product recommendations are an adequate solution for any identified or unidentified Customer issues.

Please note that Badger Meter's warranties for Syrinix branded products do not cover failures, interruptions, and damages resulting directly or indirectly from natural hazards outside of human control for which no person or persons can be held responsible, war, terrorism, civil, disobedience, theft, extreme weather, floods, storms, lightning, tornado, hurricane, fire, combustion, explosion, landslide, volcano and earthquake, extreme temperature, external electrical irregularity including surge and failure, acoustic interference, and third party service provider interruptions.

Buyer's Obligations. Buyer must satisfy the following obligations in order to be eligible for coverage by the applicable warranty. Prior to using or permitting use of the Goods, Buyer shall determine the suitability of the Goods for the intended use and Buyer assumes all risk and liability whatsoever in connection therewith. Buyer agrees that Badger Meter has no post-sale duty to warn Buyer or any other party about any matter or, if such duty exists, Badger Meter satisfies that duty by providing any required warnings only to Buyer. Buyer assumes all post-sale duty to warn its customers and shall be responsible for any and all costs in connection with such duty or failure to warn. Buyer agrees to test and evaluate Goods promptly upon receipt to ensure compliance with all specifications, quality requirements and other requirements of Buyer's application. Badger Meter does not guaranty the accuracy of information given and recommendations made as to suitability of Goods for Buyer's application or operating conditions. Nothing shall be construed to imply the nonexistence of any relevant patents or to constitute a permission, inducement or recommendation to practice any invention covered by any patent without authority from the patent owner.

13. Intellectual Property. No Intellectual Property (as defined below) is assigned to Buyer hereunder. Badger Meter shall own or continue to own all Intellectual Property used or created in the course of performing this Agreement. To the extent, if any, that any ownership interest in and to such Intellectual Property does not automatically vest in Badger Meter, and instead vests in Buyer, Buyer agrees to grant and assign and hereby does grant and assign to Badger Meter all right, title and interest that Buyer may have in and to such Intellectual Property. Buyer agrees not to reverse engineer any Goods purchased or provided hereunder. This includes the reverse engineering of software, source code, or other proprietary elements that Badger Meter provides to Buyer. **"Intellectual Property"** means patents and patent applications, inventions, developments and discoveries, whether or not patentable or copyrightable, trademarks, service marks, trade dress, copyrights, trade secrets, designs, drawings, specifications, database rights, rights in and to confidential information and know-how, and any rights analogous to the same anywhere in the world and existing at any time in the Goods or arising out of or relative to the design or manufacture of the Goods or the provision of services, and all other Intellectual Property and proprietary rights.

Any use of Badger Meter's or its affiliates' or suppliers' trademarks in advertisements or promotion must be preapproved in writing by Badger Meter. Buyer agrees to take all steps which Badger Meter may from time to time consider to be necessary to perfect or protect Badger Meter's or its affiliates' or suppliers' rights in Badger Meter's Intellectual Property including, without limitation, executing all necessary assignments, declarations, and other documents requested by Badger Meter from time to time. Upon expiration or termination of this Agreement for any reason, Buyer shall take such steps and execute such documents as Badger Meter requests to cause Badger Meter or its affiliates or suppliers to own all rights in the Intellectual Property and to terminate any rights Buyer or its affiliates may have to use the Intellectual Property. Buyer shall inform Badger Meter promptly of any potential or actual infringement of any of Badger Meter's or its affiliates' or suppliers' Intellectual Property and shall provide all assistance and information required by Badger Meter, at Badger Meter's expense, in connection with any such infringement.

For Syrinix branded products that require transmission of data, the Buyer agrees to the transmission of information relating to the product and product data during the installation, commissioning and operation of the product and to the analysis and provision of product data, including web-based, server-based and bespoke communication and analytical methodologies, nationally and internationally. The Buyer shall own all product data provided from the product. Each and every Buyer and its consumers and/or employees hereby grants to Badger Meter a non-exclusive, irrevocable, transferable, royalty free license to store, analyze, copy, edit, record and otherwise use all product data for such purposes, including, without limitation, research, administration and commercial, as Syrinix, in its sole discretion, considers appropriate. This license shall survive the termination of this agreement, however arising, including, without limitation, termination due to Badger Meter's default. To the extent applicable, any use of product data is also subject to the Google Maps/Google Earth Additional Terms of Service (including the Google Privacy Policy) (see https://maps.google.com/help/terms_maps.html).

14. Compliance with Laws. Buyer agrees to familiarize itself with and comply with all laws and regulations now or hereafter in effect and applicable to the purchase, transport, use, supply, storage, sale, offer for sale, lease and/or disposal of the Goods ("Laws") including, without limitation, to the extent applicable, the U.S. Foreign Corrupt Practices Act and all other anti-bribery laws, all U.S. anti-boycott laws, and the U.S. Export Administration Act and all regulations thereunder.

If Buyer or its affiliates, agents or representatives engages a freight forwarder or similar service provider, Buyer shall provide Badger Meter with copies of freight forwarder (or similar) records regarding Goods exports promptly upon request.

Buyer shall promptly notify Badger Meter in writing if Buyer receives notice of or otherwise has reason to believe that a violation of any applicable trade laws has occurred or is likely to occur. Buyer assumes all risk with respect to compliance of Goods with applicable Laws (including without limitation all environmental laws in any jurisdiction).

Buyer acknowledges that certain Goods may have restrictions on who can purchase, transport, use, supply, store, sell, offer for sale, lease and/or dispose of ("Actions") the Goods and on how and where such Actions may take place. Buyer agrees to be responsible for determining who may take such Actions and how and where such Actions may take place after Badger Meter's delivery hereunder, and further agrees to ensure that its customers comply with such requirements.

By accepting this Agreement, Buyer confirms that:

- Buyer understands that Goods provided by Badger Meter are subject to U.S. export control laws and regulations, including, without limitation, the International Traffic in Arms Regulation (ITAR) or the Export Administration Regulations;
- Buyer will comply with all applicable U.S., EU, and UN laws and regulations and any other laws, regulations, or orders of similar effect enforced any other applicable jurisdiction whenever we export, re-export, or transfer Product(s) acquired from Badger Meter, insofar as it does not infringe any applicable anti-boycott rule, and acknowledges that the controlling laws and regulations may be amended from time to time;
- Buyer acknowledges that U.S. law prohibits the sale, transfer, export, re-export, or participation in any export transaction involving Badger Meter's Goods with individuals or companies listed in the United Nations Financial Sanctions List, Consolidated List of Persons, Groups, and Entities Subject to EU Financial Sanctions, U.S. Department of Commerce's Denied Persons List, Entity List, or Unverified List; the U.S. Department of State Nonproliferation Sanctions, AECA Debarred List; U.S. Department of Treasury's Specially Designated Nationals, Foreign Sanctions Evaders List, Sectoral Sanctions Identifications (SSI) List, Palestinian Legislative Council (PLC) List, The List of Foreign Financial Institutions Subject to Part 561 List, and Blocked Persons Lists; and any additional lists added by the U.S. Government. Buyer will not transfer, export, or re-export, directly or indirectly to any party identified on a restricted party list published by the U.S. government, European Union, or any other government, or to any party otherwise prohibited under any applicable law from receiving Badger Meter Goods;
- Buyer will not use, sell, transfer, export or re-export Badger Meter Goods for use in any activity related to the development, production, use, stockpiling, maintenance, or proliferation of weapons of mass destruction, including, without limitation, uses related to nuclear, chemical or biological weapons (i.e. the nuclear, chemical or biological materials/substances themselves could be used in weapons and/or the weapon delivery systems for those materials/substances) ("Weapons"), and that Buyer will not transfer, divert, export, or re-export, directly or indirectly, Goods, including any products developed or manufactured using Badger Meter's Goods, to any party engaged in any such activity. nor use such Goods in any facilities that are engaged in activities related to such Weapons. This restriction also includes, but is not limited to:
 - nuclear explosive activities, safeguarded and unsafeguarded nuclear activities
 - rocket systems or unmanned air vehicles
 - maritime nuclear propulsion;
- If Buyer is subsequently engaged in the use, development, production, transfer, export or re-export of any Badger Meter Goods, Buyer acknowledges that it may be subject to and responsible for the export licensing requirements of the U.S. government or any other government;

- Buyer acknowledges that it may receive Goods from Badger Meter exported under a written authorization from the U.S. government or any other government and acknowledge that it may be subject to and responsible for conditions subject to this written authorization and/or be subject to and responsible for the re-export licensing requirements applicable to the U.S. government's or any other government's written authorization;
- Buyer will comply with all applicable laws and regulations whenever Buyer transfers, exports, or reexport Goods obtained from Badger Meter, and Buyer acknowledges that the controlling laws and regulations may be amended from time to time; and
- Buyer will provide Badger Meter with information regarding end-user, end-use, and country of ultimate destination if purchasing Badger Meter Goods for anything other than stock inventory.

15. Customer Validation. Badger Meter reserves the right to determine OEM qualifications of any and all buyers to request end customer invoicing in situations where project pricing may have been granted by the factory. Badger Meter reserves the right to determine market definition of any and all buyers and to employ third-party sources, including SIC codes, and/or information about the application or products purchased to determine market definition.

16. Nuclear Disclaimer. The Goods are not intended for use in connection with any nuclear facility or activity unless covered by a specific quotation where the conditions of such usage will be detailed. If the Goods are used in a nuclear facility or activity without a supporting quotation, Badger Meter disclaims all liability for any damage, injury or contamination and Buyer shall indemnify and hold Badger Meter, its shareholders, directors, officers, agents, employees, successors, assigns and customers, whether direct or indirect, harmless from and against any and all Losses (as defined in Section 17) which they, any of them, may sustain or incur, whether as a result of breach of contract, warranty, tort (including negligence), strict liability or other theories of law, by reason of such use. The foregoing shall not be deemed to imply or impose liability on Badger Meter where the Goods are used in a nuclear facility or activity with a supporting quotation; all limitations and exclusions in this Agreement and in Badger Meter's Limited Warranty shall apply.

17. Limitation of Liability.

Cap on Liability. Badger Meter's aggregate liability in any and all claims and causes of action arising under, out of or in relation to this Agreement, its negotiation, performance, breach or termination (collectively "Causes of Action") shall not exceed the total amount paid by Buyer to Badger Meter under this Agreement, whether the Causes of Action are in tort including, without limitation, negligence or strict liability, in contract, under statute or otherwise.

Limitation and Exclusion of Damages. AS A SEPARATE AND INDEPENDENT LIMITATION ON LIABILITY, BADGER METER'S LIABILITY SHALL BE LIMITED TO DIRECT DAMAGES. BADGER METER SHALL NOT BE LIABLE FOR: (I) ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES, DIRECT OR INDIRECT LOST PROFITS OR REVENUES OR DIMINUTION IN VALUE, SHUTDOWN OR SLOWDOWN COSTS, OR LOSSES RELATING TO COLLATERAL CONTRACTS, ARISING OUT OF OR RELATING TO ANY BREACH OF THIS AGREEMENT, WHETHER OR NOT THE POSSIBILITY OF SUCH DAMAGES HAS BEEN DISCLOSED IN ADVANCE BY BUYER OR COULD HAVE BEEN REASONABLY FORESEEN, REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE)

UPON WHICH THE CLAIM IS BASED, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE; (II) ANY IN/OUT COSTS; (III) ANY MANUAL METER READING COSTS AND EXPENSES NOR (IV) ANY COSTS AND EXPENSES TO REMOVE PRODUCT FOR WARRANTY ANALYSIS, OR RE-INSTALLATION COSTS AND EXPENSES; "IN/OUT COSTS" MEANS ANY COSTS OR EXPENSES INCURRED BY BUYER IN TRANSPORTING GOOD BETWEEN ITS WAREHOUSE AND ITS END USER'S PREMISES. "END USER" MEANS ANY END USER OF THE WATER OR GAS THAT PAYS BUYER FOR THE CONSUMPTION OF WATER OR GAS, AS APPLICABLE.

Limitations Unconditional. The limitations on liability set forth in this Agreement are fundamental inducements to Badger Meter entering into this Agreement. They apply unconditionally and in all respects.

18. Indemnification. To the extent allowed by applicable law, Buyer releases and agrees to defend, indemnify and hold harmless Badger Meter its shareholders, directors, officers, employees, agents, affiliates, successors, assigns and customers from and against all claims, liabilities, actions, causes of action, fines, penalties, judgments, demands, damages, losses, costs and expenses, including without limitation attorneys' fees and costs, and including damages arising from personal injury or death, in law or in equity, of every kind and nature whatsoever (collectively, "Losses"), arising out of (a) Buyer's or its End User's use of the Goods, (b) breach of this Agreement by Buyer, (c) Buyer's or its End User's products, materials, performance, designs, approvals or instructions, (d) infringement of third party proprietary rights, except to the extent such Losses arise out of a breach of this Agreement by Badger Meter, (e) any violation of Buyer of any law, rule or regulation, (f) any negligence or willful misconduct of Buyer, or (g) any modifications or changes made to the Goods by or on behalf of any person other than Seller or its Representatives, if the infringement would have been avoided without such modification or change. Prior to settling any claims, Buyer will give Badger Meter an opportunity to participate in the defense and/or settlement of such claim. Buyer shall not settle any claim without Badger Meter's written consent. In the event of any recall affecting Goods, Badger Meter shall have the right to control the recall process and Buyer shall fully cooperate with Badger Meter in connection with the recall.

19. Confidentiality.

Generally. Buyer acknowledges that all Badger Meter Confidential Information (as defined below) which may be disclosed to it by Badger Meter or its affiliates or suppliers shall at all times, during and after expiration or termination of this Agreement for any reason, remain Badger Meter's exclusive property, and Buyer shall not acquire any proprietary interest whatsoever therein. Buyer shall (and shall cause its employees and contractors to) keep all Badger Meter Confidential Information strictly confidential and shall not disclose it to any third party or use it, except to the extent reasonably required to perform this Agreement or as required under applicable law, court order or regulation. As used herein "Badger Meter Confidential Information" means any and all non-public information of Badger Meter, including without limitation all non-public data, specifications, equipment and product information, prototypes, drawings, technical information, engineering drawings, forecasts, sales data, "know-how", designs, computer programs, processes, inventions, current and future (unreleased) products and technology, and confidential business information such as cost data, profit margins, sales strategies, supplier information, procurement requirements, employee information, customer preference or needs, customer data and employee capabilities which are not available to the public, unpublished U.S. and foreign patent applications, invention disclosure forms, all technical information about products or services, pricing

information, marketing and marketing plans, Goods performance, Goods architecture and design, other business and financial information, software, third party information Badger Meter is required to keep confidential, any materials derived from or based upon Badger Meter Confidential Information, and all trade secrets. Badger Meter Confidential Information may be transmitted orally, in writing, electronically or otherwise observed by Buyer. Notwithstanding the foregoing, "Badger Meter Confidential Information" shall not include: (i) any information that is in the public domain other than due to Buyer's breach of this Agreement; (ii) any information Buyer can demonstrate by documentary evidence was in the possession of the Buyer without restriction prior to disclosure by Badger Meter; or (iii) "public records" as defined by Chapter 132 of the North Carolina General Statutes. Upon expiration or termination of this Agreement for any reason, and otherwise upon Badger Meter's request, Buyer shall, within fifteen (15) days surrender to Badger Meter all plans, drawings, specifications, sketches, literature, samples, documents and other tangible objects and copies thereof relating to Badger Meter Confidential Information and all of Badger Meter's or its affiliates' or suppliers' property. Nothing in this Agreement shall be construed to limit or negate the common or statutory law of torts or trade secrets where it provides Badger Meter, its affiliates or suppliers with broader protection than that provided herein.

Engineering Data. All engineering data, design information and engineering and shop drawings used in the completion of Buyer's order are and shall remain Badger Meter's property. Buyer shall not copy, distribute or communicate to any third party such data without Badger Meter's prior written permission. However, Buyer shall distribute appropriate product data regarding operation, safety and maintenance to the end user.

Personal Information Safeguards This Section will apply unless superseded by a prior agreement. Under this Agreement, Badger Meter will not receive, or have access to, use or store Personal Information (as defined below), unless otherwise notified by Buyer with written notice that such information is pertinent to the transaction. If, however, Badger Meter receives, or has access to, uses or stores Personal Information under this Agreement, then this will apply (in addition to Section 18 [Confidentiality]).

"Data Protection Law" means: (a) the Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 (as updated); (b) any other applicable data privacy legislation or regulation; and (c) Badger Meter's privacy policy ([available here.](#))

"Personal Information" means any information relating to an identified natural person or a directly or indirectly identifiable natural person.

To the extent Badger Meter receives, or has access to, uses or stores Personal Information under this Agreement, Badger Meter will:

immediately notify Buyer;

implement and maintain administrative, physical, and technical safeguards ("Safeguards") that meet or exceed relevant industry standards and that protect the security and privacy of Personal Information. Badger Meter will not permit access to Personal Information except to those who need to know it in order to perform under this Agreement, and will ensure that any third party accessing Personal Information protect it with Safeguards at least as strong as Badger Meter's Safeguards;

upon Buyer's instruction and in accordance with Badger Meter's electric record retention policy, delete such Personal Information immediately or return it to Buyer in a secure manner and delete all remaining copies of Personal Information after such return and provide documentation of the deletion to Buyer;

not use the Personal Information for any other purpose than compliance with its' obligations under this Agreement; and

if Badger Meter has reason to believe that Personal Information is reasonably likely to have been accessed for an unauthorized purpose or by unauthorized persons (a "Breach"): (a) promptly notify Buyer (b) reasonably assist Buyer in investigating and remedying any Incident and any related inquiry or claim; and (c) provide Buyer with reasonable assurance that Badger Meter has corrected all circumstances under Badger Meter's control that led to the Incident.

20. Returns. No Goods may be returned for credit or repair without a Returned Material Authorization (RMA) issued by Badger Meter. Badger Meter reserves the right to reject return if Buyer does not get prior authorization and RMA. Authorized return shipments must be returned in original packaging and in good condition to Badger Meter's designated receiving point, must be accompanied by a packing slip, including Badger Meter's RMA number, and must have transportation charges prepaid. NO RETURNS ACCEPTED WITHOUT PRIOR BADGER METER AUTHORIZATION EVIDENCED BY A VISIBLE RMA NUMBER ON THE OUTSIDE OF THE PACKAGE. If returned Goods are severely damaged in shipping, based on poor packing, they may not be eligible for credit. Correspondence concerning all returned Goods must be addressed to the appropriate Badger Meter office and party. Badger Meter reserves the right to deduct an adequate service charge to cover all inspection, testing and handling from any credit, plus freight, insurance, packing, import and export costs. Unused or uninstalled product returns received prior to 90 days after invoice date are eligible to be credited back to the customer with Badger Meter approval. Only current versions of other products are eligible to be credited back to the customer. Badger Meter reserves the right to charge a restocking fee.

21. Assignment. This Agreement may not be assigned by either party without the written consent of the other (which consent shall not be unreasonably withheld). However, consent will not be required for internal transfers and assignments of Badger Meter, its subsidiaries or affiliates as part of a consolidation, merger or any other form of corporate reorganization.

22. Governing Law and Dispute Resolution. This Agreement shall be deemed as made and accepted in Wake County, North Carolina, USA. This Agreement and all disputes hereunder shall be governed by, resolved and construed under the internal laws of the State of North Carolina without regard to rules relating to conflict of laws. Neither this Agreement nor sales hereunder shall be governed by the provisions of the United Nations Convention on Contracts for the International Sale of Goods. Upon expiration or termination of this Agreement for any reason, Badger Meter shall have all of the rights and remedies provided by law, including, without limitation, the rights of a secured party in the jurisdiction where Buyer is located or stores the Goods.

VENUE FOR ANY SUIT OR ACTION RELATING TO OR ARISING OUT OF ANY GOODS PURCHASED FROM OR SERVICES PERFORMED BY BADGER METER SHALL LIE EXCLUSIVELY IN THE STATE OR FEDERAL COURTS LOCATED IN WAKE COUNTY, NORTH CAROLINA, USA.

23. Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

24. Non-Waiver. Failure or delay of Badger Meter to exercise a right or power under this Agreement shall not operate as a waiver thereof, nor shall any single or partial exercise of a right or power preclude any other future exercise thereof.

25. Government Contracts. If the provision of Goods by Badger Meter under accepted orders is subject to mandatory provisions of U.S. law concerning contracts or subcontracts with or for the benefit of the U.S. or any state or other national government, Buyer shall so notify Badger Meter in advance of order acceptance specifying the mandatory provisions of U.S, state or other national government law which apply.

a) **E-Verify.** Badger Meter shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes (E-Verify).

26. Cumulative Remedies. Badger Meter's rights and remedies under the Agreement are cumulative and in addition to all other rights and remedies available to Badger Meter at law or in equity.

27. Relationship of Parties. Buyer and Badger Meter are independent contractors, and nothing herein shall be construed to create a partnership, joint venture, agency or employment relationship Neither party has nor will have any power to bind the other, or to assume or create any obligation or responsibility, express or implied, on behalf of the other party.

In witness thereof, the contracting parties, by their authorized agents, affix their signatures and seals this ____ day of _____, 2024.

BUYER (Town of Apex)

BADGER METER

Shawn Purvis, Interim Town Manager

Title: _____

Allen L. Coleman, CMC, NCCCC, Town Clerk

This instrument has been preaudited in the manner required

By the Local Government Fiscal Control Act.

Antwan Morrison, Finance Director

| Agenda Item | cover sheet

for consideration by the Apex Town Council

Item Type: CONSENT AGENDA

Meeting Date: January 9, 2024

Item Details

Presenter(s): Russell Dalton, PE, Traffic Engineering Manager

Department(s): Transportation & Infrastructure Development

Requested Motion

Motion to approve Supplemental Agreement ID No. 12773 with North Carolina Department of Transportation (NCDOT) to extend the completion date for project U-5928, Apex Peakway, to December 31, 2028.

Approval Recommended?

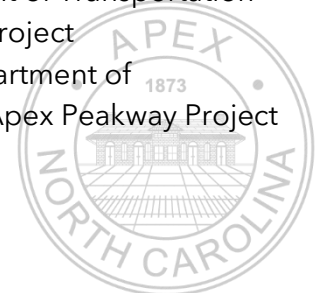
Yes

Item Details

North Carolina Department of Transportation (NCDOT) has notified the Town of Apex that the current completion date per prior agreements for project U-5928, Apex Peakway at South Salem Street and the CSX railroad tracks, is insufficient to complete all construction activities and close out the project based on the current schedule. This has resulted in a pause in requesting Construction Authorization from Federal Highway Administration (FHWA). Therefore, Supplemental Agreement ID No. 12773 proposes to extend the completion date for all construction activities and project closeout to December 31, 2028. No additional funding is provided as part of this Supplemental Agreement. Based on current progress, Town of Apex anticipates starting construction by summer 2024 and completing construction by summer 2027. The agreement provides an additional year beyond end of construction to complete final review by Materials & Tests Unit, final invoicing, and close out the project.

Attachments

- CN3-A1: Supplemental Agreement - Agreement - North Carolina Department of Transportation (NCDOT) and Town of Apex - - Extend Completion Date for Apex Peakway Project
- CN3-A2: Original Agreement 06.15.2016 - Agreement - North Carolina Department of Transportation (NCDOT) and Town of Apex - - Extend Completion Date for Apex Peakway Project



NORTH CAROLINA
WAKE COUNTY

SUPPLEMENTAL AGREEMENT

DATE: 1/02/2024

NORTH CAROLINA DEPARTMENT OF
TRANSPORTATION

TIP #: U-5928

AND

WBS ELEMENTS: PE _____

ROW _____

TOWN OF APEX

CON 44822.3.1

OTHER FUNDING:

FEDERAL-AID #: STBGDA-0501(041)

CFDA #: 20.205

TOTAL SUPPLEMENTAL FUNDS [NCDOT PARTICIPATION] \$0

THIS AGREEMENT is made and entered into on the last date executed below, by and between the North Carolina Department of Transportation, an agency of the State of North Carolina, hereinafter referred to as the "Department", and the Town of Apex, hereinafter referred to as the "Municipality."

WITNESSETH:

WHEREAS, the Department and the Municipality on 8/22/2016, entered into a certain Project Agreement for the original scope: construction of a grade separated interchange for the Apex Peakway at South Salem Street and the CSX railroad tracks, programmed under Project U-5928; and,

WHEREAS, the Department and the Municipality on 5/10/2022, entered into a Supplemental Agreement for additional funding for the Project; and,

WHEREAS, the Municipality has requested additional time to complete the Project

NOW THEREFORE, the parties wish to supplement the aforementioned Agreement whereby the following provisions are amended:

4. PERIOD OF PERFORMANCE

The Municipality has until December 31, 2028, to complete all work outlined in the Agreement. Completion for this Agreement is defined as completion of all construction activities or implementation activities, acceptance of the project, and submission of a final reimbursement package to the Department.

If additional time is needed to complete the Project, then a supplemental agreement must be executed. The Department may allow up to three additional months for submission of final reimbursement package by the Municipality, without entering into a supplemental agreement. The Department and/or FHWA reserves the right to revoke the funds awarded if the Municipality is unable to meet milestone dates included herein.

OTHER PROVISIONS

The other party to this Agreement shall comply with Title VI of the Civil Rights Act of 1964 (Title 49 CFR, Subtitle A, Part 21) and related nondiscrimination authorities. Title VI and related authorities prohibit discrimination on the basis of race, color, national origin, disability, gender, and age in all programs or activities of any recipient of Federal assistance.

A copy or facsimile copy of the signature of any party shall be deemed an original with each fully executed copy of the Agreement as binding as an original, and the parties agree that this Agreement can be executed in counterparts, as duplicate originals, with facsimile signatures sufficient to evidence an agreement to be bound by the terms of the Agreement.

Except as hereinabove provided, the Agreements heretofore executed by the Department and the Municipality on 8/22/2016 and 5/10/2022, are ratified and affirmed as therein provided.

IN WITNESS WHEREOF, this Agreement has been executed, in duplicate, the day and year heretofore set out, on the part of the Department and the Municipality by authority duly given.

L.S. ATTEST:

TOWN OF APEX

BY: _____

BY: _____

TITLE: _____

TITLE: _____

DATE: _____

DATE: _____

NCGS 133-32 and Executive Order 24 prohibit the offer to, or acceptance by, any State Employee of any gift from anyone with a contract with the State, or from any person seeking to do business with the State. By execution of any response in this procurement, you attest, for your entire organization and its employees or agents, that you are not aware that any such gift has been offered, accepted, or promised by any employees of your organization.

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

(SEAL)

(FINANCE OFFICER)

Federal Tax Identification Number

Remittance Address:

Town of Apex

DEPARTMENT OF TRANSPORTATION

BY: _____

(CHIEF ENGINEER)

DATE: _____

APPROVED BY BOARD OF TRANSPORTATION ITEM O: _____ (Date)

NORTH CAROLINA
WAKE COUNTY

LOCALLY ADMINISTERED PROJECT - FEDERAL

DATE: 6/15/2016

NORTH CAROLINA DEPARTMENT OF
TRANSPORTATION

AND

TOWN OF APEX

TIP #: U-5928

WBS Elements: PE _____
ROW _____
CON 44822.3.1

OTHER FUNDING:

FEDERAL-AID NUMBER: STBG DA -
0501(041)

CFDA #: 20.205

Total Funds [NCDOT Participation] \$2,500,000

THIS AGREEMENT is made and entered into on the last date executed below, by and between the North Carolina Department of Transportation, an agency of the State of North Carolina, hereinafter referred to as the "Department" and the Town of Apex, hereinafter referred to as the "Municipality".

WITNESSETH:

WHEREAS, Section 1108 of the Moving Ahead for Progress in the 21st Century (MAP-21) allows for the allocation of STP-DA funds to be available for certain specified transportation activities; and,

WHEREAS, the Municipality has requested federal funding for Peakway South Salem Interchange, hereinafter referred to as the Project, in Wake County, North Carolina; and,

WHEREAS, subject to the availability of federal funds, the Municipality has been designated as a recipient to receive funds allocated to the Department by the Federal Highway Administration (FHWA) up to and not to exceed the maximum award amount of \$2,500,000 for the Project; and,

WHEREAS, the Department has agreed to administer the disbursement of said funds on behalf of FHWA to the Municipality for the Project in accordance with the Project scope of work and in accordance with the provisions set out in this Agreement; and,

WHEREAS, the Department has programmed funding in the approved Transportation Improvement Program for the Project; and,

WHEREAS, the governing board of the Municipality has agreed to participate in certain costs and to assume certain responsibilities in the manner and to the extent as hereinafter set out; and,

WHEREAS, this Agreement is made under the authority granted to the Department by the North Carolina General Assembly including, but not limited to, the following applicable legislation: General Statutes of North Carolina (NCGS) Section 136-66.1, Section 136-71.6, Section 160A-296 and 297, Section 136-18, Section 136-41.3 and Section 20-169, to participate in the planning, construction and/or implementation of the Project approved by the Board of Transportation.

NOW, THEREFORE, this Agreement states the promises and undertakings of each party as herein provided, and the parties do hereby covenant and agree, each with the other, as follows:

1. GENERAL PROVISIONS

FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT

All parties to this Agreement, including contractors, subcontractors, and subsequent workforces, associated with any work under the terms of this Agreement shall provide reports as required by the Federal Funding Accountability and Transparency Act (FFATA) for this Project.

AGREEMENT MODIFICATIONS

Any modification to scope, funding, responsibilities, or time frame will be agreed upon by all parties by means of a Supplemental Agreement.

LOCAL PUBLIC AGENCY TO PERFORM ALL WORK

The Municipality shall be responsible for administering all work performed and for certifying to the Department that all terms set forth in this Agreement are met and adhered to by the Municipality and/or its contractors and agents. The Department will provide technical oversight to guide the Municipality. The Department must approve any assignment or transfer of the responsibilities of the Municipality set forth in this Agreement to other parties or entities.

PERSON IN RESPONSIBLE CHARGE

The Municipality shall designate a person or persons to be in responsible charge of the Project, in accordance with Title 23 of the Code of Federal Regulations, Part 635.105. The person, or persons, shall be expected to:

- Administer governmental project activities, including those dealing with cost, time, adherence to contract requirements, construction quality and scope of Federal-aid projects;

- Maintain knowledge of day to day project operations and safety issues;
- Make or participate in decisions about changed conditions or scope changes that require change orders or supplemental agreements;
- Visit and review the project in accordance with the project scope and scale;
- Review financial processes, transactions and documentation to reduce the likelihood of fraud, waste, and abuse;
- Direct project staff, agency or consultant, to carry out project administration and contract oversight, including proper documentation; and
- Be aware of the qualifications, assignments and on-the-job performance of the agency and consultant staff at all stages of the project.

The person in responsible charge must be a full-time employee of the Municipality, but the duties may be split among several employees, if necessary.

COMPLIANCE WITH STATE/FEDERAL POLICY

The Municipality, and/or its agent, including all contractors, subcontractors, or sub-recipients shall comply with all applicable Federal and State policies and procedures, stated both in this Agreement and in the Department's guidelines and procedures, including the *Local Programs Management Handbook*.

FAILURE TO COMPLY - CONSEQUENCES

Failure on the part of the Municipality to comply with any of the provisions of this Agreement will be grounds for the Department to terminate participation in the costs of the Project and, if applicable, seek repayment of any reimbursed funds.

2. SCOPE OF PROJECT

The Project consists of construction of a grade separated interchange for the Apex Peakway at South Salem Street and the CSX railroad tracks.

The Department's funding participation in the Project shall be restricted to the following eligible items:

- Construction

as further set forth in this Agreement.

3. FUNDING

REIMBURSEMENT FOR ELIGIBLE ACTIVITIES

Subject to compliance by the Municipality with the provisions set forth in this Agreement and the availability of federal funds, the Department shall reimburse 50% of eligible expenses incurred by the Municipality up to a maximum amount of Two Million Five Hundred Thousand Dollars (\$2,500,000), as detailed below. The Municipality shall provide a minimum 50% non-federal match, or \$2,500,000, as per the FUNDING TABLE below. The sum of these dollar amounts represents the **Total Project Funding**. If the Funding provided through this Agreement changes, a supplemental agreement will be generated.

FUNDING TABLE

Fund Source	Federal Funds Amount	Reimbursement Rate	Non-Federal Match \$	Non-Federal Match Rate
STP-DA	\$2,500,000	50 %	\$2,500,000	50 %
Total Estimated Cost		\$5,000,000		

PROJECT COSTS

In addition to the required non-federal match, the Municipality shall be responsible for all costs that exceed the **Total Project Funding** (Federal Funds + Non-Federal Match). Both parties understand that the **Total Estimated Cost** is subject to change and therefore, the Municipality's liabilities are subject to change. This Agreement will not be modified if the **Total Estimated Cost** changes and the LGA's additional liability changes.

COST AND FISCAL LIABILITY TABLE

Description	Amount
Project Funding (Federal Funds)	\$2,500,000
Project Funding (Non-Federal Match)	\$2,500,000
Total Project Funding (Federal Funds + Non-Federal Match)	\$5,000,000
Total Estimated Cost of Project	\$7,100,000
Agency Additional Liability (Total Estimated Cost In Excess of Total Project Funding)	\$2,100,000

Agency Total Liability (Non-Federal Match + Estimated Additional Liability)	\$4,600,000
--	--------------------

WORK PERFORMED BY NCDOT

All work performed by the Department on this Project, including, but not limited to, reviews, inspections, and Project oversight, during any phase of the delivery of the Project, shall reduce the funding available to the Municipality under this Agreement. The Department will set aside ten percent (10%) of the total estimated cost, or \$500,000, to use towards the costs related to review and oversight of this Project, including, but not limited to review and approval of plans, environmental documents, contract proposals, engineering estimates, construction engineering and inspection oversight, and other items as needed to ensure the Municipality's appropriate compliance with state and federal regulations.

In the event that the Department does not utilize all the set-aside funding, then those remaining funds will be available for reimbursement to the Municipality at the above reimbursement rate. For all costs of work performed on the Project, whether incurred by the Municipality or by the Department, the Municipality shall provide the non-federal match. The Department will bill the Municipality for the non-federal match of any costs that the Department incurs on the Project and for any costs that exceed the Total Estimated Cost.

4. PERIOD OF PERFORMANCE

The Municipality has five (5) years to complete all work outlined in the Agreement from the date of authorization of Federal funds for the initial phase of work. Completion for this Agreement is defined as completion of all construction activities or implementation activities, acceptance of the project, and submission of a final reimbursement package to the Department.

If additional time is needed to complete the Project, then a supplemental agreement must be executed. The Department and/or FHWA reserves the right to revoke the funds awarded if the Municipality is unable to meet milestone dates included herein.

5. PRELIMINARY ENGINEERING AUTHORIZATION

If Preliminary Engineering is an eligible expense, then upon receipt of an executed agreement, the Department will authorize Preliminary Engineering funds and shall notify the Municipality, in writing, once funds have been authorized and can be expended. The Municipality shall not initiate any work, nor solicit for any professional services prior to receipt of written authorization

from the Department to proceed. Any work performed, or contracts executed, prior to receipt of written authorization to proceed will be ineligible for reimbursement.

6. PROFESSIONAL AND ENGINEERING SERVICES

The Municipality shall comply with the policies and procedures of this provision if the Municipality is requesting reimbursement for the Preliminary Engineering contract or the Construction Contract Administration / Construction Engineering and Inspection contract.

PROCUREMENT POLICY

When procuring professional services, the Municipality must adhere to Title 2 Code of Federal Regulations Part 200; Title 23 of the Code of Federal Regulations, Part 172; Title 40 United States Code, Chapter 11, Section 1101-1104; NCGS 143-64, Parts 31 and 32; and the Department's *Policies and Procedures for Major Professional or Specialized Services Contracts*. Said policies and standards are incorporated in this Agreement by reference at www.fhwa.dot.gov/legsregs/legislat.html and www.ncleg.net/gascripts/Statutes/Statutes.asp.

- The Municipality shall ensure that a qualified firm is obtained through an equitable selection process, and that prescribed work is properly accomplished in a timely manner and at a just and reasonable cost.
- All Professional Services Firms shall be pre-qualified by the Department in the Work Codes advertised.
- A pre-negotiation audit will be conducted by the Department's External Audit Branch. The Municipality shall not execute a consultant contract until the Department's review has been completed.

SMALL PROFESSIONAL AND ENGINEERING SERVICES FIRMS REQUIREMENTS

Any contract entered into with another party to perform work associated with the requirements of this Agreement shall contain appropriate provisions regarding the utilization of Small Professional Services Firms (SPSF). This policy conforms with the SPSF Guidelines as approved by the North Carolina Board of Transportation.

- The Municipality shall not advertise nor enter into a contract for services performed as part of this Agreement, unless the Department provides written approval of the advertisement or the contents of the contract.

- If the Municipality fails to comply with these requirements, the Department will withhold funding until these requirements are met.

WORK BY ENTITY

If the Design, Planning, Contract Administration and/or Construction Engineering and Inspection required for this project will be undertaken by the Municipality, and the Municipality requests reimbursement, then the Municipality must submit a request and supporting documentation to the Department for review and approval, prior to any work being initiated by the Municipality.

7. PLANNING / ENVIRONMENTAL DOCUMENTATION

The Municipality shall prepare the environmental and/or planning document, including any environmental permits, needed to construct the Project, in accordance with the National Environmental Policy Act (NEPA) and all other appropriate environmental laws and regulations. All work shall be performed in accordance with Departmental procedures and guidelines. Said documentation shall be submitted to the Department for review and approval.

- The Municipality shall be responsible for preparing and filing with all proper agencies the appropriate planning documents, including notices and applications required to apply for those permits necessary for the construction of the desired improvements. Copies of approved permits should be forwarded to the Department.
- The Municipality shall advertise and conduct any required public hearings.
- If any permit issued requires that action be taken to mitigate impacts associated with the improvements, the Municipality shall design and implement a mitigation plan. The Department will determine if any mitigation costs are eligible for reimbursement. The Municipality shall bear all costs associated with penalties for violations and claims due to delays.
- The Municipality shall be responsible for designing an erosion control plan if required by the North Carolina Sedimentation Pollution Control Act of 1973, NCGS 113A, Article 4, incorporated in this Agreement by reference at www.ncleg.net/gascripts/Statues/Statutes.asp and obtaining those permits required thereby in order to construct the Project. During the construction of the improvements, the Municipality, and its contractors and agents, shall be solely responsible for compliance with the provisions of said Act and the plan adopted in compliance therewith.

8. DESIGN

CONTENT OF PLAN PACKAGE

The Municipality, and/or its agent, shall prepare the Project's plans, specifications, and a professional estimate of costs (PS&E package), in accordance with the Department's guidelines and procedures, and applicable Federal and State standards. All work shall be submitted to the Department for review and approval. The plans shall be completed to show the design, site plans, landscaping, drainage, easements, and utility conflicts.

9. RIGHT OF WAY / UTILITY AUTHORIZATION

If the costs of right of way acquisition or utility relocation are an eligible expense, the Municipality shall submit a letter of request to the Department to authorize and set up right of way and/or utility funding. The acquisition for right of way, construction easements, and/or utility relocation may be undertaken only after the Municipality receives written authorization from the Department to proceed.

10. PROJECT LIMITS AND RIGHT OF WAY (ROW)

The Municipality shall comply with the policies and procedures of this provision regardless of whether the Municipality is requesting reimbursement for the Right of Way phase of the Project.

SPONSOR PROVIDES ROW

The Municipality, at no liability whatsoever to the Department, shall be responsible for providing and/or acquiring any required ROW and/or easements for the Project.

ROW GUIDANCE

The Municipality shall accomplish all ROW activities, including acquisition and relocation, in accordance with the following: Title 23 of the Code of Federal Regulations, Part 710, Subpart B and Title 49 of the Code of Federal Regulations, Part 24, [Uniform Act] incorporated by reference at www.fhwa.dot.gov/legregs/directives/fapgtoc.htm; NCGS, Chapter 133, Article 2, Sections 133-5 through 133-18, Relocation Assistance, incorporated by reference at www.ncleg.net/gascripts/Statutes/Statutes.asp; and the North Carolina Department of Transportation Right of Way Manual.

APPRAISAL

The Municipality shall submit the appraisal to the Department for review and approval in accordance with Departmental policies and procedures.

CLEARANCE OF PROJECT LIMITS / ROW

The Municipality shall remove and dispose of all obstructions and encroachments of any kind or character (including hazardous and contaminated materials) from said ROW, with the exception that the Municipality shall secure an encroachment agreement for any utilities (which shall remain or are) to be installed within the Department's ROW, or follow other applicable approval process, for utilities within the Municipality's ROW. The Municipality shall indemnify and save harmless the Department, Federal Highway Administration, and the State of North Carolina, from any and all damages and claims for damages that might arise on account of said right of way acquisition, drainage, and construction easements for the construction of said Project. The Municipality shall be solely responsible for any damages caused by the existence of said material now and at any time in the future and will save the Department harmless from any legal actions arising as a result of this contaminated and/or hazardous material and shall provide the Department with documentation proving the proper disposal of said material.

RELOCATION ASSISTANCE

The Municipality shall provide relocation assistance services and payments for families, businesses, and non-profit organizations being displaced by the Project in full accordance with the Federal relocation requirements of Title 49 Code of Federal Regulations, Part 24 [Uniform Act], as amended. Relocation assistance services and payments may be accomplished by contract with any other municipal corporation, or State or Federal agency, rendering such services upon approval by the Department and Federal Highway Administration.

11. UTILITIES

The Municipality, and/or its agent, at no liability to the Department, shall relocate, adjust, relay, change or repair all utilities in conflict with the Project, regardless of ownership. All utility work shall be performed in a manner satisfactory to and in conformance with State and Federal rules and regulations, prior to Municipality beginning construction of the project. This Agreement does not modify or supersede any existing Utility Encroachment Agreements that may be in place.

12. RIGHT OF WAY CERTIFICATION

The Municipality, upon acquisition of all right of way/property necessary for the Project, shall provide the Department all required documentation (deeds/leases/easement/plans) to secure right of way certification. Certification is only issued after all ROW is in public ownership or property is publicly accessible by a legal document and utilities in conflict with the project are relocated, or a plan for their relocation during construction has been approved.

13. CONTRACT PROPOSAL AND ENGINEER'S ESTIMATE

CONTRACT PROPOSAL

The Municipality shall develop a contract proposal that will be advertised for bids. The proposal shall comply with NCDOT Specifications and Standard Drawings as applicable to the Project. The proposal shall also contain provisions, as applicable, per Title 23 Code of Federal Regulations 633 and 635 to include, but not be limited to: FHWA 1273, Buy America, Davis-Bacon Wage Rates, Non-discrimination, DBE Assurances, Contractor Certification regarding suspension and debarment, and other provisions as required by the Department.

ENGINEER'S ESTIMATE

The Municipality shall develop an itemized engineer's estimate to show items referenced to the NCDOT Standard Specifications, if applicable, along with units and unit price. The engineer's estimate will be used as the basis for comparing bids received.

14. CONSTRUCTION AUTHORIZATION

The Municipality shall submit the required environmental and/or planning document, ROW certification, final construction plans, total contract proposal, and an estimate of Project costs (final PS&E package) to the Department for review and approval.

- After approval of all documentation, the Department will request construction authorization from the Federal Highway Administration.
- The Municipality shall not advertise for bids prior to receiving written construction authorization from the Department.

15. CONTRACTOR PROCUREMENT

ADVERTISE FOR BIDS

Upon receipt of written construction authorization from the Department, the Municipality may advertise the Project. The Municipality shall follow applicable Federal and/or State procedures pertaining to the advertisement of the Project, bid opening, and award of the contract, according to Title 2 of the Code of Federal Regulations, Part 200 and Title 23 of the Code of Federal Regulations, Part 633 and Part 635, incorporated by reference at www.fhwa.dot.gov/legsregs/directives/fapgtoc.htm; and NCGS, Chapter 143, Article 8 (Public Contracts), incorporated by reference at www.ncleg.net/gascripts/Statutes/Statutes.asp.

CONSTRUCTION CONTRACTOR REQUIREMENTS

All Contractors submitting bids on the project shall be pre-qualified by the Department. All proposed subcontractors must be pre-qualified before construction work begins. Any subcontractors who are proposed to meet the Disadvantaged Business Enterprise goal must be certified by the Department.

CONSTRUCTION SUBCONTRACTOR REQUIREMENTS

Any contract entered into with another party to perform work associated with the requirements of this Agreement shall contain appropriate provisions regarding the utilization of Disadvantaged Business Enterprises (DBEs), or as required and defined in Title 49 of the Code of Federal Regulations, Part 26 and the North Carolina Administrative Code. These provisions are incorporated into this Agreement by reference <https://connect.ncdot.gov/projects/Contracts/Pages/LGA-Projects.aspx>.

- The Municipality shall not advertise nor enter into a contract for services performed as part of this Agreement, unless the Department provides written approval of the advertisement or the contents of the contract.
- If the Municipality fails to comply with these requirements, the Department will withhold funding until these requirements are met.

AWARDING CONTRACT

After the advertisement of the Project for construction bids, the Municipality shall request concurrence from the Department to award the construction contract by submitting a letter along

with tabulated bids received depicting Disadvantaged Business Enterprises (DBE) goals, and a resolution recommending award of the Project to the lowest responsible, responsive bidder. The Department will review the submitted information and provide written approval to the Municipality prior to the contract being awarded by the Municipality.

DELAY IN PROCUREMENT

In the event the Project has not been let to contract within six (6) months after receiving construction authorization from the Department, the Municipality shall be responsible for documenting to the Department justification for project delay and that the Project remains in compliance with the terms of this Agreement, the approved plans and specifications, and current codes.

FORCE ACCOUNT

Force account work is only allowed when there is a finding of cost effectiveness for the work to be performed by some method other than a contract awarded by a competitive bidding process, or there is an emergency. Written approval from the Department is required prior to the use of force account by the Municipality. Federal Highway Administration regulations governing Force Account are contained in Title 23 Code of Federal Regulations, Part 635.201, Subpart B; said policy being incorporated in this Agreement by reference www.fhwa.dot.gov/legregs/directives/cfr23toc.htm. North Carolina General Statutes governing the use of Force Account, Chapter 143, Article 8 (Public Contracts) can be found at www.ncleg.net/gascripts/Statutes/Statutes.asp.

16. CONSTRUCTION

The Municipality, and/or its agents shall construct the Project in accordance with the plans and specifications of the Project as filed with, and approved by, the Department. During the construction of the Project, the procedures set out below shall be followed:

CONSTRUCTION CONTRACT ADMINISTRATION

The Municipality shall comply with the NCDOT Construction Manual as referenced at <http://www.ncdot.org/doh/operations/dp%5Fchief%5Feng/constructionunit/formsmanuals/construction/>, which outlines the procedures for records and reports that must be adhered to in order to obtain uniformity of contract administration and documentation. This includes, but is not limited to, inspection reports, material test reports, materials certification, documentation of quantities,

project diaries, and pay records. The Municipality, and/or its agent, shall perform the construction engineering, sampling and testing required during construction of the Project, in accordance with Departmental procedures, including the Department's Guide for Process Control and Acceptance Sampling and Testing. The Municipality shall document that said compliance was accomplished in accordance with State and Federal procedures, guidelines, standards and specifications.

RETAINAGE

The Municipality shall not retain any portion of a payment due the contractor.

SIGNAGE

The Municipality shall provide and maintain adequate signage and other warning devices for the protection of the public in accordance with the approved traffic control plans for the Project and the current edition of the Manual on Uniform Traffic Control Devices (MUTCD) for Streets and Highways, or any subsequent revision of the same, published by the Federal Highway Administration and effective at the time of award of the contract.

SITE LAYOUT

The Municipality shall be responsible for ensuring that all site layout, construction work, and Project documentation are in compliance with applicable city, state and federal permits, guidelines, and regulations, including American Association of State Highway and Transportation Officials (AASHTO) guidelines and Americans with Disabilities Act (ADA) Standards for Accessible Design (www.usdoj.gov/crt/ada/stdspdf.htm).

RIGHT TO INSPECT

The Department and representatives of the Federal Highway Administration shall have the right to inspect, sample or test, and approve or reject, any portion of the work being performed by the Municipality or the Municipality's contractor to ensure compliance with the provisions of this Agreement. Prior to any payment by the Department, any deficiencies inconsistent with approved plans and specifications found during an inspection must be corrected.

CONTRACTOR COMPLIANCE

The Municipality will be responsible for ensuring that the contractor complies with all of the terms of the contract and any instructions issued by the Department or FHWA as a result of any review or inspection made by said representatives.

CHANGE ORDERS

If any changes in the Project plans are necessary, the Department must approve such changes prior to the work being performed.

SHOP DRAWINGS

Shop Drawings shall be submitted in accordance with the approved plans and specifications and may require review by the Designer.

17. CLOSE-OUT

Upon completion of the Project, the Municipality shall be responsible for the following:

FINAL INSPECTION

The Municipality shall arrange for a final inspection by the Department. Any deficiencies determined during the final field inspection must be corrected prior to final payment being made by the Department to the Municipality. Additional inspection by other entities may be necessary in accordance with the Department's guidelines and procedures. The Municipality shall provide the Department with written evidence of approval of completed project prior to requesting final reimbursement.

FINAL PROJECT CERTIFICATION

The Municipality will provide a certification to the Department that all work performed for this Project is in accordance with all applicable standards, guidelines, and regulations.

18. MAINTENANCE

The Municipality, at no expense or liability to the Department, shall assume all maintenance responsibilities for the Peakway South Salem Interchange, or as required by an executed encroachment agreement.

19. REIMBURSEMENT

SCOPE OF REIMBURSEMENT

Activities eligible for funding reimbursement for this Project shall include:

- Construction

REIMBURSEMENT GUIDANCE

The Municipality shall adhere to applicable administrative requirements of Title 2 Code of Federal Regulations, Part 200 (www.fhwa.dot.gov/legsregs/directives/fapgtoc.htm) "Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards." Reimbursement to the Municipality shall be subject to the policies and procedures contained in Title 23 Code of Federal Regulations, Part 140 and Part 172, which is being incorporated into this Agreement by reference at www.fhwa.dot.gov/legsregs/directives/fapgtoc.htm. Reimbursement to the Municipality shall be subject to the guidance contained in Title 2 Code of Federal Regulations, Part 170 (<http://edocket.access.gpo.gov/2010/pdf/2010-22705.pdf>) and Office of Management and Budget (OMB) "Federal Funding Accountability and Transparency Act" (FFATA). Said reimbursement shall also be subject to the Department being reimbursed by the Federal Highway Administration and subject to compliance by the Municipality with all applicable federal policy and procedures.

REIMBURSEMENT LIMITS

▪ WORK PERFORMED BEFORE NOTIFICATION

Any costs incurred by the Municipality prior to written notification by the Department to proceed with the work shall not be eligible for reimbursement.

▪ NO REIMBURSEMENT IN EXCESS OF APPROVED FUNDING

At no time shall the Department reimburse the Municipality costs that exceed the total funding per this Agreement and any Supplemental Agreements.

▪ UNSUBSTANTIATED COSTS

The Municipality agrees that it shall bear all costs for which it is unable to substantiate actual costs or any costs that have been deemed unallowable by the Federal Highway Administration and/or the Department's Financial Management Division.

- **WORK PERFORMED BY NCDOT**

All work performed by the Department on this Project, including, but not limited to, reviews, inspections, and Project oversight, shall reduce the maximum award amount of \$2,500,000 available to the Municipality under this Agreement. The Department will bill the Municipality for the non-federal match of any costs that the Department incurs on the Project and for any costs that exceed the Total Estimated Cost.

- **CONSTRUCTION ADMINISTRATION**

Reimbursement for construction contract administration will be made as governed by Departmental policy that limits reimbursement for construction contract administration to no more than fifteen (15%) percent of the actual construction contract of the Project. These costs will also include any cost overruns and charges to the Project by the Department during the Construction Phase.

- **CONSTRUCTION CONTRACT UNIT PRICES**

Reimbursement for construction contract work will be made on the basis of contract unit prices in the construction contract and any approved change orders.

- **RIGHT OF WAY**

Reimbursement will be limited to the value as approved by the Department. Eligible costs for reimbursement of Right of Way Acquisition include: realty appraisals, surveys, closing costs, and the agreed upon just compensation for the property, at the reimbursement rate as shown in the FUNDING TABLE.

- **FORCE ACCOUNT**

Invoices for force account work shall show a summary of labor, labor additives, equipment, materials and other qualifying costs in conformance with the standards for allowable costs set forth in 2 CFR 200 "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards." Reimbursement shall be based on actual eligible costs incurred with the exception of equipment owned by the Municipality or its Project partners. Reimbursement rates for equipment owned by the Municipality or its Project partners cannot exceed the Department's rates in effect for the time period in which the work is performed.

BILLING THE DEPARTMENT

▪ PROCEDURE

The Municipality may bill the Department for eligible Project costs in accordance with the Department's guidelines and procedures. Proper supporting documentation shall accompany each invoice as may be required by the Department. By submittal of each invoice, the Municipality certifies that it has adhered to all applicable state and federal laws and regulations as set forth in this Agreement.

Along with each invoice, the Municipality is responsible for submitting the FFATA Subrecipient Information Form, which is available at <https://connect.ncdot.gov/municipalities/Funding/Pages/default.aspx>.

▪ INTERNAL APPROVALS

Reimbursement to the Municipality shall be made upon approval of the invoice by the Department's Financial Management Division.

▪ TIMELY SUBMITTAL OF INVOICES

The Municipality may invoice the Department monthly for work accomplished, but no less than once every six (6) months to keep the Project funds active and available. If the Municipality is unable to invoice the Department, then they must provide an explanation. Failure to submit invoices or explanation may result in de-obligation of funds.

▪ FINAL INVOICE

All invoices associated with the Project must be submitted within six (6) months of the completion of construction and acceptance of the Project to be eligible for reimbursement by the Department. Any invoices submitted after this time will not be eligible for reimbursement.

20. REPORTING REQUIREMENTS AND RECORDS RETENTION

PROJECT EVALUATION REPORTS

The Municipality is responsible for submitting quarterly Project evaluation reports, in accordance with the Department's guidelines and procedures, that detail the progress achieved to date for the Project.

PROJECT RECORDS

The Municipality and its agents shall maintain all books, documents, papers, accounting records, Project records and such other evidence as may be appropriate to substantiate costs incurred under this Agreement. Further, the Municipality shall make such materials available at its office and shall require its agent to make such materials available at its office at all reasonable times during the contract period, and for five (5) years from the date of payment of the final voucher by the Federal Highway Administration, for inspection and audit by the Department's Financial Management Section, the Federal Highway Administration, or any authorized representatives of the Federal Government.

21. OTHER PROVISIONS

REFERENCES

It will be the responsibility of the Municipality to follow the current and/or most recent edition of references, websites, specifications, standards, guidelines, recommendations, regulations and/or general statutes, as stated in this Agreement.

INDEMNIFICATION OF DEPARTMENT

The Municipality agrees to indemnify and hold harmless the Department, FHWA and the State of North Carolina, to the extent allowed by law, for any and all claim for payment, damages and/or liabilities of any nature, asserted against the Department in connection with this Project. The Department shall not be responsible for any damages or claims, which may be initiated by third parties.

DEBARMENT POLICY

It is the policy of the Department not to enter into any agreement with parties that have been debarred by any government agency (Federal or State). By execution of this agreement, the Municipality certifies that neither it nor its agents or contractors are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal or State Agency or Department and that it will not enter into agreements with any entity that is debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction.

TITLE VI - CIVIL RIGHTS ACT OF 1964

The Municipality shall comply with Title VI of the Civil Rights Act of 1964, (Title 49 CFR, Subtitle A, Part 21). Title VI prohibits discrimination on the basis of race, color, national origin, disability, gender, and age in all programs or activities of any recipient of Federal assistance.

OTHER AGREEMENTS

The Municipality is solely responsible for all agreements, contracts, and work orders entered into or issued by the Municipality for this Project. The Department is not responsible for any expenses or obligations incurred for the Project except those specifically eligible for STP-DA funds and obligations as approved by the Department under the terms of this Agreement.

AVAILABILITY OF FUNDS

All terms and conditions of this Agreement are dependent upon, and, subject to the allocation of funds for the purpose set forth in the Agreement and the Agreement shall automatically terminate if funds cease to be available.

IMPROPER USE OF FUNDS

Where either the Department or the FHWA determines that the funds paid to the Municipality for this Project are not used in accordance with the terms of this Agreement, the Department will bill the Municipality.

TERMINATION OF PROJECT

If the Municipality decides to terminate the Project without the concurrence of the Department, the Municipality shall reimburse the Department one hundred percent (100%) of all costs expended by the Department and associated with the Project.

AUDITS

In accordance with OMB Circular A-133, "Audits of States, Local Governments and Non-Profit Organizations" (http://www.whitehouse.gov/omb/circulars_default) and the Federal Single Audit Act Amendments of 1996, the Municipality shall arrange for an annual independent financial and compliance audit of its fiscal operations. The Municipality shall furnish the Department with a copy of the annual independent audit report within thirty (30) days of completion of the report, but not later than nine (9) months after the Municipality's fiscal year ends.

REIMBURSEMENT BY MUNICIPALITY

For all monies due the Department as referenced in this Agreement, reimbursement shall be made by the Municipality to the Department within sixty (60) days of receiving an invoice. A late payment penalty and interest shall be charged on any unpaid balance due in accordance with NCGS 147-86.23.

USE OF POWELL BILL FUNDS

If the other party to this agreement is a Municipality and fails for any reason to reimburse the Department in accordance with the provisions for payment hereinabove provided, NCGS 136-41.3 authorizes the Department to withhold so much of the Municipality's share of funds allocated to Municipality by NCGS 136-41.1, until such time as the Department has received payment in full.

ENTIRE AGREEMENT

This Agreement contains the entire agreement between the parties and there are no understandings or agreements, verbal or otherwise, regarding this Agreement except as expressly set forth herein.

AUTHORIZATION TO EXECUTE

The parties hereby acknowledge that the individual executing the Agreement on their behalf is authorized to execute this Agreement on their behalf and to bind the respective entities to the terms contained herein and that he has read this Agreement, conferred with his attorney, and fully understands its contents.

FACSIMILE SIGNATURES

A copy or facsimile copy of the signature of any party shall be deemed an original with each fully executed copy of the Agreement as binding as an original, and the parties agree that this Agreement can be executed in counterparts, as duplicate originals, with facsimile signatures sufficient to evidence an agreement to be bound by the terms of the Agreement.

GIFT BAN

By Executive Order 24, issued by Governor Perdue, and NCGS 133-32, it is unlawful for any vendor or contractor (i.e. architect, bidder, contractor, construction manager, design professional,

engineer, landlord, offeror, seller, subcontractor, supplier, or vendor), to make gifts or to give favors to any State employee of the Governor's Cabinet Agencies (i.e. Administration, Commerce, Correction, Crime Control and Public Safety, Cultural Resources, Environment and Natural Resources, Health and Human Services, Juvenile Justice and Delinquency Prevention, Revenue, Transportation, and the Office of the Governor).

IRAN DIVESTMENT ACT

Pursuant to G.S. 147-86.59, any person identified as engaging in investment activities in Iran, determined by appearing on the Final Divestment List created by the State Treasurer pursuant to G.S. 147-86.58, is ineligible to contract with the State of North Carolina or any political subdivision of the State. The Iran Divestment Act of 2015, G.S. 147-86.55 et seq. requires that each vendor, prior to contracting with the State, certify that the contracting party meets the requirements of the Iran Disinvestment Act. The State Treasurer's Final Divestment List can be found on the State Treasurer's website at the address www.nctreasurer.com/Iran and will be updated every 180 days.

By execution of this Agreement each Party certifies that neither it nor its Agents or Contactors/Subcontractors 1) are on the Final Divestment List of entities that the State Treasurer has determined engages in investment activities in Iran; 2) shall not utilize on any contract with the State agency any subcontractor that is identified on the Final Divestment List; and 3) that the undersigned are authorized by the Parties to make this Certification.

During the term of this Agreement, should the Parties receive information that a person is in violation of the Act as stated above, the Department will offer the person an opportunity to respond and the Department will take action as appropriate and provided for by law, rule, or contract. Should this Act be voided by NC General Statute, this Agreement will remain valid; however this certification will no longer be required.

22. SUNSET PROVISION

All terms and conditions of this Agreement are dependent upon, and subject to, the allocation of funds for the purpose set forth in the Agreement and the Agreement shall automatically terminate if funds cease to be available.

IT IS UNDERSTOOD AND AGREED that the approval of the Project by the Department is subject to the conditions of this Agreement, and that no expenditures of funds on the part of the Department will be made until the terms of this Agreement have been complied with on the part of the Municipality.

IN WITNESS WHEREOF, this Agreement has been executed, in duplicate, the day and year heretofore set out, on the part of the Department and the Municipality by authority duly given.

L.S. ATTEST:

TOWN OF APEX

BY: *Donna Hosen*

BY: *Donna Hosen*

TITLE: TOWN CLERK

TITLE: Town Manager

DATE: August 3 2016

NCGS 133-32 and Executive Order 24 prohibit the offer to, or acceptance by, any State Employee of any gift from anyone with a contract with the State, or from any person seeking to do business with the State. By execution of any response in this procurement, you attest, for your entire organization and its employees or agents, that you are not aware that any such gift has been offered, accepted, or promised by any employees of your organization.

Approved by the Town of Apex as attested to by the signature of *DONNA HOSEN*
Clerk of the TOWN OF APEX (governing body) on 8-3-16 (Date)



This Agreement has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

T. Vance Hall
(FINANCE OFFICER)

Federal Tax Identification Number

56-6001166

Town of Apex

Remittance Address:

P.O. Box 250
Apex, NC 27502

DEPARTMENT OF TRANSPORTATION

BY: *Jeff Helt*
(CHIEF ENGINEER)

DATE: 8/22/16

APPROVED BY BOARD OF TRANSPORTATION ITEM O: 8-4-2016 (Date)

| Agenda Item | cover sheet

for consideration by the Apex Town Council

Item Type: CONSENT AGENDA

Meeting Date: January 9, 2024

Item Details

Presenter(s): Allen Coleman, Town Clerk

Department(s): Town Clerk's Office

Requested Motion

Motion to adopt a Resolution Directing the Town Clerk to Investigate Petition Received, to accept the Certificate of Sufficiency by the Town Clerk, and to adopt a Resolution Setting the Date of a Public Hearing for January 23, 2024, on the Question of Annexation - Apex Town Council's intent to annex 5.367 acres, located at The Preserve on Holt, Annexation No. 745 into the Town Corporate limits.

Approval Recommended?

Yes

Item Details

The Town Clerk certifies to the investigation of said annexation. Adoption of the Resolution authorizes the Town Clerk to advertise said public hearing by electronic means and on the Town of Apex's website.

Attachments

- CN4-A1: Resolution Directing the Town Clerk to Investigate Petition - Annexation No. 745 - The Preserve on Holt - 5.367 acres
- CN4-A2: Certificate of Sufficiency by the Town Clerk - Annexation No. 745 - The Preserve on Holt - 5.367 acres
- CN4-A3: Resolution Setting Date of Public Hearing - Annexation No. 745 - The Preserve on Holt - 5.367 acres
- CN4-A4: Legal Description - Annexation No. 745 - The Preserve on Holt - 5.367 acres
- CN4-A5: Aerial Map - Annexation No. 745 - The Preserve on Holt - 5.367 acres
- CN4-A6: Plat Map - Annexation No. 745 - The Preserve on Holt - 5.367 acres
- CN4-A7: Annexation Petition - Annexation No. 745 - The Preserve on Holt - 5.367 acres





RESOLUTION DIRECTING THE TOWN CLERK
TO INVESTIGATE PETITION RECEIVED UNDER G.S. § 160A-31

Annexation Petition #745
1305 Holt Road – 5.367 acres

WHEREAS, G.S. § 160A-31 provides that the sufficiency of the petition shall be investigated by the Town Clerk before further annexation proceedings may take place; and

WHEREAS, the Town Council of the Town of Apex deems it advisable to proceed in response to this request for annexation;

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Apex, that the Town Clerk is hereby directed to investigate the sufficiency of the above-described petition and to certify to the Town Council the result of his investigation.

This the 9th day of January, 2024.

Jacques K. Gilbert
Mayor

ATTEST:

Allen L. Coleman, CMC, NCCCC
Town Clerk



CERTIFICATE OF SUFFICIENCY BY THE TOWN CLERK

Annexation Petition#745
1305 Holt Road – 5.367 acres

To: The Town Council of the Town of Apex, North Carolina

I, Allen L. Coleman, Town Clerk, do hereby certify that I have investigated the annexation petition attached hereto, and have found, as a fact, that said petition is signed by all owners of real property lying in the area described therein, in accordance with G.S. § 160A-31, as amended.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Town of Apex, North Carolina this 9th day of January, 2024.

Allen L. Coleman, CMC, NCCCC
Town Clerk

(Seal)



RESOLUTION SETTING DATE OF PUBLIC HEARING
ON THE QUESTION OF ANNEXATION PURSUANT TO G.S. § 160A-31 AS AMENDED

Annexation Petition #745
1305 Holt Road – 5.367 acres

WHEREAS, a petition requesting annexation of the area described herein has been received; and

WHEREAS, the Town Council of Apex, North Carolina has by Resolution directed the Town Clerk to investigate the sufficiency thereof; and

WHEREAS, Certification by the Town Clerk as to the sufficiency of said petition has been made;

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Apex, North Carolina that:

Section 1. A public hearing on the question of annexation of the area described herein will be held at the Apex Town Hall at 6 o'clock p.m. on the 23rd day of January, 2024.

Section 2. The area proposed for annexation is described as attached.

Section 3. Notice of said public hearing shall be published on the Town of Apex Website, www.apexnc.org, Public Notice, at least ten (10) days prior to the date of said public hearing.

This the 9th day of January, 2024.

Jacques K. Gilbert, Mayor

ATTEST:

Allen L. Coleman, Town Clerk

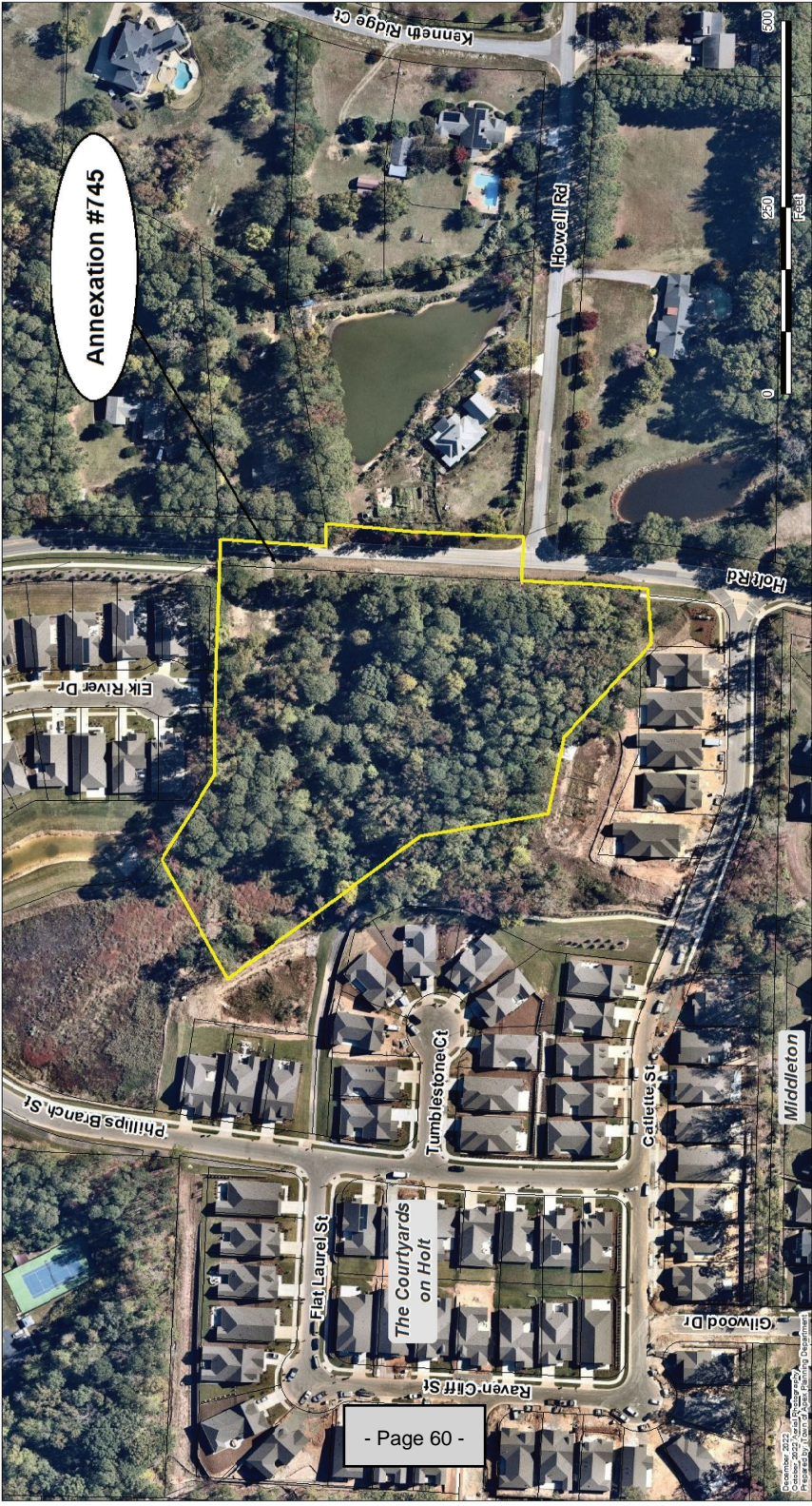
Attachment: Legal Description

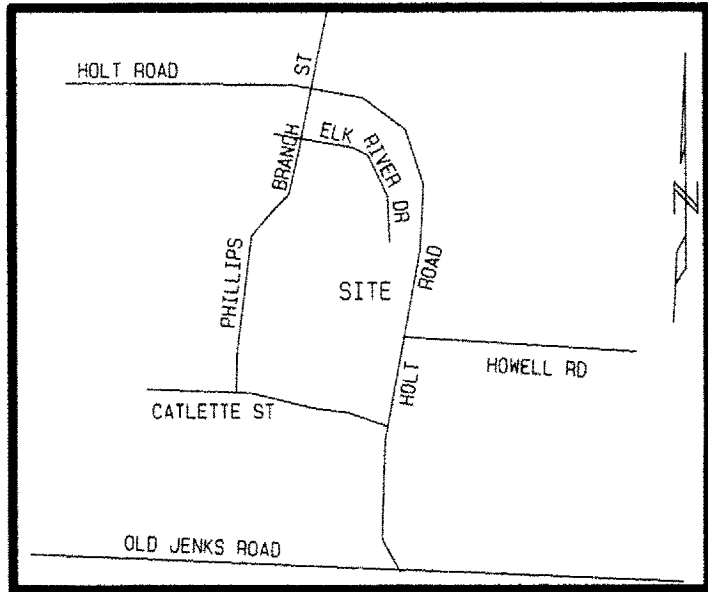
1305 Holt Road

Annexation

Town of Apex

Beginning at a point, said point being the point and place of beginning and being an iron pipe found having NC Grid Coordinates of N 732793.0113 E 2043233.3030 and being N 88° 10' 25" E 3.95' from and iron pipe set in the right-of-way of Holt Road (State Road 1612), thence with said point of beginning S 86° 27' 23" W 69.61' to an iron pipe found, thence N 47° 29' 25" W 174.02' to an iron pipe found, thence N 79° 23' 17" W 104.24' to an iron pipe set, thence N 10° 32' 20" W 175.06' to an iron pipe found, thence N 37° 12' 27" W 321.25' to an iron pipe set, thence N 60° 36' 35" E 183.83' to an iron pipe found, thence S 57° 52' 21" E 134.27' to an iron pipe found, thence S 89° 48' 52" E 288.81' to an iron pipe set, thence S 70° 52' 55" E 31.10' to a point in the centerline of Holt Road (State Road 1612), thence with said centerline S 03° 19' 47" W 153.69' to a point in said centerline, thence N 80° 58' 12" E 30.71' to an iron pipe found in the right-of-way of said road and being a common property corner of PIN 0743-33-4370 & PIN 0743-33-4069 thence with said right-of-way S 03° 20' 06" W 254.85' to point in the right of way of Holt Road and Howell Road, thence N 85° 45' 06" W 58.93' to a point, thence S 03° 11' 34" W 169.60' to an iron pipe set in the right-of-way of Holt Road, thence S 88° 10' 25" W 3.95' to the point and place of beginning containing 5.367 acres or 223748 square feet as computed by the coordinate method.





VICINITY MAP NOT TO SCALE

I, LEONARD H. SULLIVAN, JR., CERTIFY THAT THIS PLAT WAS DRAWN UNDER MY SUPERVISION FROM AN ACTUAL SURVEY MADE UNDER MY SUPERVISION USING REFERENCES SHOWN HEREON; THAT THE BOUNDARIES NOT SURVEYED ARE SHOWN AS BROKEN LINES PLOTTED FROM INFORMATION SHOWN HEREON; THAT THE RATIO OF PRECISION AS CALCULATED IS 1: 10000 +; THAT THIS PLAT WAS PREPARED IN ACCORDANCE WITH G. S. 47-30 AS AMENDED, WITNESS MY ORIGINAL SIGNATURE, LICENSE NUMBER, AND SEAL THIS 20th DAY OF NOVEMBER, A.D., 2022

SURVEYOR LEONARD H. SULLIVAN JR.
L-2821

LICENSE
NUMBER

ALSO, I CERTIFY:

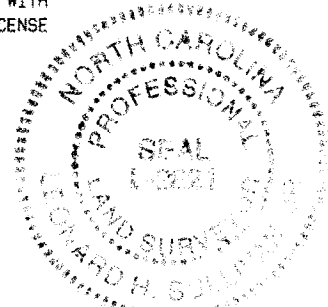
- THAT THE SURVEY CREATES A SUBDIVISION OF LAND WITHIN THE AREA OF A COUNTY OR MUNICIPALITY THAT HAS AN ORDINANCE THAT REGULATES PARCELS OF LAND
- THAT THE SURVEY IS LOCATED IN A PORTION OF A COUNTY OR MUNICIPALITY THAT IS UNREGULATED AS TO AN ORDINANCE THAT REGULATES PARCELS OF LAND
- ANY ONE OF THE FOLLOWING:
 - THAT THE SURVEY IS OF AN EXISTING PARCEL OR PARCELS OF LAND AND DOES NOT CREATE A NEW STREET OR CHANGE AN EXISTING STREET.
 - THAT THE SURVEY IS OF AN EXISTING BUILDING OR OTHER STRUCTURE, OR NATURAL FEATURE, SUCH AS A WATERCOURSE.
 - THAT THE SURVEY IS A CONTROL SURVEY.
 - THAT THE SURVEY IS OF ANOTHER CATEGORY, SUCH AS THE RECOMBINATION OF EXISTING PARCELS, A COURT-ORDERED SURVEY, OR OTHER EXCEPTION TO THE DEFINITION OF SUBDIVISION.
 - THAT THE INFORMATION AVAILABLE TO THE SURVEYOR IS SUCH THAT THE SURVEYOR IS UNABLE TO MAKE A DETERMINATION TO THE BEST OF THE SURVEYOR'S PROFESSIONAL ABILITY AS TO PROVISIONS CONTAINED IN (A) THROUGH (D) ABOVE.

ANNEXION # _____
I, ALLEN COLEMAN, CMC, NCCCC, TOWN CLERK, APEX, NORTH CAROLINA CERTIFY THIS A TRUE AND EXACT MAP OF ANNEXATION ADOPTED THE _____ DAY OF _____ 20____ BY THE TOWN COUNCIL. I SET MY HAND AND SEAL OF THE TOWN OF APEX.

DAY/MONTH/YEAR

ALLEN COLEMAN, CMC, NCCCC, TOWN CLERK

- NOTES:
- AREAS COMPUTED BY COORDINATE METHOD.
 - ALL DISTANCES ARE HORIZONTAL GROUND DISTANCES MEASURED IN U.S. SURVEY FEET.
 - THIS SURVEY DONE WITHOUT THE BENEFIT OF A TITLE SEARCH AND IS SUBJECT TO ANY FACTS WHICH MAY BE DISCLOSED BY A FULL AND ACCURATE TITLE SEARCH.
 - NOT ALL SUBSURFACE IMPROVEMENTS TO LOT SHOWN HEREON.
 - ANY POINT NOTED AS "CONTROL CORNER" SHALL NOT BE DEEMED ANY MORE OR LESS RELIABLE THAN ANY OTHER POINT SHOWN HEREON.
 - NC GRID COORDINATES BY GPS OBSERVATION, REF NAD 83 (2011)
 - NO NCOS MONUMENT WAS FOUND WITHIN 2000' OF SITE.



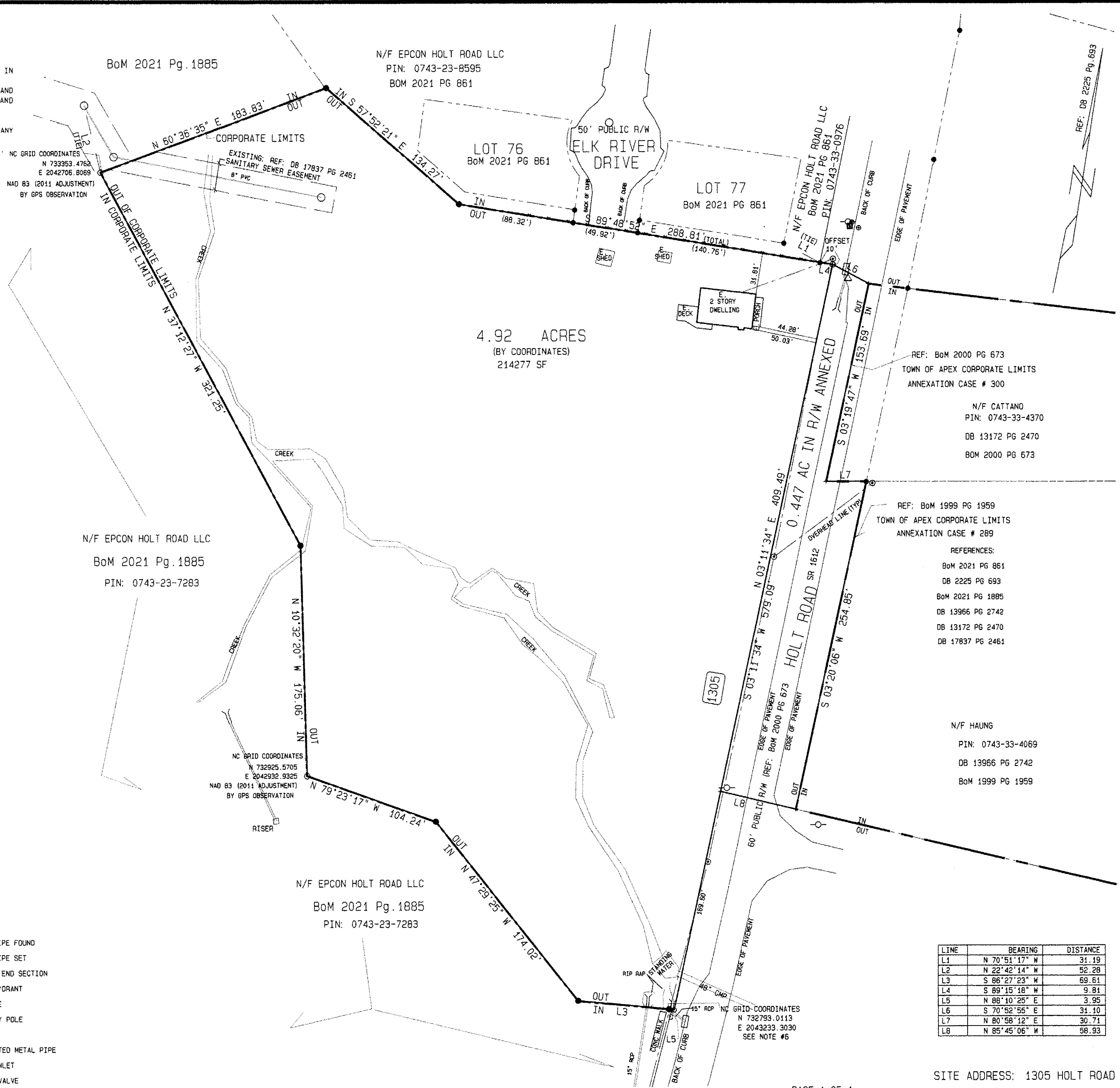
LEGEND:

- IRON PIPE FOUND
- IRON PIPE SET
- FLARED END SECTION
- FIRE HYDRANT
- MANHOLE
- UTILITY POLE
- FENCE
- CMP CORRUGATED METAL PIPE
- CURB INLET
- ⊙ WATER VALVE
- RCP REINFORCED CONCRETE PIPE
- △ MASON NAIL SET
- ⊙ CONCRETE MONUMENT FOUND (BO)
- ### INDICATES STREET ADDRESS
- E EXISTING
- IN INSIDE CORPORATE LIMITS OF APEX
- OUT OUTSIDE CORPORATE LIMITS OF APEX
- + COMPUTED POINT

SITE DATA TABLE:

AREA IN R/W TO BE ANNEXED: 0.447 AC
AREA OF PIN 0743-33-1106 TO BE ANNEXED: 4.92 AC
TOTAL AREA TO BE ANNEXED: 5.367 AC

RECORDED IN WAKE COUNTY REGISTRY OF DEEDS BOOK OF MAPS 20222 PAGE _____



PAGE 1 OF 1

SITE ADDRESS: 1305 HOLT ROAD

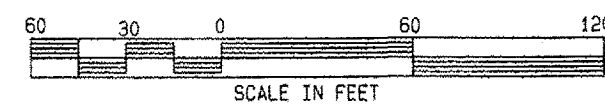
SULLIVAN SURVEYING

1143-D EXECUTIVE CIRCLE CARY, NC 27511
(919) 469-4738 FAX: (919) 469-8447
F-0507

REVISION DATE:

25 OCTOBER 2022
26 OCTOBER 2022
7 NOVEMBER 2022
19 NOVEMBER 2022

OWNER(S):
SRP SIGNATURE HOMES, L.L.C.
2025 KIRKHAVEN ROAD
MORRISVILLE, N.C. 27560-7121
DB 18990 PG 1587



ANNEXATION PLAT FOR THE TOWN OF APEX:

SRP SIGNATURE HOMES LLC PROPERTY

WHITE OAK TOWNSHIP

WAKE COUNTY

SCALE: 1" = 60'

DRAWN BY: TAH

DATE: 25 MARCH 2022

FILE: S:\PACSOFT\2022\1305HO.CRD

NORTH CAROLINA

PIN 0743-33-1106

SURVEYED BY: MAS

JOB # 5471522

PETITION FOR VOLUNTARY ANNEXATION

This document is a public record under the North Carolina Public Records Act and may be published on the Town's website or disclosed to third parties.

Application #: 2022-022 Submittal Date: 10-3-2022
Fee Paid \$ 200.00 Check # 1046

TO THE TOWN COUNCIL APEX, NORTH CAROLINA

1. We, the undersigned owners of real property, respectfully request that the area described in Part 4 below be annexed to the Town of Apex, ☒ Wake County, ☐ Chatham County, North Carolina.
2. The area to be annexed is ☒ contiguous, ☐ non-contiguous (satellite) to the Town of Apex, North Carolina and the boundaries are as contained in the metes and bounds description attached hereto.
3. If contiguous, this annexation will include all intervening rights-of-way for streets, railroads, and other areas as stated in G.S. 160A-31(f), unless otherwise stated in the annexation amendment.

OWNER INFORMATION

SRP Signature Homes, LLC

0743-33-1106

Owner Name (Please Print)

Property PIN or Deed Book & Page #

919-339-5072 (Raj Baksha)

bsrajnc@gmail.com

Phone

E-mail Address

Owner Name (Please Print)

Property PIN or Deed Book & Page #

Phone

E-mail Address

Owner Name (Please Print)

Property PIN or Deed Book & Page #

Phone

E-mail Address

- Page 62 -

SURVEYOR INFORMATION

Surveyor: Sullivan Surveying (F-0507)

Phone: 919-469-4738

Fax: 919-469-8447

E-mail Address: sullivanurveying@yahoo.com

ANNEXATION SUMMARY CHART

Property Information	Reason(s) for annexation (select all that apply)
Total Acreage to be annexed: <u>4.92</u> <u>5.367</u>	Need water service due to well failure <input type="checkbox"/>
Population of acreage to be annexed: <u>0</u>	Need sewer service due to septic system failure <input type="checkbox"/>
Existing # of housing units: <u>1</u>	Water service (new construction) <input checked="" type="checkbox"/>
Proposed # of housing units: <u>4</u>	Sewer service (new construction) <input checked="" type="checkbox"/>
Zoning District*: <u>RR</u>	Receive Town Services <input checked="" type="checkbox"/>

*If the property to be annexed is not within the Town of Apex's Extraterritorial Jurisdiction, the applicant must also submit a rezoning application with the petition for voluntary annexation to establish an Apex zoning designation. Please contact the Department of Planning and Community Development with questions.

PETITION FOR VOLUNTARY ANNEXATION

Application #: 2022-022

Submittal Date: 10-3-2022

COMPLETE IF SIGNED BY INDIVIDUALS:

All individual owners must sign. (If additional signatures are necessary, please attach an additional sheet.)

Please Print

Signature

Please Print

Signature

Please Print

Signature

Please Print

Signature

STATE OF NORTH CAROLINA
COUNTY OF WAKE

Sworn and subscribed before me, _____, a Notary Public for the above State and County,
this the _____ day of _____, 20____.

Notary Public

SEAL

My Commission Expires: _____

COMPLETE IF A CORPORATION:

In witness whereof, said corporation has caused this instrument to be executed by its President and attested by its
Secretary by order of its Board of Directors, this the _____ day of _____, 20____.

Corporate Name

SEAL

By: _____

President (Signature)

Secretary (Signature)

STATE OF NORTH CAROLINA
COUNTY OF WAKE

Sworn and subscribed before me, _____, a Notary Public for the above State and County,
this the _____ day of _____, 20____.

Notary Public

SEAL

My Commission Expires: _____

PETITION FOR VOLUNTARY ANNEXATION

Application #: 2022-022 Submittal Date: 10-3-2022

COMPLETE IF IN A LIMITED LIABILITY COMPANY

In witness whereof, SRP Signature Homes, LLC a limited liability company, caused this instrument to be executed in its name by a member/manager pursuant to authority duly given, this the 29 day of September, 2022.

Name of Limited Liability Company SRP Signature Homes, LLC

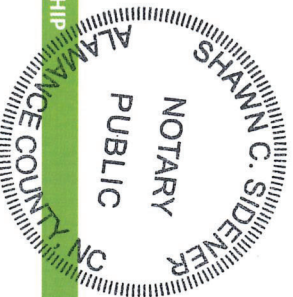
By: _____

B.S.D.
Signature of Member/Manager

STATE OF NORTH CAROLINA
COUNTY OF WAKE

Sworn and subscribed before me, Shawn C. Sidener, a Notary Public for the above State and County, this the 29 day of September, 2022.

SEAL



Notary Public

My Commission Expires: June 27, 2026

In witness whereof, _____, a partnership, caused this instrument to be executed in its name by a member/manager pursuant to authority duly given, this the _____ day of _____, 20____.

Name of Partnership _____

By: _____

Signature of General Partner

STATE OF NORTH CAROLINA
COUNTY OF WAKE

Sworn and subscribed before me, _____, a Notary Public for the above State and County, this the _____ day of _____, 20____.

Notary Public

SEAL

My Commission Expires: _____

VOLUNTARY ANNEXATION-PLAT CHECKLIST

FOR APPLICANT USE ONLY PLEASE DO NOT INCLUDE THIS CHECKLIST WITH YOUR APPLICATION SUBMITTAL

COMMON ACRONYMS/DEFINITIONS			
IDT Website	Contractor's Plan Room	UDO	Town's Unified Development Ordinance
TOA	Town of Apex	NCDEQ	North Carolina Dept. of Environmental Quality
RCA	Resource Conservation Area	DDM	Design & Development Manual
CONTACT INFORMATION			
Department of Planning and Community Development	(919) 249-3426	Soil & Erosion Control Officer	(919) 249-1166
Parks, Recreation, and Cultural Resources Department	(919) 372-7468	Electric Utilities Department	(919) 249-3342
Transportation Engineer	(919) 249-3358	Stormwater & Utility Engineering	(919) 249-3413

#	REQUIRED PLAT ITEMS
1	The exact boundary lines of the area to be annexed fully dimensioned by lengths and bearings, and the location of intersecting boundary lines of existing town limits, labeled and distinctly marked. Include full right-of-way if the area on both sides is or will be in the corporate limits.
2	Show and label any utility easements with metes and bounds.
3	Accurate locations and descriptions of all monuments, markers, and control points.
4	Ultimate right-of-way widths on all streets.
5	Entitle "ANNEXATION MAP for the TOWN OF APEX" or "SATELLITE ANNEXATION MAP for the TOWN OF APEX", as appropriate.
6	Name of property owner.
7	Name, seal, and registration of Professionally Licensed Surveyor (PLS).
8	Date of the survey and map preparation; a north arrow indicating whether the index is true magnetic North Carolina grid (NAD 83 of NAD 27) or deed; graphic scale; and declination.
9	Names of the township, county, and state.
10	A detailed vicinity map.
11	Include address of property if assigned.
12	Show all contiguous or non-contiguous town limits.
13	The following certification must be placed on the map near a border to allow the map to be sealed: Annexation # _____ I, Allen Coleman, CMC, NCCCC, Town Clerk, Apex, North Carolina certify this a true and exact map of annexation adopted the _____ day of _____, 20____ by the Town Council. I set my hand and seal of the Town of Apex, _____ Day/Month/Year _____ _____ Allen Coleman, CMC, NCCCC, Town Clerk
14	Leave 2 inch by 2 inch space for the Wake County or Chatham County Register of Deeds stamp on the plat. All final plats must be stamped and signed before they can be accepted by the Town. -Seal-

| Agenda Item | cover sheet

for consideration by the Apex Town Council

Item Type: CONSENT AGENDA

Meeting Date: January 9, 2024

Item Details

Presenter(s): Allen Coleman, Town Clerk

Department(s): Town Clerk's Office

Requested Motion

1. Motion to reappoint the following member to the Apex Board of Adjustment (BOA) for three-year term effective January 1, 2024 and expiring December 31, 2026.
 - Bryan Johnson, Regular Member of the Apex Board of Adjustment (BOA) - Corporate Limits
2. Motion to move the following members of the Apex Board of Adjustment (BOA) as Alternates 1 and Alternate 2:
 - Michael Sayers, move seat from alternate 2 to alternate 1 and keep term - February 28, 2023 - February 28, 2026 - Corporate Limits
 - William Hollenbeck, move seat from alternate 3 to alternate 2 and keep term - February 28, 2023 - February 28, 2026 - Corporate Limits
3. Motion to appoint Heidi-Marie Sisco to the Alternate 3 position on the Apex Board of Adjustment (BOA) for a three-year term effective January 1, 2024 and expiring December 31, 2026.

Approval Recommended?

Mayor Jacques K. Gilbert recommends the above appointment considerations to the Apex Board of Adjustment (BOA).

Item Details

Under N.C. G.S. 0167 § 160D-302(a) and the Town's Unified Development Ordinance (UDO) no member of the Apex Board of Adjustment (BOA) may serve more than three (3) consecutive three (3) year terms.

The Town Clerk's Office advertised the Board of Adjustment beginning December 21, 2023 and ending January 3, 2024. A variety of platforms were used to recruit for these positions including: Facebook, Instagram, Nextdoor, and the Town's website.

A total of five (9) **new** applications were received for appointment consideration to the Apex Board of Adjustment (BOA) and they are:

- Clements, Kristen - Corporate Limits
- Danielson, Matthew - Corporate Limits
- Fleitman, Jacob - Corporate Limits
- Hart, William - Corporate Limits
- Jacob, Olivia - Corporate Limits
- Kumar, Vipul - Corporate Limits
- LaMonica, Joel - Corporate Limits
- Patel, Uday - Corporate Limits
- Sisco, Heidi-Marie - Corporate Limits

Attachments

- CN5-A1: Clements, Kristen - Application - Appointment(s) - Board of Adjustment
- CN5-A2: Danielson, Matthew - Application - Appointment(s) - Board of Adjustment
- CN5-A3: Fleitman, Jacob - Application - Appointment(s) - Board of Adjustment
- CN5-A4: Hart, William - Application - Appointment(s) - Board of Adjustment
- CN5-A5: Jacob, Olivia - Application - Appointment(s) - Board of Adjustment
- CN5-A6: Kumar, Vipul - Application - Appointment(s) - Board of Adjustment
- CN5-A7: LaMonica, Joel - Application - Appointment(s) - Board of Adjustment
- CN5-A8: Patel, Uday - Application - Appointment(s) - Board of Adjustment
- CN5-A9: Sisco, Heidi-Marie - Application - Appointment(s) - Board of Adjustment



Entry #: 620 - Board of Adjustment **Status:** Submitted **Submitted:** 1/2/2024 7:25 PM

Applications are held by the [Town Clerk](#) until such time that a vacancy occurs. Please note, your completed form is subject to public inspection upon request.

[Learn more](#) about each of the committees listed below.

Original Submittal

I'm interested in serving on...

Board of Adjustment

How did you hear about this opportunity to serve?

Instagram

Candidate Contact Information

Legal Name

Kristin Clements

Preferred First Name

Address

1005 Latern Light Court, Apex, North Carolina 27502

Do you live within the Apex town limits?

Yes

Do you live within the town's extra-territorial jurisdiction (ETJ)?

No

Email

kec@duck.com

Mobile Phone

(202) 913-9689

Alternate Phone (work/home)

Background Information

Current Employer

Current Job Title

Tell us why you would like to serve?

I want to serve my community to help shape Apex and the surrounding areas to serve it's citizens best.

Please list any education, special skills, or experience you have that would be useful while considering this form.

MSN - University of Michigan

BSN - University of Maryland

BA - American University

I've been a critical care nurse for over ten years serve specially in Trauma and Cardiovascular ICUs. I have experience during my graduate work at the University of Michigan analysing community data for housing infrastructure and health relater improvements. Before my graduate studies I worked at Rex Hospital in their Cardiovascular ICU and Duke in their Surgical Trauma ICU. I hope to support Apex with my leadership and innovation experience that takes into the account of the care I've provide to the community in a understanding of caring for those at their most vulnerable times.

If you now serve, or have previously served on any town boards, commissions or committees, please list the committees and dates served.

I have not served before.

Entry #: 614 - Board of Adjustment **Status:** Submitted **Submitted:** 1/2/2024 11:42 AM

Applications are held by the [Town Clerk](#) until such time that a vacancy occurs. Please note, your completed form is subject to public inspection upon request.

[Learn more](#) about each of the committees listed below.

Original Submittal

I'm interested in serving on...

Board of Adjustment

How did you hear about this opportunity to serve?

Friend / Neighbor

Candidate Contact Information

Legal Name

Matthew Danielson

Preferred First Name

Matthew

Address

479 Clark Creek Lane, Cary, North Carolina 27519

Do you live within the Apex town limits?

Yes

Do you live within the town's extra-territorial jurisdiction (ETJ)?

No

Email

matthewdanielson919@gmail.com

Mobile Phone

(919) 522-9837

Alternate Phone (work/home)

Background Information

Current Employer

AMH

Current Job Title

Director Land Acquisition

Tell us why you would like to serve?

I believe it is important to serve and give back to our community. Since moving to the Cary/Apex area in 2002 I have been involved in community activities, from serving on non-profit boards, being a member of my HOA, participating in community forums, head coach for my kids sports and even previously serving on a town board. I might be able to change the world, but I can change the world I live in.

Please list any education, special skills, or experience you have that would be useful while considering this form.

I have a Masters Degree in Public Administration so I understand the complexities of local government. Over the course of my career I have been before 1,000+ jurisdictional boards and neighborhood meetings. I understand the importance of local UDO's, the impact of development on the community and the need to be able to balance good/smart growth versus the wants of the applicant or those who appose proposed application.

If you now serve, or have previously served on any town boards, commissions or committees, please list the committees and dates served.

Planning and Zoning Board - Town of Cary 2003-2005

Entry #: 551 - Board of Adjustment **Status:** Submitted **Submitted:** 2/20/2023 8:25 AM

Applications are held by the [Town Clerk](#) until such time that a vacancy occurs. Please note, your completed form is subject to public inspection upon request.

[Learn more](#) about each of the committees listed below.

Original Submittal

I'm interested in serving on...

Board of Adjustment

How did you hear about this opportunity to serve?

Friend / Neighbor

Candidate Contact Information

Legal Name

Jacob Fleitman

Preferred First Name

Address

2624 marazzi trail, Apex, North Carolina 27502

Do you live within the Apex town limits?

Yes

Do you live within the town's extra-territorial jurisdiction (ETJ)?

Yes

Email

jacob@fleitmanlegal.com

Mobile Phone

(631) 664-2250

Alternate Phone (work/home)

Background Information

Current Employer

Benderson Development

Current Job Title

In House Counsel

Tell us why you would like to serve?

Want to give back to my community.

Please list any education, special skills, or experience you have that would be useful while considering this form.

Real Estate Attorney

If you now serve, or have previously served on any town boards, commissions or committees, please list the committees and dates served.

Entry #: 605 - Board of Adjustment **Status:** Submitted **Submitted:** 12/28/2023 5:32 PM

Applications are held by the [Town Clerk](#) until such time that a vacancy occurs. Please note, your completed form is subject to public inspection upon request.

[Learn more](#) about each of the committees listed below.

Original Submittal

I'm interested in serving on...

Board of Adjustment

How did you hear about this opportunity to serve?

Facebook

Candidate Contact Information

Legal Name

William Hart

Preferred First Name

Address

1005 Cuddington Ct, Apex, North Carolina 27502

Do you live within the Apex town limits?

Yes

Do you live within the town's extra-territorial jurisdiction (ETJ)?

No

Email

williamhartjr@gmail.com

Mobile Phone

(919) 649-8906

Alternate Phone (work/home)

Background Information

Current Employer

National Guard Bureau

Current Job Title

Judge Advocate

Tell us why you would like to serve?

I believe this board addresses important questions that have to be answered thoughtfully by engaged and qualified townsfolk. I have lived in Apex for 2yrs and have been a resident of Southwestern Wake County since birth (42yrs) and feel a great sense of ownership as to the future course of our town and county.

Please list any education, special skills, or experience you have that would be useful while considering this form.

I have a JD and an LLM with general legal knowledge although not specific to zoning laws.

If you now serve, or have previously served on any town boards, commissions or committees, please list the committees and dates served.

N/A

Entry #: 600 - Board of Adjustment **Status:** Submitted **Submitted:** 12/21/2023 7:19 PM

Applications are held by the [Town Clerk](#) until such time that a vacancy occurs. Please note, your completed form is subject to public inspection upon request.

[Learn more](#) about each of the committees listed below.

Original Submittal

I'm interested in serving on...

Board of Adjustment

How did you hear about this opportunity to serve?

Facebook

Candidate Contact Information

Legal Name

Olivia Jacob

Preferred First Name

Olivia

Address

2707 Tiemouse lane, Apex, North Carolina 27523

Do you live within the Apex town limits?

Yes

Do you live within the town's extra-territorial jurisdiction (ETJ)?

No

Email

olivia-jacob@outlook.com

Mobile Phone

(919) 630-1118

Alternate Phone (work/home)

Background Information

Current Employer

Logisource

Current Job Title

Project Mgr

Tell us why you would like to serve?

I served on committees while I lived in Morrisville and enjoyed it I took a break for a while and would like to get involved and have the time to get involved

Please list any education, special skills, or experience you have that would be useful while considering this form.

Logistics CERT organizational skills

If you now serve, or have previously served on any town boards, commissions or committees, please list the committees and dates served.

CERT- Morrisville
Morrisville Community Fund was a founding board member
Town of Morrisville planning and other committees

Entry #: 550 - Board of Adjustment **Status:** Submitted **Submitted:** 2/18/2023 9:10 AM

Applications are held by the [Town Clerk](#) until such time that a vacancy occurs. Please note, your completed form is subject to public inspection upon request.

[Learn more](#) about each of the committees listed below.

Original Submittal

I'm interested in serving on...

Board of Adjustment

How did you hear about this opportunity to serve?

Facebook

Candidate Contact Information

Legal Name

Vipul Kumar

Preferred First Name

VK

Address

1532 Bicknor Dr, Apex, North Carolina 27502

Do you live within the Apex town limits?

Yes

Do you live within the town's extra-territorial jurisdiction (ETJ)?

No

Email

vk@vkdesignlabs.com

Mobile Phone

(919) 916-8849

Alternate Phone (work/home)

Background Information

Current Employer

Birlasoft Technology Inc

Current Job Title

Global Practice Director

Tell us why you would like to serve?

Community and inclusion are deep rooted principles

Of mine. Inclusive and sustainable growth of everyone are ever lasting calls of society. While I presently serve as President of Apex Farmers Market board, my desire to get more colder to the community and help in whatever possible ways are growing everyday.

Please list any education, special skills, or experience you have that would be useful while considering this form.

I am electrical engineering by education and have great design, review and build experiences in various fields. My ability of learn new things and apply that knowledge to practical use cases is very high.

If you now serve, or have previously served on any town boards, commissions or committees, please list the committees and dates served.
Presently, serving as President of Apex Farmers Market board since Dec 2021

Entry #: 547 - Board of Adjustment **Status:** Submitted **Submitted:** 2/17/2023 1:36 PM

Applications are held by the [Town Clerk](#) until such time that a vacancy occurs. Please note, your completed form is subject to public inspection upon request.

[Learn more](#) about each of the committees listed below.

Original Submittal

I'm interested in serving on...

Board of Adjustment

How did you hear about this opportunity to serve?

Nextdoor

Candidate Contact Information

Legal Name

Joel LaMonica

Preferred First Name

Address

2304 Maplegreen Lane, Apex, North Carolina 27502

Do you live within the Apex town limits?

Yes

Do you live within the town's extra-territorial jurisdiction (ETJ)?

Yes

Email

joel.lamonica@gmail.com

Mobile Phone

(919) 292-3327

Alternate Phone (work/home)

Background Information

Current Employer

Ribbon Communications

Current Job Title

Sr. Systems Resident Engineer

Tell us why you would like to serve?

Would like to get involved in the community I live in and plan to live in for the remainder of my life as well as raising my family here. Want to do contribute my time and effort to ensure Apex remains one of the top towns to live in the US as well as continue to make Apex attractive to both residential and business communities.

Please list any education, special skills, or experience you have that would be useful while considering this form.

MS in Information Systems

BS in Information Svstems

If you now serve, or have previously served on any town boards, commissions or committees, please list the committees and dates served.
Have not served in any official capacity as of yet

Entry #: 574 - Board of Adjustment **Status:** Submitted **Submitted:** 7/28/2023 7:43 PM

Applications are held by the [Town Clerk](#) until such time that a vacancy occurs. Please note, your completed form is subject to public inspection upon request.

[Learn more](#) about each of the committees listed below.

Original Submittal

I'm interested in serving on...

Board of Adjustment

How did you hear about this opportunity to serve?

Town Employee / Elected Official

Candidate Contact Information

Legal Name

Uday P Patel

Preferred First Name

Address

1533 ARMSCROFT LN, APEX, North Carolina 27502

Do you live within the Apex town limits?

Yes

Do you live within the town's extra-territorial jurisdiction (ETJ)?

No

Email

jalpatel1004@gmail.com

Mobile Phone

(229) 310-0111

Alternate Phone (work/home)

Background Information

Current Employer

NewYork Life Insurance Company

Current Job Title

Agent

Tell us why you would like to serve?

I love serving community and helping citizens.

Please list any education, special skills, or experience you have that would be useful while considering this form.

My special skills are I am an Asian and can serve as ethnic background to have one on board that could distinguish and help the citizens with the vision and care needed.

If you now serve, or have previously served on any town boards, commissions or committees, please list the committees and dates served.

Entry #: 606 - Board of Adjustment **Status:** Submitted **Submitted:** 12/28/2023 9:42 PM

Applications are held by the [Town Clerk](#) until such time that a vacancy occurs. Please note, your completed form is subject to public inspection upon request.

[Learn more](#) about each of the committees listed below.

Original Submittal

I'm interested in serving on...

Board of Adjustment

How did you hear about this opportunity to serve?

Facebook, Instagram

Candidate Contact Information

Legal Name

Heidi-Marie Sico

Preferred First Name

Address

3003 Shopton Dr, Apex, North Carolina 27502

Do you live within the Apex town limits?

Yes

Do you live within the town's extra-territorial jurisdiction (ETJ)?

No

Email

hsico75@gmail.com

Mobile Phone

(919) 810-3341

Alternate Phone (work/home)

Background Information

Current Employer

Nodell, Glass & Haskell

Current Job Title

Legal Assistant

Tell us why you would like to serve?

I've always felt that every citizen has a civic responsibility to try to play an active role in their government, whether it be as a juror, voting, volunteering, employed within a government agency or holding a civic position. With my children grown, I have more time to devote to activities I both find interesting and believe have an opportunity to affect my community.

Please list any education, special skills, or experience you have that would be useful while considering this form.

The Adjustment Board is structured and operated in a quasi-judicial manner. This is something I am very familiar with and understand with over 8 years of prior employment with both the US Attorney's Office and Wake County District Attorney's Office.

If you now serve, or have previously served on any town boards, commissions or committees, please list the committees and dates served.

N/A

| Agenda Item | cover sheet

for consideration by the Apex Town Council

Item Type: CONSENT AGENDA

Meeting Date: January 9, 2024

Item Details

Presenter(s): Jenna Shouse, Senior Long-Range Planner

Department(s): Planning

Requested Motion

Motion to adopt Capital Project Ordinance Amendment 2024-10 allocating funding for the GoApex Bus Stop Improvements (Four Locations) and Sidewalk Connection Project.

Approval Recommended?

Yes

Item Details

The Town of Apex is collaborating with Wake County on a project to improve four bus stops along GoApex Route 1 and complete a sidewalk connection to one bus stop. Wake County is using Community Development Block Grant (CDBG) funding for this project. Per the agreement, the Town is responsible for any costs exceeding the committed CDBG funding. These funds will be used to cover the costs exceeding the committed CDBG funding.

The project was released for bid on November 28, 2023. The lowest bid came in at \$629,188.35, approximately 20% over the original cost opinion. Wake County cited rising labor costs and labor shortage as the reasons for the increased cost. The Wake County funds available for this project are \$303,903.56. The project account has \$213,942 allocated to the project. An additional \$120,000 is being requested to cover the cost of the project with a contingency. Staff requested and CAMPO approved a request to use Community Funding Area funds from the Bus Stop Improvements project to cover the overruns for the CDBG project for a 50% match.

Capital Project Ordinance Amendment 2024-10 allocates the \$6,300 from interest earnings in the fund and reallocates \$60,000 in grant funds and \$53,700 from Transfer from the General Fund from the GoApex Bus Stop to the GoApex CDBG project. All funds are already available in the Capital Project Fund.

Attachments

- CN6-A1: Wake County GoApex Route 1 Bus Stop Improvements - Capital Project Ordinance Amendment No. 2024-10 - GoApex Bus Stops Improvements (Four Locations) and Sidewalk Connection Project

- CN6-A2: Capital Project Ordinance Amendment 2024-10 - Capital Project Ordinance Amendment No. 2024-10 - GoApex Bus Stops Improvements (Four Locations) and Sidewalk Connection Project



BUILDING INSPECTIONS & PERMITS TOWN OF APEX CERTIFICATION

This drawing has been reviewed by the Town of Apex Building Inspections & Permits Department, and to the best of my knowledge and belief, conforms to the requirements established within the Town's Code of Ordinances and the North Carolina State Building Codes. However, this signature does not constitute a variance from any requirements contained in any federal, state, or local code, law, specification, rule or ordinance. It is the sole responsibility of the owner/developer, or any of his agents or contract professionals to ensure that this construction plan meets all the aforementioned requirements.

By: **N/A**
sewens 10/06/2023 11:16:42 AM

ELECTRIC TOWN OF APEX CERTIFICATION

This drawing has been reviewed by the Town of Apex Electric Department, and to the best of my knowledge and belief, conforms to the requirements established in the Standard Specifications and Construction Details and the Unified Development Ordinance of the Town of Apex. However, this signature does not constitute a variance from any requirements contained in any federal, state, or local code, law, specification, rule or ordinance. It is the sole responsibility of the owner/developer, or any of his agents or contract professionals to ensure that this construction plan meets all the aforementioned requirements.

By: **Approved**
rsmith 10/02/2023 2:59:39 PM

FIRE DEPARTMENT TOWN OF APEX CERTIFICATION

This drawing has been reviewed by the Town of Apex Fire Department, and to the best of my knowledge and belief, conforms to the requirements established within the Town's Standard Specifications, Fire Protection Ordinances, and the North Carolina International Fire Code. However, this signature does not constitute a variance from any requirements contained in any federal, state, or local code, law, specification, rule or ordinance. It is the sole responsibility of the owner/developer, or any of his agents or contract professionals to ensure that this construction plan meets all the aforementioned requirements.

By: **Approved**
khugench 10/02/2023 10:44:56 AM

PARKS, RECREATION, AND CULTURAL RESOURCES TOWN OF APEX CERTIFICATION

These plans have been reviewed by the Town of Apex, and to the best of my knowledge and belief, conform to representations made by the developer to myself and the Parks, Recreation, and Cultural Resource Advisory Commission consistent with the projects requirements for public Parks and Recreation, either in total or in part, as outlined in the Town of Apex Unified Development Ordinance and Town of Apex Code of Ordinances. However, this signature does not constitute a variance from any requirements contained in any federal, state, or local code, law, specification, rule or ordinance. It is the sole responsibility of the owner/developer, or any of his agents or contract professionals to ensure that this construction plan meets all the aforementioned requirements.

By: **N/A**
tgmpright 10/02/2023 3:47:56 PM

PLANNING/ZONING TOWN OF APEX CERTIFICATION

This construction drawing has been reviewed by the Town of Apex Planning Department, and to the best of my knowledge and belief, conforms to the Subdivision or Site Plan that was approved by the Town of Apex Town Council or Technical Review Committee, as appropriate, and meets the standards of the Town of Apex Unified Development Ordinance. This signature does not constitute a variance from any requirements of the originally approved Subdivision or Site Plan cited above, or any federal, state, or local code, law, specification, rule, guideline, or ordinance. It is the sole responsibility of the owner/developer, or any of his agents or contract professionals to ensure that this construction plan meets all the aforementioned requirements.

By: **Approved**
lstaudemair 10/03/2023 8:59:54 AM

TRANSPORTATION & INFRASTRUCTURE DEVELOPMENT TRANSPORTATION ENGINEERING TOWN OF APEX CERTIFICATION

This drawing has been reviewed by the Town of Apex Transportation & Infrastructure Development Department, and to the best of my knowledge and belief, provides an acceptable transportation system with consideration for the elements contained within the Transportation Plan conforming to the requirements established in the Standard Specifications & Standard Details and the Unified Development Ordinance of the Town of Apex. However, this signature does not constitute a variance from any requirements contained in any federal, state, or local code, law, specification, rule or ordinance. It is the sole responsibility of the owner/developer, or any of his agents or contract professionals to ensure that this construction plan meets all the aforementioned requirements.

By: **Approved**
rdalton 10/02/2023 5:10:09 PM

WATER RESOURCES SOIL EROSION & SEDIMENTATION CONTROL TOWN OF APEX CERTIFICATION

This drawing has been reviewed by the Town of Apex, and to the best of my knowledge and belief, conforms to the requirements established in the Soil Erosion and Sedimentation Control Ordinance of the Town of Apex. However, this signature does not constitute a variance from any requirements contained in any federal, state, or local code, law, specification, rule or ordinance. It is the sole responsibility of the owner/developer, or any of his agents or contract professionals to ensure that this construction plan meets all the aforementioned requirements. This signature does not constitute plan approval, only plan requirements. A separate letter of plan approval will be mailed to the financially responsible person at a later date according to the construction sequence.

By: **N/A**
tpatterson 10/02/2023 12:46:40 PM

WATER RESOURCES STORMWATER ENGINEERING TOWN OF APEX CERTIFICATION

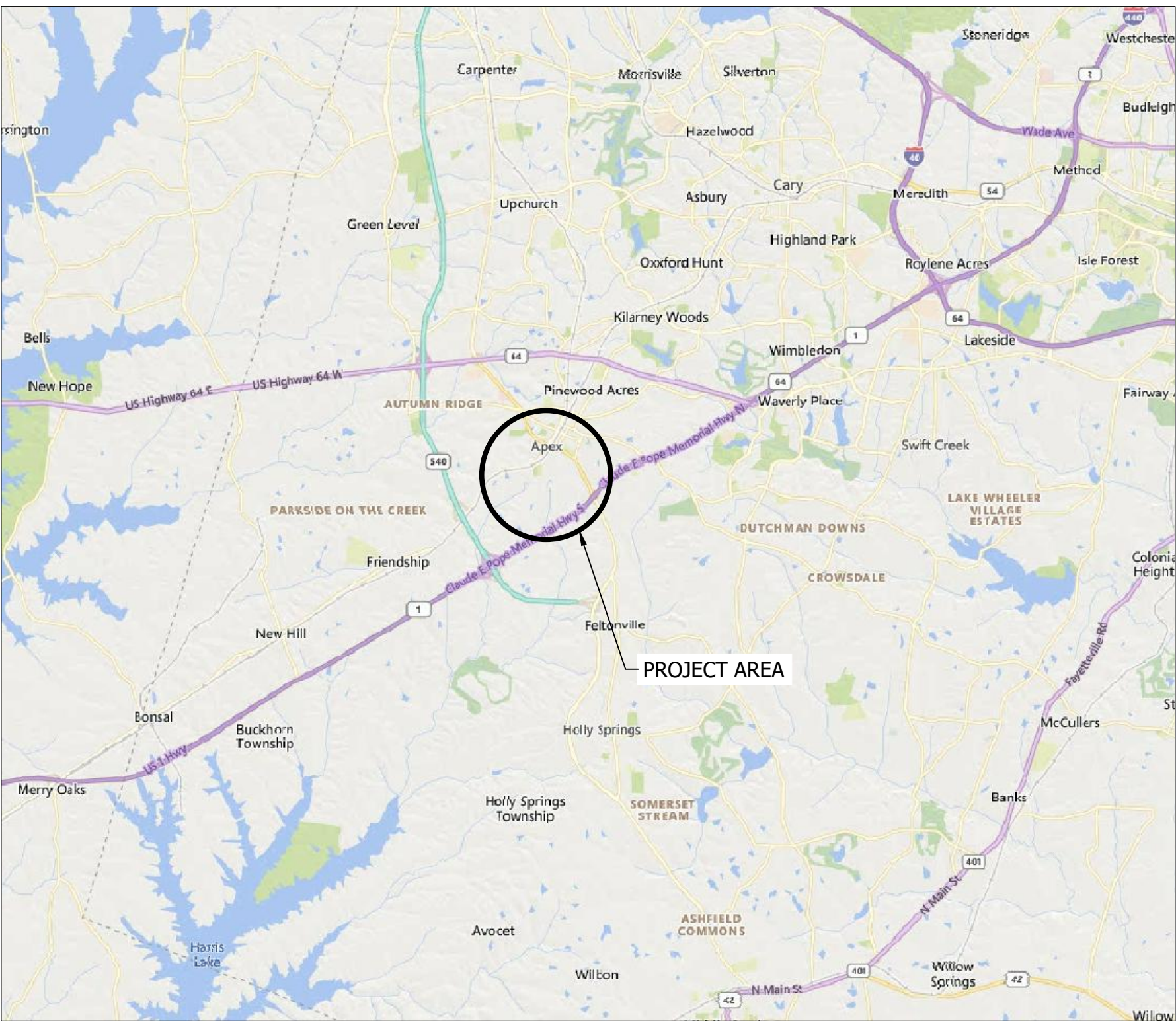
This drawing has been reviewed by the Town of Apex Water Resources Stormwater & Utility Engineering Division and to the best of my knowledge and belief, conforms to the requirements established in the Standard Specifications and Standard Details and the Unified Development Ordinance of the Town of Apex. However, this signature does not constitute a variance from any requirements contained in any federal, state, or local code, law, specification, rule or ordinance. It is the sole responsibility of the owner/developer, or any of his agents or contract professionals to ensure that this construction plan meets all the aforementioned requirements. This signature serves as the stormwater permit for this project.

By: **Approved**
rpatterson 10/02/2023 12:46:45 PM

WATER RESOURCES UTILITY ENGINEERING TOWN OF APEX CERTIFICATION

This drawing has been reviewed by the Town of Apex Water Resources Department, and to the best of my knowledge and belief, conforms to the requirements established in the Standard Specifications and Standard Details of the Town of Apex. However, this signature does not constitute a variance from any requirements contained in any federal, state, or local code, law, specification, rule or ordinance. It is the sole responsibility of the owner/developer, or any of his agents or contract professionals to ensure that this construction plan meets all the aforementioned requirements.

By: **Approved**
jdillon 10/05/2023 2:57:39 PM



VICINITY MAP
NOT TO SCALE

WAKE COUNTY NORTH CAROLINA GoAPEX ROUTE 1 BUS STOP IMPROVEMENTS SEPTEMBER 2023



BOARD OF COMMISSIONERS
CHAIR: SHINICA THOMAS
VICE CHAIR: SUSAN EVANS
COUNTY MANAGER: DAVID ELLIS
DON MIAL MATT CALABRIA CHERYL STALLINGS
JAMES WEST VICKIE ADAMSON



120 North Boylan Avenue • Raleigh, NC 27603-1423
(919) 828-0531 • thewootencompany.com
License Number : F-0115



REVISIONS

**FINAL DRAWING
FOR CONSTRUCTION**

APPROVED EXCEPTIONS	
The following items have been approved as exceptions for this drawing by the Town of Apex Department Director(s), and to the best of my knowledge and belief, this drawing conforms to the requirements established by the Director(s) allowing deviation from the Standard Specifications and Standard Details of the Town of Apex. The signature below represents that the requesting Engineer has been granted a variance ONLY for the items listed. The developer/engineer/contractor is solely responsible for meeting all applicable requirements.	
(List items below add number as needed)	
APPROVED EXCEPTION	DIRECTOR GRANTING EXCEPTION
1. 601.A.1	
2.	
3.	
By: Ana Wadsworth, P.E. Requesting Engineer	Date: 4/28/23

SHEET INDEX

C-0.01 COVER SHEET
C-0.02 NOTES & LEGEND

JAMES STREET AT E. WILLIAMS STREET BUS STOPS

C-1.0 EXISTING CONDITIONS & DEMOLITION PLAN
C-2.0 SIDEWALK LAYOUT PLAN
C-2.1 PAVEMENT MARKING PLAN
C-3.0 SIDEWALK GRADING & DRAINAGE PLAN
C-3.1 SIDEWALK GRADING & DRAINAGE PLAN 2

C-4.0 SITE PLAN: BUS STOPS #21
C-4.1 SITE PLAN: BUS STOPS #28, #32
C-4.2 SITE PLAN: BUS STOPS #35

C-5.0 CROSS SECTIONS
C-5.1 CROSS SECTIONS 2
C-5.2 CROSS SECTIONS 3

C-6.0 EROSION PLAN

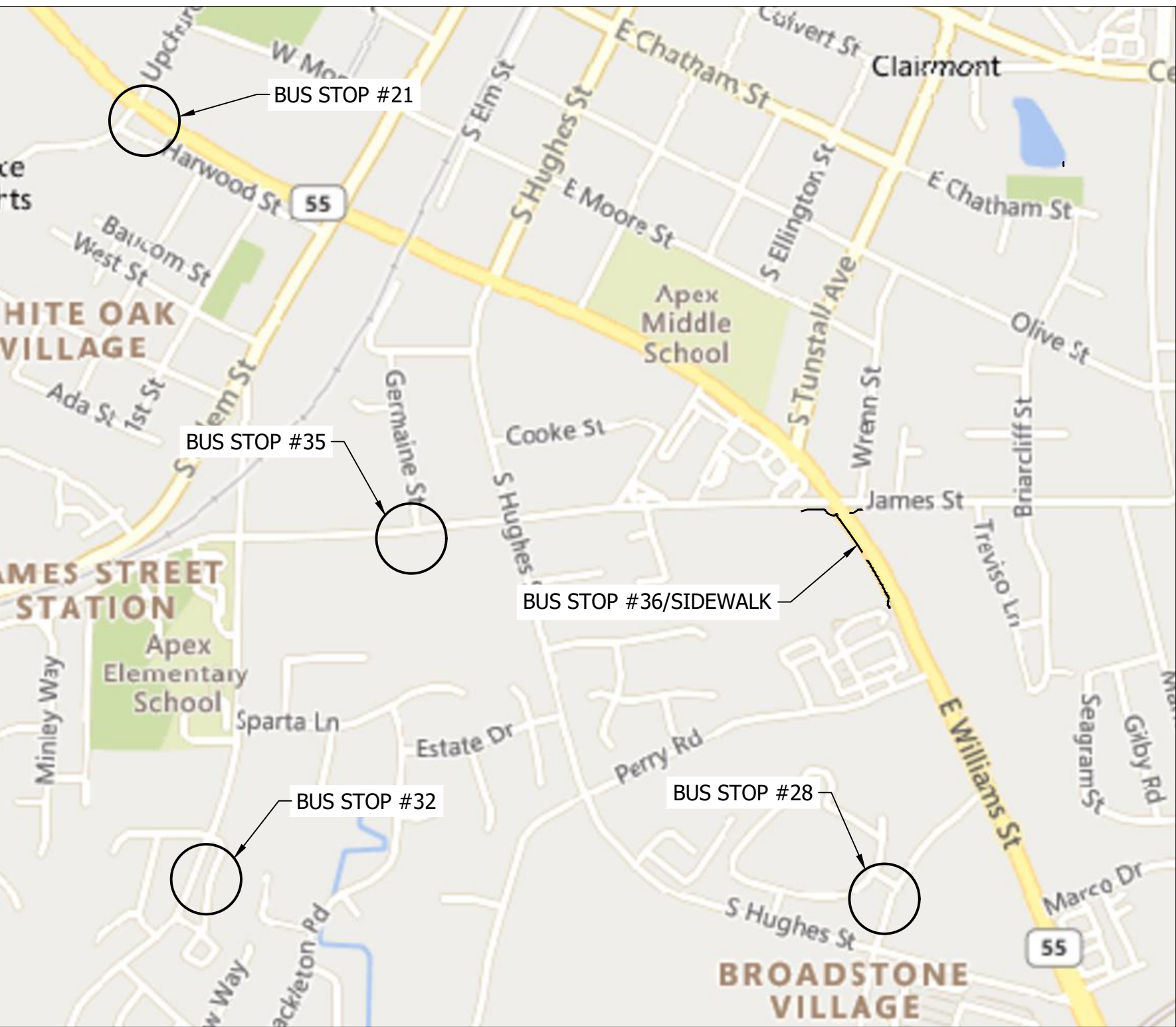
C-7.0 DETAILS
C-7.1 DETAILS CONTINUED
C-7.2 DETAILS CONTINUED
C-7.3 EROSION CONTROL DETAILS
C-7.4 TRAFFIC CONTROL DETAILS

SIG-1.0 SIGNAL PLANS
SIG-1.1 ELECTRICAL DETAILS 1/5
SIG-1.2 ELECTRICAL DETAILS 2/5
SIG-1.3 ELECTRICAL DETAILS 3/5
SIG-1.4 ELECTRICAL DETAILS 4/5
SIG-1.5 ELECTRICAL DETAILS 5/5

PUBLIC INFRASTRUCTURE TABLE:

STORM DRAIN (24") - 164 LF
STORM DRAIN (18") - 414 LF
STORM DRAIN (15") - 22 LF
CURB & GUTTER (2.5') - 642 LF
SIDEWALK (5') - 873 LF

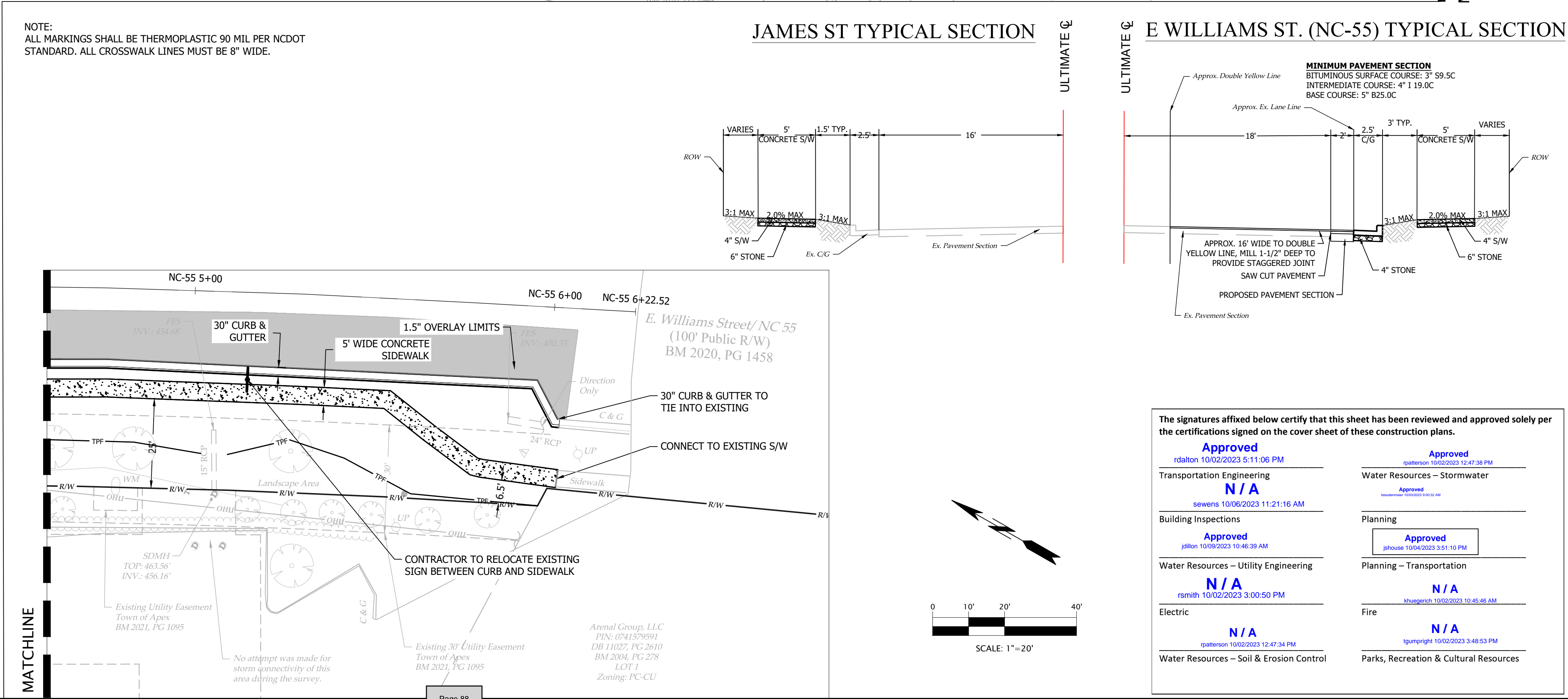
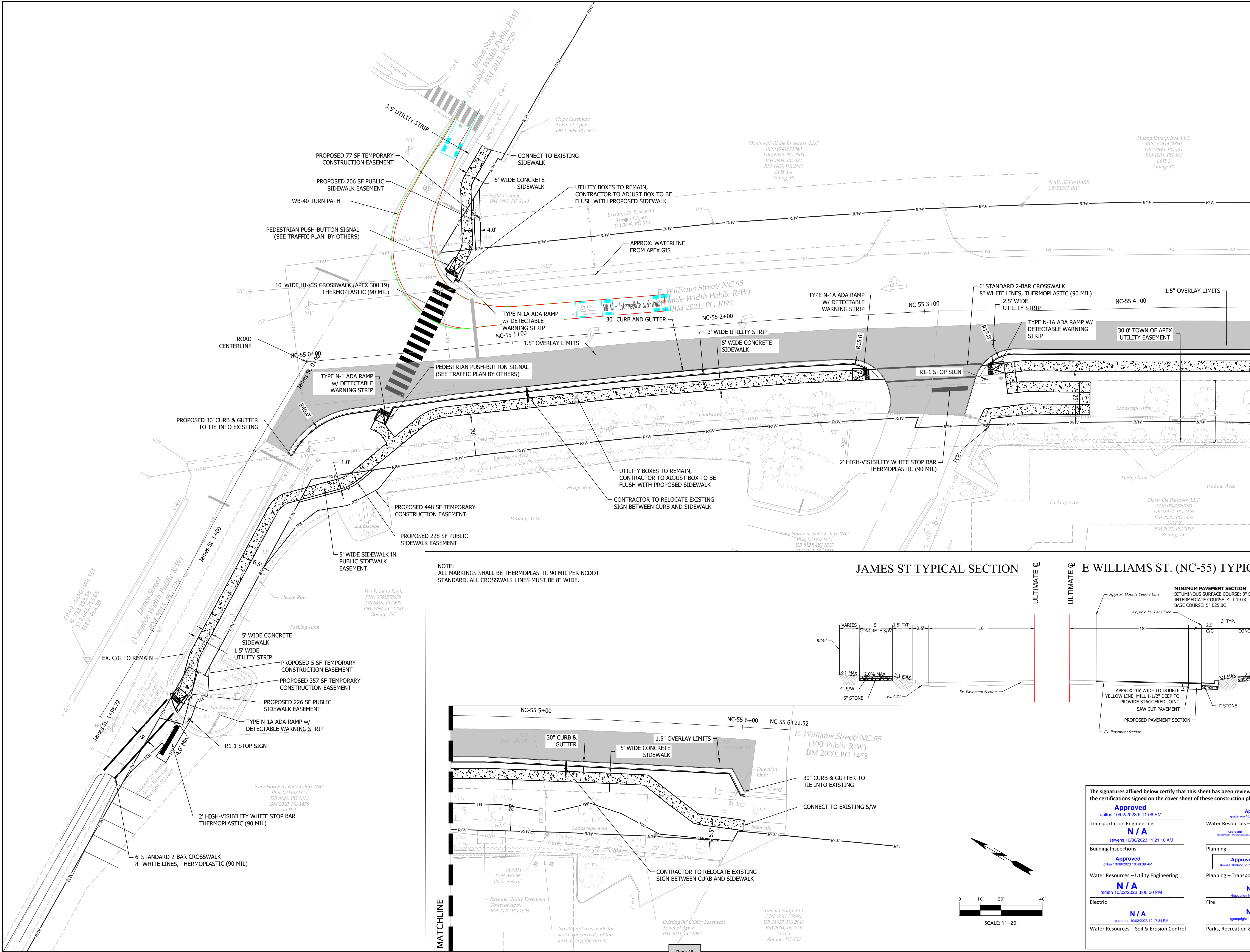
Standard Specifications & Standard Details
Version: February 28, 2023



PROJECT AREA MAP
NOT TO SCALE

C-0.01

T:\Projects\Wake_County-2461\GJ-GoApex.Route_1_BusStopImpri_CADD\DrawingSets\02-SITE-PLAN-2461-GJ.dwg JBRIGHT 9/28/2023 11:03 AM



The signatures affixed below certify that this sheet has been reviewed and approved solely per the certifications signed on the cover sheet of these construction plans.	
Approved rdalton 10/02/2023 5:11:06 PM Transportation Engineering N/A sewens 10/05/2023 11:21:16 AM Building Inspections Approved jdillon 10/05/2023 10:46:39 AM Water Resources – Utility Engineering N/A rsmith 10/02/2023 3:00:50 PM Electric N/A rdalton 10/02/2023 12:47:34 PM Water Resources – Soil & Erosion Control	Approved spatterson 10/02/2023 12:47:34 PM Water Resources – Stormwater Approved jdillon 10/04/2023 5:51:10 PM Planning Approved jdillon 10/02/2023 3:45:53 PM Fire N/A jdillon 10/02/2023 3:45:53 PM Parks, Recreation & Cultural Resources

FINAL DRAWING
FOR CONSTRUCTION

REVISIONS	
1	TOWN OF APEX CONSTRUCTION DRAWING REVIEW – 1/3/2023
2	TOWN OF APEX CONSTRUCTION DRAWING REVIEW – 2/27/2023
3	TOWN OF APEX CONSTRUCTION DRAWING REVIEW – 3/13/2023
4	TOWN OF APEX CONSTRUCTION DRAWING REVIEW – 4/11/2023
5	TOWN OF APEX CONSTRUCTION DRAWING REVIEW – 5/18/23

Wooten

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COUNTY OF WAKE
NORTH CAROLINA
GOAPEX ROUTE 1 BUS STOP IMPROVEMENTS
SIDEWALK LAYOUT PLAN
JAMES STREET AT E. WILLIAMS STREET



DESIGNED BY: JCB
DRAWN BY: JCB
CHECKED BY: AMW
PROJECT NO.: 2461-GJ
DATE: SEPTEMBER 2023
SCALE: AS NOTED
IF THIS BAR DOES NOT MEASURE 1" THEN DRAWING IS NOT TO FULL SCALE
C-2.0



BUS STOP #21 - W. WILLIAMS ST AT UPCHURCH ST
PROPOSED IMPROVEMENTS: AMENITY PAD, SHELTER, & BENCH
SCALE: AS NOTED

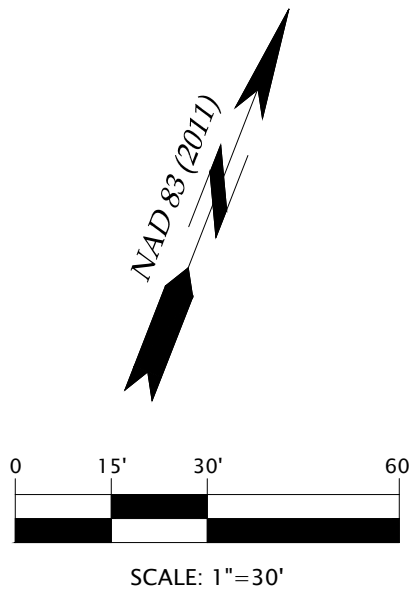
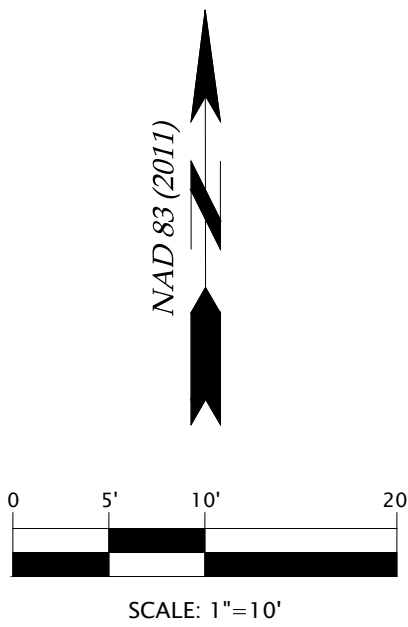
SIGHT DISTANCE CALCULATION PER AASHTO GREEN BOOK, CHAPTER 9 9.5 SIGHT DISTANCE

ROAD, MINOR = UPCHURCH ST
POSTED SPEED = 45 MPH
DESIGN SPEED, V = 50 MPH
DRIVER HEIGHT 3.5'
DRIVER SETBACK = 14.5' FROM EDGE OF TRAVEL LANE

CASE B2 = LEFT TURN FROM MINOR STREET, TG=7.5

SIGHT DISTANCE = 1.47*V*TG

CASE B1= 551.25 FT
DESIGN DISTANCE = 555 FT



**FINAL DRAWING
FOR CONSTRUCTION**

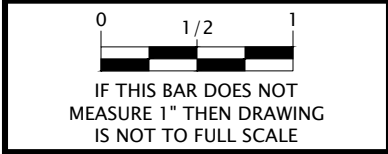
REVISIONS	
1	TOWN OF APEX CONSTRUCTION DRAWING REVIEW - 1/3/2023
2	TOWN OF APEX CONSTRUCTION DRAWING REVIEW - 2/27/2023
3	TOWN OF APEX CONSTRUCTION DRAWING REVIEW - 3/13/2023
4	TOWN OF APEX CONSTRUCTION DRAWING REVIEW - 4/11/2023
5	TOWN OF APEX CONSTRUCTION DRAWING REVIEW - 5/18/23

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COUNTY OF WAKE	
NORTH CAROLINA	
GOAPEX ROUTE 1 BUS STOP IMPROVEMENTS	
SITE PLAN	
BUS STOPS 21	

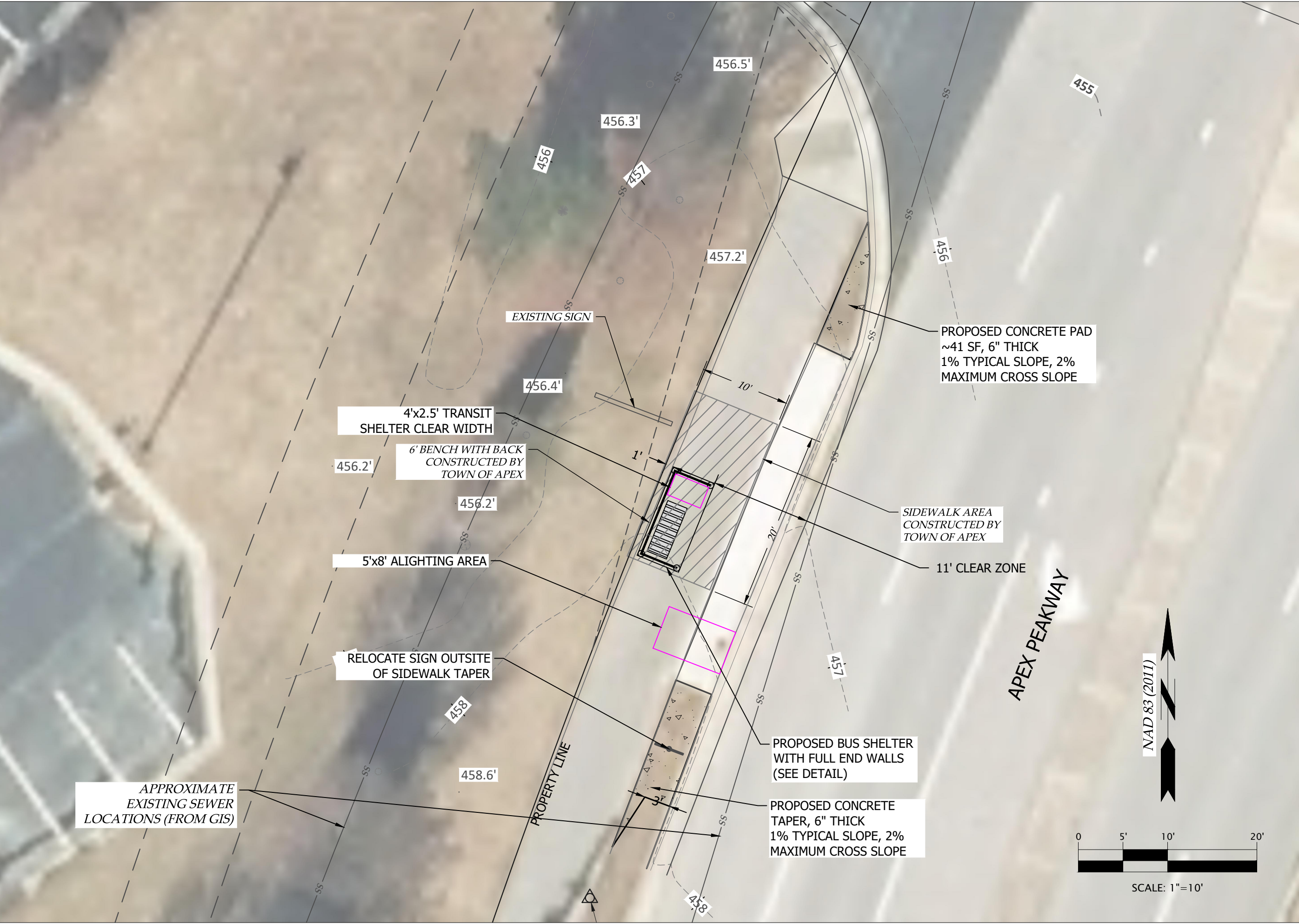


DESIGNED BY:	JCB
DRAWN BY:	JCB
CHECKED BY:	AMW
PROJECT NO.:	2461-GJ
DATE:	SEPTEMBER 2023
SCALE:	AS NOTED

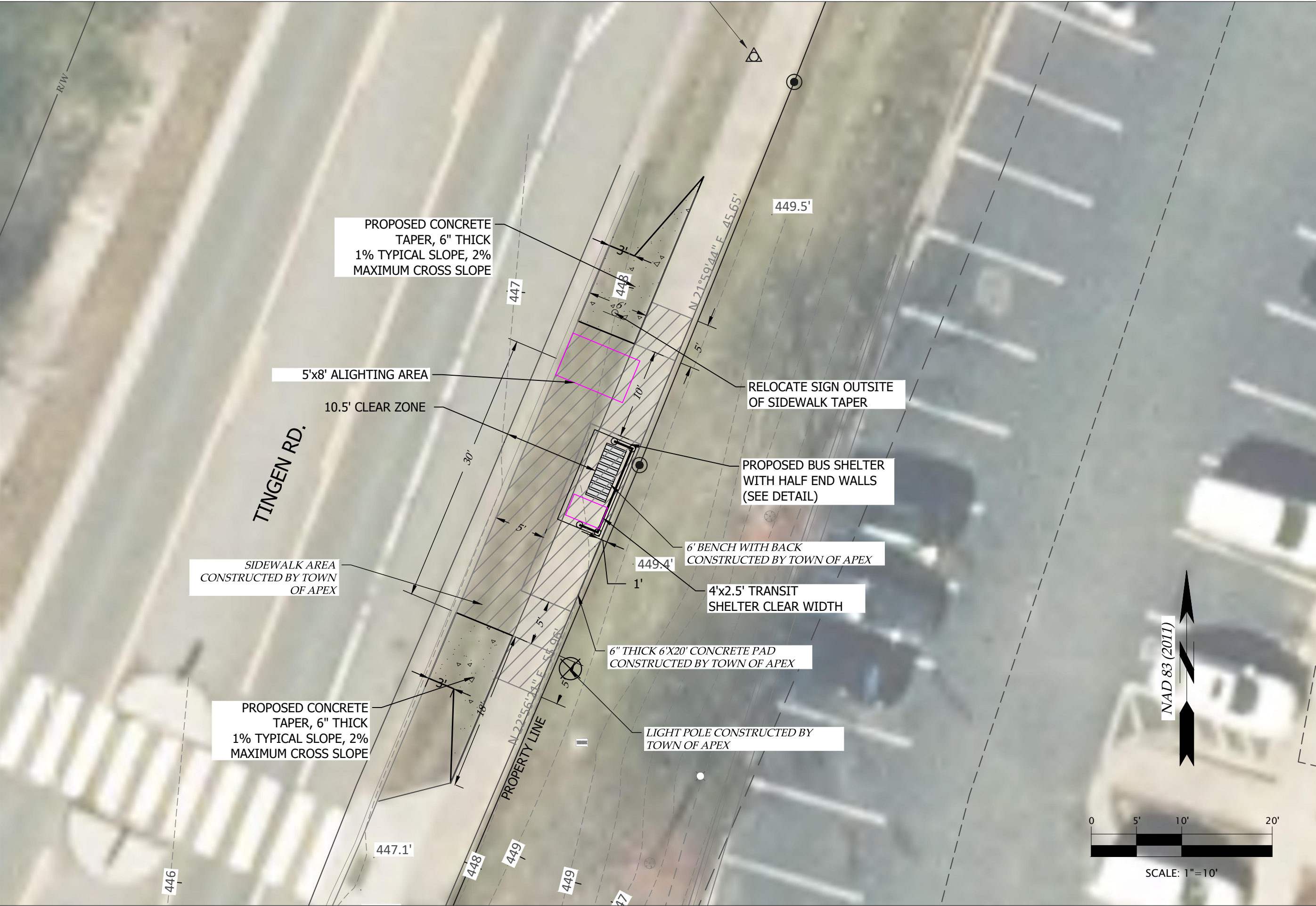


C-4.0

T:\Projects\Wake_County-2461\GJ-GoApex_Route_1_BusStop\mpr1_CADD\DrawingSets\04-SITE-PLAN-Bus Stops-2461-GJ.dwg WORK 9/28/2023 11:04 AM



BUS STOP #28 - CAMBRIDGE VILLAGE LOOP AT APEX PEAKWAY
PROPOSED IMPROVEMENTS: SHELTER
SCALE: AS NOTED



BUS STOP #32 - TINGEN RD AT PEACE HAVEN PL
PROPOSED IMPROVEMENTS: SHELTER
SCALE: AS NOTED

The signatures affixed below certify that this sheet has been reviewed and approved solely per the certifications signed on the cover sheet of these construction plans.	
<div>Approved rdalton 10/02/2023 5:12:59 PM Transportation Engineering N/A siemens 10/06/2023 11:21:16 AM Building Inspections Approved jdillon 10/05/2023 3:03:31 PM Water Resources – Utility Engineering N/A rsmith 10/02/2023 3:02:03 PM Electric N/A Water Resources – Soil & Erosion Control</div>	<div>Approved spatterton 10/02/2023 12:48:51 PM Water Resources – Stormwater Approved khaudemmar 10/02/2023 9:01:28 AM Planning Approved jhouse 10/04/2023 3:54:24 PM Planning – Transportation N/A khuagierich 10/02/2023 10:47:00 AM Fire N/A tpumpgriff 10/02/2023 3:50:41 PM Parks, Recreation & Cultural Resources</div>

FINAL DRAWING
FOR CONSTRUCTION

1	TOWN OF APEX CONSTRUCTION DRAWING REVIEW – 1/13/2023
2	TOWN OF APEX CONSTRUCTION DRAWING REVIEW – 2/27/2023
3	TOWN OF APEX CONSTRUCTION DRAWING REVIEW – 3/13/2023
4	TOWN OF APEX CONSTRUCTION DRAWING REVIEW – 4/11/2023
5	TOWN OF APEX CONSTRUCTION DRAWING REVIEW – 5/18/23

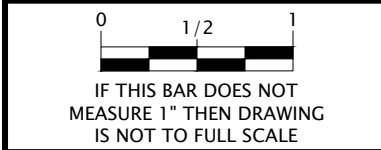


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APEX	COUNTY OF WAKE	NORTH CAROLINA
	GOAPEX ROUTE 1 BUS STOP IMPROVEMENTS	SITE PLAN BUS STOPS 28,32



DESIGNED BY:	JCB
DRAWN BY:	JCB
CHECKED BY:	AMW
PROJECT NO.:	2461-GJ
DATE:	SEPTEMBER 2023
SCALE:	AS NOTED

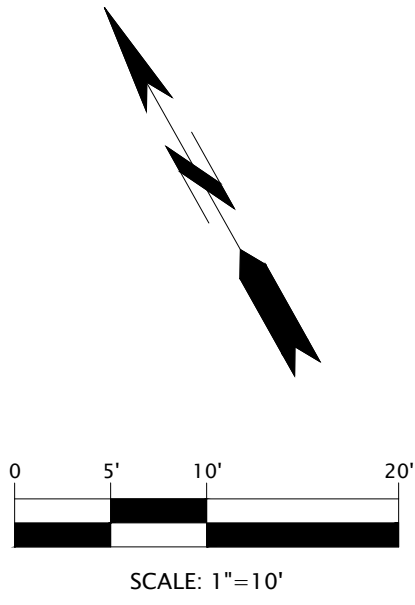


C-4.1

T:\Projects\Wake_County-2461\G-GoApex_Route1_BusStopImpri_CADD\DrawingSets\04-SITE-PLAN-Bus Stops-2461-GJ.dwg WORK 9/28/2023 11:04 AM



BUS STOP #35 - JAMES ST AT GERMAINE ST
PROPOSED IMPROVEMENTS: SHELTER
SCALE: AS NOTED



SIGHT DISTANCE CALCULATION PER AASHTO GREEN BOOK, CHAPTER 9 9.5 SIGHT DISTANCE

ROAD, MINOR = JAMES ST.
POSTED SPEED = 25 MPH
DESIGN SPEED, V = 30 MPH
DRIVER HEIGHT 3.5'
DRIVER SETBACK = 14.5' FROM EDGE OF TRAVEL LANE

CASE B1 = LEFT TURN FROM MINOR ROAD, TG= 7.5

SIGHT DISTANCE = 1.47*V*TG

CASE B1= 330.75 FT
DESIGN DISTANCE = 335 FT

The signatures affixed below certify that this sheet has been reviewed and approved solely per the certifications signed on the cover sheet of these construction plans.	
<div>Approved</div> <div>rdalton 10/02/2023 5:13:20 PM</div> <div>Transportation Engineering</div> <div>N/A</div> <div>sewerts 10/06/2023 11:21:15 AM</div> <div>Building Inspections</div> <div>Approved</div> <div>jdillon 10/05/2023 3:04:15 PM</div> <div>Water Resources – Utility Engineering</div> <div>N/A</div> <div>rsmith 10/02/2023 3:02:25 PM</div> <div>Electric</div> <div>N/A</div> <div>lindbeck 10/02/2023 12:48:11 PM</div> <div>Water Resources – Soil & Erosion Control</div>	<div>Approved</div> <div>spatterson 10/02/2023 12:48:18 PM</div> <div>Water Resources – Stormwater</div> <div>Approved</div> <div>lindbeck 10/03/2023 9:01:42 AM</div> <div>Planning</div> <div>Approved</div> <div>phouse 10/04/2023 3:54:48 PM</div> <div>Planning – Transportation</div> <div>N/A</div> <div>khuaenrich 10/02/2023 10:47:18 AM</div> <div>Fire</div> <div>N/A</div> <div>lgumpinger 10/02/2023 3:51:07 PM</div> <div>Parks, Recreation & Cultural Resources</div>

REVISIONS

1	TOWN OF APEX CONSTRUCTION DRAWING REVIEW – 1/13/2023
2	TOWN OF APEX CONSTRUCTION DRAWING REVIEW – 2/27/2023
3	TOWN OF APEX CONSTRUCTION DRAWING REVIEW – 3/13/2023
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COUNTY OF WAKE

NORTH CAROLINA

GOAPEX ROUTE 1 BUS STOP IMPROVEMENTS

SITE PLAN

BUS STOPS 35

APEX

PROFESSIONAL SEAL

082359

Anna Wadsworth

ENGINEER

9/29/2023

DESIGNED BY:

JCB

DRAWN BY:

JCB

CHECKED BY:

AMW

PROJECT NO.:

2461-GJ

DATE:

SEPTEMBER 2023

SCALE:

AS NOTED

0 1/2 1

IF THIS BAR DOES NOT MEASURE 1" THEN DRAWING IS NOT TO FULL SCALE

C-4.2



Town of Apex

CAPITAL PROJECT ORDINANCE AMENDMENT 2024-10

General Capital Project Fund

BE IT ORDAINED, by the Council of the Town of Apex that the Capital Project Ordinance previously entitled "General Capital Project Fund" be amended as follows:

Section 1. The revenues anticipated for the projects are:

61-9225-0113-36100 Interest Earned	6,300
61-9225-0113-33240 Grants	60,000
61-9225-0113-36710 Transfer from General Fund	53,700
Total Revenues	\$120,000

Section 2. The expenditures anticipated are:

61-9225-0113 GoApex CDBG Project	120,000
Total Expenditures	\$120,000

Section 3. Within five (5) days after adoption, copies of this Amendment shall be filed with the Finance Officer and Town Clerk.

Adopted this the 9th day of January, 2024.

Attest:

Jacques K. Gilbert, Mayor

Allen L. Coleman, CMC, NCCCC
Town Clerk

| Agenda Item | cover sheet

for consideration by the Apex Town Council

Item Type: CONSENT AGENDA

Meeting Date: January 9, 2024

Item Details

Presenter(s): Allen Coleman, Town Clerk

Department(s): Town Clerks Office

Requested Motion

Motion to approve, as submitted or amended, Meeting Minutes from the following meeting:

- November 28, 2023 - Town Council Regular Meeting Minutes
- November 30, 2023 - Town Council Work Session - Public Safety
- December 12, 2023 - Regular Town Council Meeting
- December 14, 2023 - Town Council Work Session

Approval Recommended?

The Town Clerk recommends the Town Council approve the meeting minutes as presented or amended.

Item Details

In accordance with 160A-72 of North Carolina General Statutes (NCGS), the Governing Board has the legal duty to approve all minutes that are entered into the official journal of the Board's proceedings.

Attachments

- CN7-A1: **DRAFT** Minutes - November 28, 2023 - Town Council Regular Meeting Minutes
- CN7-A2: **DRAFT** Minutes - November 30, 2023 - Town Council Work Session Meeting Minutes
- CN7-A3: **DRAFT** Minutes - December 12, 2023 - Town Council Regular Meeting Minutes
- CN7-A4: **DRAFT** Minutes - December 14, 2023 - Town Council Work Session Meeting Minutes



DRAFT MINUTES
TOWN OF APEX
REGULAR TOWN COUNCIL MEETING
TUESDAY, NOVEMBER 28, 2023
6:00 PM

The Apex Town Council met for a Regular Town Council Meeting on Tuesday, November 28, 2023 at 6:00 PM in the Council Chambers at Apex Town Hall, located at 73 Hunter Street in Apex, North Carolina.

This meeting was open to the public. Members of the public were able to attend this meeting in-person or watch online via the livestream on the Town's YouTube Channel. The recording of this meeting can be viewed here: <https://www.youtube.com/watch?v=NHRU1IsUzOc>

[ATTENDANCE]

Elected Body

Mayor Jacques K. Gilbert (presiding)
Mayor Pro Tempore Audra Killingsworth
Councilmember Ed Gray
Councilmember Arno Zegerman
Councilmember Terry Mahaffey
Absent: Councilmember Brett Gantt

Town Staff

Interim Town Manager Shawn Purvis
Assistant Town Manager Demetria John
Assistant Town Manager Marty Stone
Town Attorney Laurie Hohe
Town Clerk Allen Coleman
Deputy Town Clerk Ashley Gentry
Planning Director Dianne Khin
All other staff members will be identified appropriately below

[SLIDE 1]



DRAFT MINUTES

[COMMENCEMENT]

Mayor Gilbert called the meeting to order, and welcomed all those in attendance and those watching on livestream. He then led everyone in observing a moment of silence.

Mayor Gilbert then led those in attendance in a recitation of the Pledge of Allegiance. He then reminded anyone who wished to speak during Public Forum to sign up with the Town Clerk.

[CONSENT AGENDA]

Mayor Gilbert noted that there was a staff request to add a Consent Item 7 – Amendment to the 2023 Town Council Calendar. He also noted that there was a staff request for Consent Item 5 to be removed.

A **motion** was made by **Councilmember Zegerman**, seconded by **Mayor Pro Tempore Killingsworth**, to approve the Consent Agenda, with the removal of Consent Item 5, and the addition of Consent Item 7.

VOTE: UNANIMOUS (4-0)

CN1 Agreement - Amended and Restated Full Requirements Power Sales Agreement between North Carolina Eastern Municipal Power Agency and the Town of Apex (REF: CONT-2023-324 and OTHER-2023-117)

Council voted to adopt an ordinance determining that it is in the best interests of the Town of Apex to Approve and Authorize the Execution and Delivery of the Amended and Restated Full Requirements Power Sales Agreement Between the Town of Apex and North Carolina Eastern Municipal Power Agency, and authorize the Mayor, Town Attorney, Town Clerk, and Finance Director to execute the necessary agreement and certification documents.

CN2 Construction Contract Award - Pacos Construction Company, Inc - Bridge Preservation - Various Locations (REF: CONT-2023-325)

Council voted to award construction contract with Pacos Construction Company, Inc for Bridge Preservation maintenance to seven (7) locations (listed below) and to authorize the Interim Town Manager, or their designee, to execute on behalf of the Town.

CN3 Contract Multi-Year - Enpira, Inc - Technology and Software Support for Utility Data - November 30, 2023 through June 30, 2026 (REF: CONT-2023-326)

Council voted to approve a Master Services Agreement (MSA), effective November 30, 2023 through June 30, 2026, with Enpira, Inc for technology and software support for utility data and authorize the Interim Town Manager, or their designee, to execute the agreement on behalf of the Town.

CN4 Contract Multi-Year - Microsoft Corporation - Enterprise Enrollment - November 1, 2023 through November 30, 2026 (REF: CONT-2023-327)

Council voted to approve a multi-year contract, effective November 1, 2023 through November 20, 2026, with Microsoft Corporation enterprise enrollment for volume licensing, and to authorize the Interim Town Manager, or their designee, to execute on behalf of the Town.

DRAFT MINUTES

CN5 Resolution - Accepting American Rescue Grant Funds from NC Division of Water Infrastructure (DWI) and Capital Project Ordinance Amendment 2024-8

Council voted to adopt a Resolution accepting American Rescue Plan (ARP) grant funds from the NC Division of Water Infrastructure (DWI) to complete Asset Inventory and Assessment (AIA), and approve Capital Project Ordinance Amendment 2024-8, and to authorize the Interim Town Manager, or their designee, to execute on behalf of the Town.

CN6 Unified Development Ordinance (UDO) Amendments - October 24, 2023 - Statement (REF: OTHER-2023-118)

Council voted to approve the Statement of the Apex Town Council pursuant to G.S. 160D-605(a) addressing action on the Unified Development Ordinance (UDO) Amendments of October 24, 2023.

CN7 ADDED 2023 Town Council Meeting Calendar Amendment (REF: OTHER-2023-122)

Council voted to amend the 2023 Town Council Meeting Calendar to revise the start time for the Town Council Organizational Meeting on Wednesday December 6, 2023 to start at 6:00 p.m., and add two closed session meetings related to the Town Manager recruitment process to be held on Tuesday, December 5, 2023 and Tuesday, December 19, 2023 both with start times of 5:00 p.m. and to be held at Apex Town Hall located at 73 Hunter Street in Apex, North Carolina.

[PRESENTATIONS]

PR1 Recognition - Apex Friendship High School Students - Women's Tennis Double State Champions

Mayor Gilbert there were champions in Town Hall tonight. He invited Julianne Izod and Caroline Izod up to be recognized for winning their second consecutive Women's Tennis Doubles State Championship. He then presented them with Letters of Honor, and they took a picture with him and the rest of Council.

Ms. Izod spoke about she was thankful that the Mayor and Council did this for them a second year in a row. She said she is proud to call Apex home, and that it is special to have won it with her little sister.

Her Sister commented about how she was lucky to be able to play with her older sister, and she was happy to win this with her sister in her senior year.

Mayor Gilbert noted that he has a tennis ball signed by the Izod sisters, and he would keep it in his office and treasure it.

~~PR2 - REMOVED - Western Wake Ministry Presentation~~

This presentation will be moved to a future Council meeting date.

[REGULAR MEETING AGENDA]

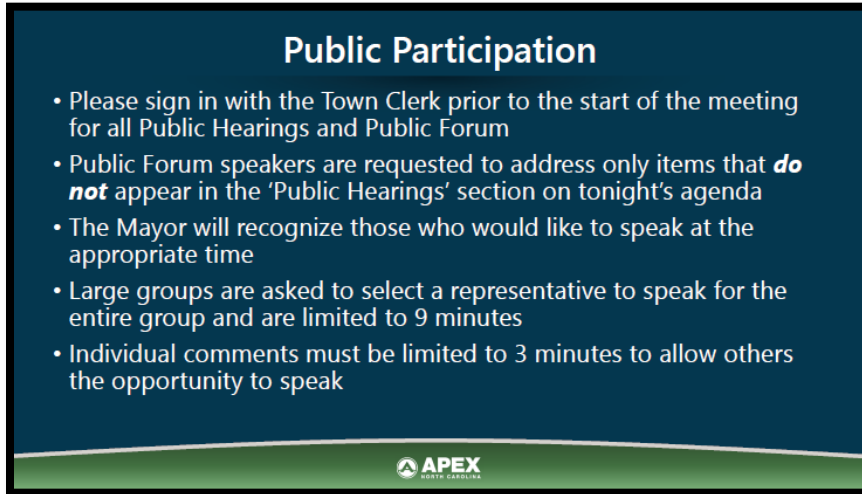
A **motion** was made by **Mayor Pro Tempore Killingsworth**, seconded by **Councilmember Gray**, to approve the Regular Meeting Agenda as presented.

VOTE: UNANIMOUS (4-0)

DRAFT MINUTES

[PUBLIC FORUM] (NOTE: To view Public Forum and Public Hearing sign-up sheets, see **OTHER-2023-120**)

[SLIDE 2]



Mayor Gilbert said this was a time to present concerns or ideas. He said there quite a few people signed up to speak, so he asked speakers to respect the time limits and to watch for repetitive comments. He said he and Council would not be responding, but would be listening and taking notes, and that a member of the team would be reaching out to discuss their concerns.

First to speak was **Marvin Hymanson** of 2907 Sunflower Road:

"It's going to be a tough act to follow tennis champs, but I'll give them my three minutes. Good evening Mr. Mayor and Council Members, I am hopeful the Council will work to represent all residents of Apex, whether they voted for you, didn't vote for you, or didn't participate at all. I'd like to point out that the Suburban Living Apex magazine just ran an article on the Town Council's improvement plan, and provided a link to this year's budget entitled FY 25 Budget Priorities survey public input. The survey is very limiting. You must rank every item suggested by the town versus giving residents the opportunity to state how we want our tax dollars to be spent. For example, as a former cycling enthusiast, many roads are just not that safe for anything besides vehicles, especially one lane each way. I would like to know the progress being made on bike lanes and sidewalks in Apex. I would like to know how to make sure my tax dollars are spent on these improvements, I want to know that you are representing my interests that I'm sharing here tonight versus relying on a very limited survey. Thank for your time, and have a good evening. Happy Holidays."

Mayor Gilbert thanked Mr. Hymanson for his comments.

Mayor Pro Tempore Killingsworth said there was an email address where residents could share their budget priorities with the Council throughout the year. She asked if Interim Town Manager Purvis could share that.

DRAFT MINUTES

1 **Interim Town Manager Purvis** said the survey was to help them categorize things. He said
2 they would be holding multiple Public Hearings for the budget to allow for input to be received. He
3 said the email for budget input year-round was annual.budget@apexnc.org
4
5

6 Next to speak was **Chuck Mattina** of 1328 Elk River Drive (To view Mr. Mattina's handout, please see
7 **OTHER-2023-124**):

8 "I'm going to talk to you about fraud tonight. By definition, fraud is an intentional perversion of the
9 truth, an act of deceiving or misrepresenting, or something that is not what it seems or is
10 represented to be. The reason we are talking about fraud is that we have learned that the Board of
11 Adjustment may reverse a decision after a Public Hearing, if the approval was obtained by fraud. We
12 contend that there were two instances of gross misrepresentation - or fraud - committed during the
13 variance hearing. One involves the assertion that NCDOT would not allow any connection off Holt
14 Road, and the other is the UDO requires a connection to Elk River Drive no matter how the property
15 is developed. So let's start with what Jason Barron said at the variance hearing. Attorney Barron said
16 that his client would not have applied for a variance if there was any chance that NCDOT would
17 grant a cu'-de-sac or a single driveway for 3 homes off of Holt Road. During the variance meeting,
18 Vice Chair Johnson asked, do we know beyond doubt that NCDOT would not permit a curb cut on
19 Holt Road. Mr. Adams, an expert for the applicant, said correct, Town staff asked, we have asked,
20 and NCDOT said in no uncertain terms, that no driveway access from Holt Road would be allowed.
21 But upon questioning by Mr. Kuhn, the attorney for Courtyard on Holt, Mr. Adams refuted his own
22 testimony, saying that the DOT would likely not permit a driveway, but I don't know whether they
23 would do that here or not. Mr. Kuhn said you didn't ask NCDOT about a driveway, and Mr. Adams
24 said no, I did not. Board Member Taylor asked, if staff is presenting that NCDOT won't make the
25 driveway connection, who on staff talked with NCDOT because we haven't seen that. Traffic
26 Engineering Manager Russell Dalton said he had email correspondence with NCDOT and that he
27 could enter it into evidence if the Board would like. Mr. Barron said the applicant entered it into
28 evidence in the staff report. Chair Carmac said they had the report, but not the correspondence
29 between the town and the NCDOT. Ms. Taylor said she had a hard time making a decision based on
30 testimony about conversations someone said they had with NCDOT when that was not entered into
31 evidence. Russell Dalton's comments should have been stricken as they are not in the record. And in
32 allowing Mr. Dalton's comments without objection, Town Attorney Hohe contributed to the fraud. As
33 you know, we submitted a FOIA request for all information and correspondence related to the
34 variance request, and here is a sample of some of that correspondence. In December 2022, Serge
35 Grebenshikov, who is an Apex traffic engineer, wrote to Jeremy Warren who is NCDOT, and Russell
36 Dalton, "we never said NCDOT will not grant access off Holt Road." Russell Dalton responded to
37 Jeremy Warren, it appears this project will have a public hearing on Monday in front of our Planning
38 Board. Unless you say otherwise, I assume the applicant could explore the possibility of right-in-
39 right-out access instead of a cul-de-sac. Jeremy Warren responded, you are correct, they could
40 apply for either. Fast forward to March 2023, the property owner wrote to Jeremy Warren of
41 NCDOT, I'm the owner of the property at 1305 Holt Road. We are going to request a variance to
42 connect the property to Elk River Road. I just want to understand the alternative options for me if I

DRAFT MINUTES

1 am forced to connect to Holt Road. Currently, there is one driveway connecting the property to Holt
2 Road. Can I connect 2 or 3 lots using a shared driveway or a right-in-right-out connection? Can I
3 build a cul-de-sac and connect that to Holt Road? This will also require one right-in-right-out
4 connection. We didn't see a reply to that property owner in our FOIA request, Russell Dalton wrote
5 back to Jeremy Warren, the original rezoning case was denied. They have come back with an
6 exempt subdivision for 3 lots and need a variance to allow the extension of Elk River Drive as a cul-
7 de-sac in excess of 600 feet, which would avoid the requirement for connectivity to Holt Road. If the
8 Department does not permit the connectivity to Holt Road, the applicant can provide that
9 information in writing to the Board of Adjustment as justification for the variance. Russell Dalton,
10 again, contributed to fraud by asking NCDOT to basically disallow any potential connection to Holt
11 Road so the applicant could make a case for the variance. The second act of fraud was in the
12 misrepresentation of the UDO, which began with Jason Barron's variance request submitted on
13 March 30, 2023. In it, he said the owner is required by UDO section 7.2.1.A.2.c.ii to connect with the
14 Elk River stub street. You know, the thing is, Jason Barron said it and it became fact, and it was never
15 challenged by the Town Attorney. What that UDO section specifically says, and I quote, "stub street
16 connections shall be provided to all existing and planned stub streets on adjacent properties." The
17 specific section cited by Jason Barron deals with the connection of one stub street to another stub
18 street. For example, Gilwood Drive in Middleton was a stub street. When Courtyard on Holt was
19 built, we connected to Gilwood through a stub street. This is exactly the intention of the UDO
20 standard because it creates real interconnectivity between two developments. But the Preserve on
21 Holt is not building a stub street, let's be clear about that. This is not what their variance is about.
22 They want to extend the cul-de-sac, which is entirely different. The UDO standard does not apply,
23 but in misrepresenting the standard, Jason Barron technically committed fraud. I want to play it a
24 little further. Ms. Shapiro, a Morningstar attorney, said the heart of this request is a required
25 connection to the Elk River Drive stub street required connection, and the town's UDO requirement
26 related to the maximum length of the cul-de-sac. She went on to say that the NCDOT will not permit
27 access from the subject property directly to Holt - which we now know is not true. She said that the
28 result is that the only vehicular connection that can be provided to the property is by the extension
29 of Elk River Drive into the site terminating into a cul-de-sac on the subject property. But she also said
30 that if the Board does not approve this variance, the applicant will have no alternative but to seek
31 inverse compensation action against the town, seeking compensation. Vice Chair Johnson asked for
32 clarity if there would be no use of the property if it could not connect to Elk River Drive, and Mr.
33 Adams said he didn't think that was accurate. He said that the DOT said for a single residence, you
34 do not have to have a driveway permit. So, the applicant own expert just clearly contradicted what
35 Ms. Shapiro claimed. Mr. Kuhn asked Mr. Roach, another expert for the applicant, if the stub street
36 had to be extended, and Mr. Roach said, probably not. Mr. Kuhn asked if 1305 Holt Road could be
37 developed as a single-family home on that lot with no subdivision, and Mr. Roach confirmed that is
38 his understanding. Mr. Kuhn asked if that were the case, DOT could not reject the driveway, and Mr.
39 Roach agreed. Clearly, the property can be developed without connecting to Elk River Drive, but Mr.
40 Barron and Ms. Shapiro engaged in fraud by misrepresenting the UDO. Again, Town Attorney
41 Hohe's silence on the issue contributed to the fraud. So in summary, there was gross
42 misrepresentations of the NCDOT and the UDO, both of which influenced the Board's decision and
43 neither of which were corrected by the Town Attorney. We're asking the Town Council to compel the

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Board of Adjustment to formally review the variance decision. If the Board has any ethical or moral compass, they should reverse the decision since approval was obtained by fraud. Thank you."

Mayor Gilbert thanked Mr. Mettina for his comments.

Next to speak was **Donald Perlmutter** of 1362 Elk River Drive:

"You have just heard in detail a recounting by my colleague Chuck Mettina of the numerous discrepancies and contradictions between official public testimony at the July Board of Adjustment quasi-judicial hearing, and private communications by those same parties. It's clear from this recounting that the Board based their decision to grant the applicant's request for variance on false and misleading information. An unjust decision has been rendered that injures the interests and safety of many residents of Courtyards on Holt. Do we have to just accept and live with this? I'd say the answer is no. To that end, we were able to obtain the training manual for the Apex Board of Adjustment quasi-judicial hearings. I will now identify for you the points in this document that are relevant to our argument that this decision cannot stand. The first one, under quasi-judicial rules, "boards should make factual findings to support its decision, and those findings should be based on the competent evidence in the record." There was no competent evidence in the record that NCDOT prohibited access to Preserves at Holt by Holt Road. The second, under standards of evidence, "the burden of proof for each standard is met if it's supported by competent, material, and substantial evidence. At not time was the Board provided with written documentation that NCDOT would expressly prohibit access to Preserves on Holt via Holt Road. In fact, in private communications as revealed by FOIA, we have learned that NCDOT's language on this subject was not prohibitive at all. And third point, under evidence notes on hearsay, "decisions should not be made based on hearsay testimony." It's our contention that the statement by Russell Dalton, Apex Traffic Engineer, at the July hearing, that NCDOT would not allow access to the proposed development from Holt Road was hearsay, in that he could not provide email documentation from NCDOT to substantiate his statement. In fact, the FOIA materials reveal that the email he referenced to support his statement did not even exist. Board of Adjustment accepted this hearsay as fact, and it contributed to their decision to grant the variance. Now that we've demonstrated that the Board of Adjustment violated its own rules of procedure, what's to be done? The answer lies in my final offering from the procedural manual for the Board of Adjustment, under reversal of decision. "The board may reverse decision after public hearing in the following situations: approval was obtained by fraud, and use for which approval was given is detrimental to public health or safety, or constituted a nuisance. The critical word here is safety. From the beginning, the compelling reason for our opposition to this variance has been the concern for the safety of our more fragile residents. We're asking Town Council to set in motion a process which forces Board of Adjustment to revisit this erroneous decision."

Mayor Gilbert thanked Mr. Perlmutter for his comments.

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Next to speak was **James Jesserer** of 1366 Elk River Drive:

"I bet you're fed up listening to me. And tonight, with the voice I have, it will get worse. Tonight, the residents and voters of Courtyards on Holt have presented the results of our FOIA request on 1305 Holt Road. We've shared emails of Apex town officials pertaining to us and the NCDOT opinion on allowing Holt Road access to the proposed development, which specifically contradicts some of their sworn testimony, or the testimony of expert witnesses of the July BOA. The fraudulent testimony informed, motivated, and directed the final BOA decision on 1305 Holt Road. I will remind you of Dr. Taylor's presentation just 2 weeks ago where shared, "we were not given all information to make a ruling. We were given information that proved to be false. As a result of Dr. Taylor's presentation and our FOIA request, we have, however, shared the truth reflected in the emails from town employees Russell Dalton, June Cowles, Serge Grebenshikov, versus their testimony, and the testimony of the applicant's sworn experts. The only town voice we did not hear in our FOIA request is perhaps the town's most powerful employee. Sorry Mayor, that's not your voice. And Town Council, that's not your voice either. The voice we did not hear, and apparently the most powerful person in Apex, is Town Attorney Hohe. We asked in our FOIA for all correspondences on 1305 Holt Road, including those of Ms. Hohe. Yet we received only 2 completely non-consequential email communications from Ms. Hohe, one to our attorney, and one to Jason Barron informing him that his client's application was approved by the BOA. Why? In Ms. Hohe's letter to Chuck Mettina, Ms. Hohe made it clear that her conversations, communications were protected by attorney-client privilege. And I quote, the BOA was her client. And therefore, Ms. Hohe was under no requirement to share those communications regardless of any FOIA request. Per UNC School of Government Dr. Jim Joyce, the Town Attorney can assume attorney-client privilege, however, only for legal advice. Additionally, there can be no conflict or potential conflict between the governing board. In this case, the Town Council and the BOA. Ms. Hohe knew that the BOA was acting in conflict with the Town Council. And yet, Ms. Hohe stated that she represented the BOA. How exactly is that possible? Ms. Hohe should have been protecting the expressed interest of the Apex Town Council and their January decision, yet Ms. Hohe failed to even inform the BOA members of the January decision on 1305 Holt Road. Ms. Hohe, how did you think you could serve both Town Council and BOA, when the groups were across purposes? Ms. Hohe should have recused herself on this BOA decision and appointed another attorney to advise the BOA because the Town Council should have been her exclusive legal responsibility in this matter. Instead, Ms. Hohe failed both of her clients, and is now hiding both of her failures behind attorney-client privilege. Why not disclose now, Ms. Hohe? The BOA decision has been rendered. It's past the time to see that the Courtyards on Holt can appeal to the NC Superior Court. What are you hiding Ms. Hohe? We are left to wonder. Did you orchestrate this BOA decision as an end-around the January Town Council decision to avoid the town being sued by the applicant and their legal firm Morningstar, who publicly threatened to sue the town? In her presentation to Town Council two weeks ago, Dr. Taylor asked if Ms. Hohe "was more concerned with pacifying the applicant out of fear the town would be sued?" Does Ms. Hohe help guide the town planners in their responses? Did she directly discuss the issue with Morningstar? Lots of questions, and thanks to you hiding behind attorney-client privilege we have no answers. Again, per Dr. Joyce, determination to disclose attorney-client communication is, and I quote, in the first place left to the attorney's ethics and professional judgement. By your failure to disclose Ms. Hohe, you're

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1 sending a clear message to the Mayor, the Town Council, and the Town of Apex. Two weeks ago we
2 asked for an independent investigation into the July decision on 1305 Holt Road. The Town Council
3 declined that request, and might have gotten hung up on the word investigation. Therefore, we the
4 residents of Courtyards on Holt, are asking for an independent review, under the guidance of Mayor
5 Gilbert, of the July Board of Adjustment decision on 1305 Holt Road, and that Apex not approve any
6 further actions on 1305 Holt Road until the review is completed. An Apex BOA decision based on
7 fraudulent information can be rendered null and void by the BOA Board itself, which is perhaps
8 informing Ms. Hohe's advice to Town Council, and her attempt to sweep this under the rug. We ask
9 you to confront the BOA with the fraudulent information that informed, motivated, and directed the
10 BOA decision, so that the BOA can reverse their July decision on this variance given to the applicant
11 on 1305 Holt Road. And in closed Session, which we know you'll be in, I suggest that the Town
12 Council summon the courage displayed by Dr. Taylor at this very same podium two weeks ago, and I
13 suggest you take your legal counsel from another resource besides the Town Attorney, who it
14 appears, at least on this issue, to have pulled the strings of the Town Council like an amateur
15 puppeteer. Thank you."

16
17 Next to speak was **Beth Bland** of 3724 Friendship Road:

18 "I wanted to come tonight to make sure the Town Council is aware that the efforts that were being
19 made to help control the traffic on Friendship Road, things like the Fix Friendship Road petition that
20 was written by Elizabeth Stitt, and then we have attended numerous Town of Holly Springs Council
21 Meetings also, and we have met with the developer of Friendship Innovation Park, and it's made a
22 difference. So the developer told us he heard our concerns during our meeting, and they made a
23 change to their plan with the traffic analysis that was done, and they specifically changed what was
24 for Friendship Road and Old US 1, they moved it from Phase 3, which is the end of their project,
25 which would be 7-10 years out, to Phase 1, and they're also doing a fee-in-lieu of over \$133,000. So
26 let's hope that that will help us a lot with trying to get us off of Friendship Road onto Old US 1 and
27 vice versa. The road itself is just crumbling, as far as the trucks that are going through, it's getting
28 worse and worse. There were blue lights on Friendship Bridge last night, I don't know really know
29 what it was, I don't know if it was a car accident, I don't know if it was a bicyclist, but at least this is
30 something, and hopefully it can be something that can happen sooner than later as far as getting a
31 signal at that intersection. Definitely the Town of Holly Springs was instrumental in having the
32 developer meet with us, so I just want to make sure you are aware of what their part of that was, and
33 hope that you can continue a relationship with the Town of Holly Springs and the Town of Apex with
34 all of the new building that's going on that US 1 corridor that's going to happen. There's one other
35 comment that I need to make, and Councilmember Mahaffey, so you ran for your position with trees
36 on your sign, and it was a lot about the canopy, etc. So back to the Force Main, I'm having a hard
37 time understanding, with all of the trees that are going to come down for this Force Main to come
38 through our properties, why you aren't on board with trying to look at moving it to the other side of
39 the road. And I had another comment for Councilmember Gantt, but he's not here tonight so I'll save
40 that for next time. Thank you."

41
42 **Mayor Gilbert** thanked Ms. Bland for her comments.

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Next to speak was **Elizabeth Stitt** of 3113 Friendship Road:

"Mayor, Town Council, good evening. As Beth previously shared, we've been working with Holly Springs. Holly Springs actually connected us with Matthew Nofo at DOT, and had some really good conversation with him about what is happening with our intersection and the traffic. That connection is huge, because now he understands our concerns. He was very appreciative of those concerns. And as many times as I've come before the Council and the town knows what we're trying to do, I would like to town to think through what other connections Apex can help us make, because if you're staff doesn't have time to advocate for the road, we absolutely will. So, we're going to maintain those relationships with DOT, we have established relationships with CAMPO, and we're going to continue to advocate there, we're going to continue to show up at Holly Springs Town Council meetings and working with them. There is another development that Holly Springs just approved within a half-mile of the Friendship Innovation Park. It also contains a fee-in-lieu for our intersection. I don't know what the dollar amount is, but what they're doing on their side of the bridge is huge and significant. We have not been able to get to the bottom of how much traffic is coming our way. Normally, a TIA has the total average daily trips. For some reason, they chose not to include that in the TIA. So, we've requested that information. We've asked the Town of Apex, Russell and Serge, if they could help get the information. Nobody has been willing to help us get that information. So that would be something very meaningful if Apex Transportation could reach out to Holly Springs Transportation and see how much traffic is coming. So, they are building over 1,500, between the two developments, homes right at that intersection, and they have unlimited commercial square feet. So just envision how much traffic that's coming on our road. I think they aren't disclosing it because they don't want us to know how much, but they wouldn't be all of a sudden dropping all this money, fee-in-lieu, if we weren't onto something. Developers don't do that. So, I believe there's much more, and I would like you to direct the staff to get more involved with Holly Springs on this particular intersection. I would love to have a neighborhood conversation, where Apex does some research and comes back to us and say, okay here's what our vision is. Because according to CAMPO, they have a vision, according to DOT they have a different vision, Holly Springs has a third, and Apex apparently has a fourth. Which version is actually going to happen? My understanding is that it's in your jurisdiction, and so ultimately, we need you to take some leadership. Thank you."

Mayor Gilbert thanked Ms. Stitt for her comments.

Next to speak was **Ivania Gutierrez**:

"Good Afternoon, my name is Ivania Gutierrez, the Executive Director of a new non-profit organization with a 501c. Paula is one of my Board Members, she is translating for some people who do not speak English. So I'm going to divide my 9 minutes into 3 parts, connecting community story, what is our story and our experience working with a community, what is the connecting community and what is the ask we are going to do, and announcements. So, I'm not new at serving the community, I've been working for 3 years in different initiatives with a group called Zumba camp. We have been doing a lot of awareness for different causes, for different non-profits, and in this

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1 experience, we have realized that there's so many things good in the community happening. There's
2 so many non-profits that are doing a great job in the community, but people don't know where to go
3 when they need something. A single mom doesn't know where to go when she needs diapers. And
4 there is an amazing non-profits called NC Diapers that is working for those single moms. So, in that
5 experience, we realized also that there is a concept called social determinants of health that is very
6 well-known by the North Carolina Health Department, so that's why this organization is not going to
7 focus on one area. This is going to be an approach that is going to be looking at different non-profits
8 in different areas. Like education, health, social support, housing, transportation, so that's why this
9 organization is going to bring non-profit from different areas, and it's going to bring the people who
10 might be interested in those non-profits, and we're going to create spaces that are fun, where
11 people are going to feel included, and they're not going to feel stigmatized. So we're going to be
12 doing fun events, one of the things we are going to be doing, this Sunday we have a soccer class
13 where 20 families of Apex are going to come, and the kids are going to be coached by a bilingual
14 coach, and the families are going to find out about different organizations. So the Town of Apex is
15 invited to go, to tell the families what is available from the town for them. So that's what connecting
16 community is. I'm a mom of 2 teenagers, and for the young populations, I see that there's not many
17 things to do in the town, like my daughter always asks me to go shopping, I would like to see more
18 live spaces where young people are doing more things for the community, for example, increasing
19 the visibility of the transportation, the kids can do that. They can do TikToks, they can do wonderful
20 things, explaining to the world the resources in the Town of Apex by doing that. My ask is a meeting
21 with the transportation department to see how my organization can help to increase the visibility of
22 the transportation, and maybe bring those young people in the town to increase the visibility. So, my
23 organization can help increase the visibility of the services you are providing, making them more
24 efficient. So, that's one of the asks. And then I teach a program every Friday called Siclo Danca,
25 which is for people with wheelchairs. I have two of them, Dan, who is over there with the caregivers.
26 This program is a movement program not only for the people in wheelchairs, but also for the
27 caregivers. It's very inclusive and represents all the barriers that sometimes have that doesn't have
28 to relate to transportation but also with a language barrier sometimes. These families have so many
29 things that that's going to allow them to try. So the other ask is to meet with a person in charge of
30 inclusion, I would like that Apex take the lead of disability, I think that is the population that is not
31 seen, people that they know about, about the different barriers that these families have, and I would
32 like to help the Town of Apex to take the lead of inclusion. Inclusion for this program, we can bring
33 all the non-profits that are doing a great job for different kinds of disability, and we can take the lead
34 and say we are an inclusive town. So, Connecting Community can help with that as well, so I am
35 requesting a meeting with the person in charge of DEI, I had a meeting with Linda Jones and I would
36 like to keep collaborating with her, and help the town to take the lead on that. That's basically what I
37 wanted to say. Coming up, I have two big events planned for women and young populations, we are
38 going to bring different non-profits that are assisting with awareness of domestic violence, single
39 moms, different populations. We are calling all the single moms, we are going to take it from the
40 offer, all the different non-profits that are working for the women groups in this event, and then
41 we're going to bring an inclusive space for them. So, that's coming up, and then I'm going to use the
42 North Carolina Museum, so Town of Apex is invited already to present things over there in that
43 coming up event, and then for other people I want to do the same, bring all the wonderful non-
44 profits, mental health, leadership classes for the young generations and do a second round of a big

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event for them. So, that's basically what is Connecting Community, and we are happy to collaborate with the Town of Apex, as a mom, a resident of Apex, I am proud of this town. Thank for listening and thank you everybody."

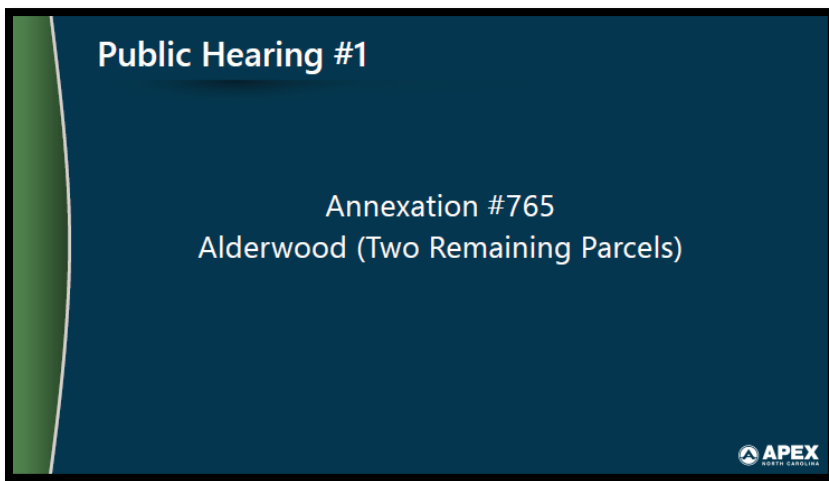
Mayor Gilbert thanked Ms. Gutierrez for all she does for the community. He then closed Public Forum with no sign ups remaining.

[PUBLIC HEARING]

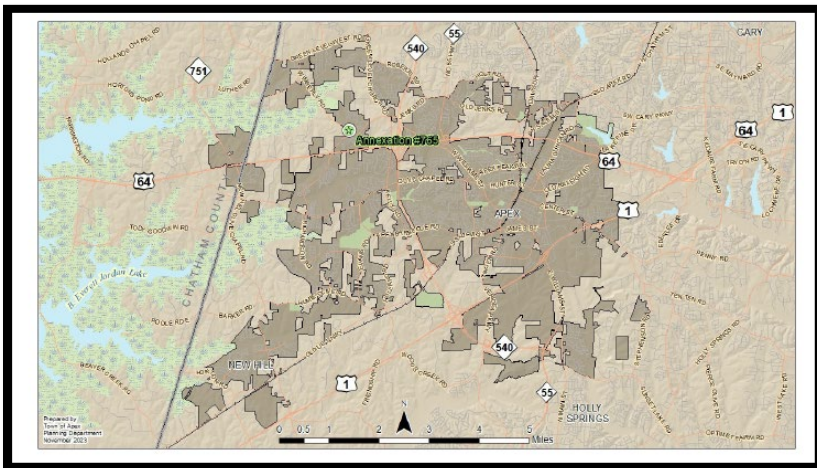
PH1 Annexation No. 765 - Alderwood - Two Remaining Parcels - 5.226 acres (REF: (ORD-2023-114))

Dianne Khin, Planning Director, gave the following presentation on Annexation No. 765 - Alderwood - Two Remaining Parcels.

[SLIDE 3]



[SLIDE 4]

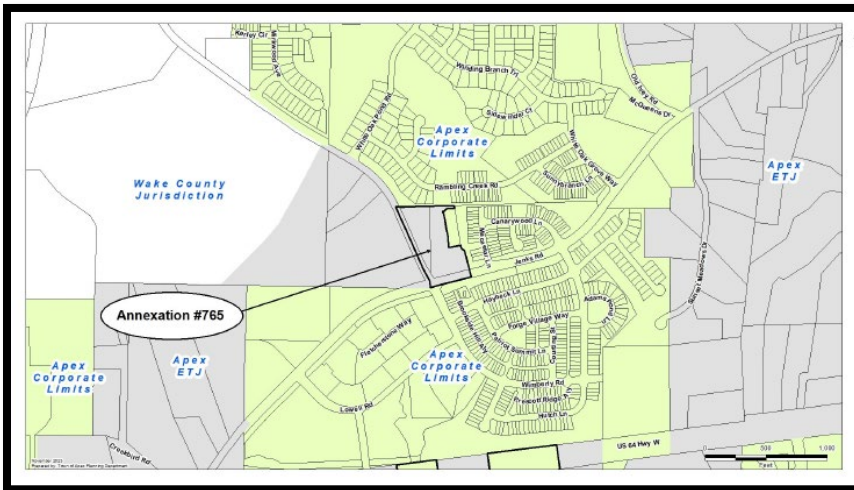


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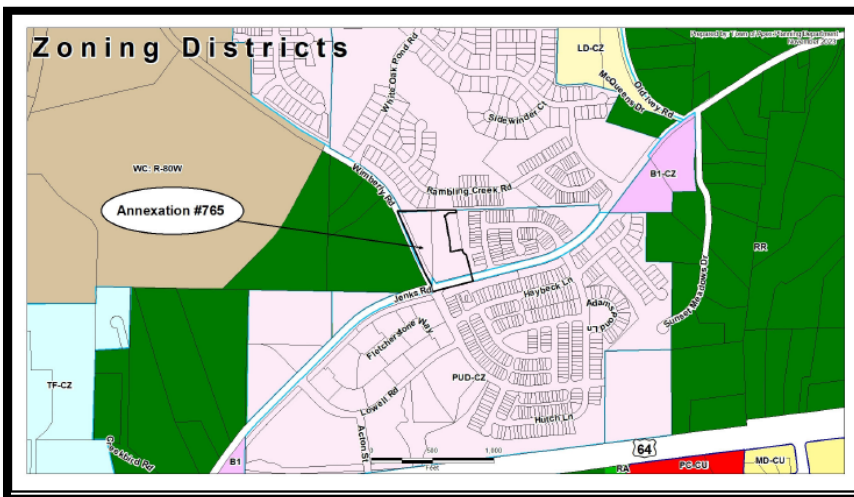
1 [SLIDE 5]



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3 [SLIDE 6]



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5 [SLIDE 7]



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8 **Mayor Gilbert** opened up public hearing for this item. With nobody signed up to speak, he
9 closed public hearing and moved discussion back to Council.

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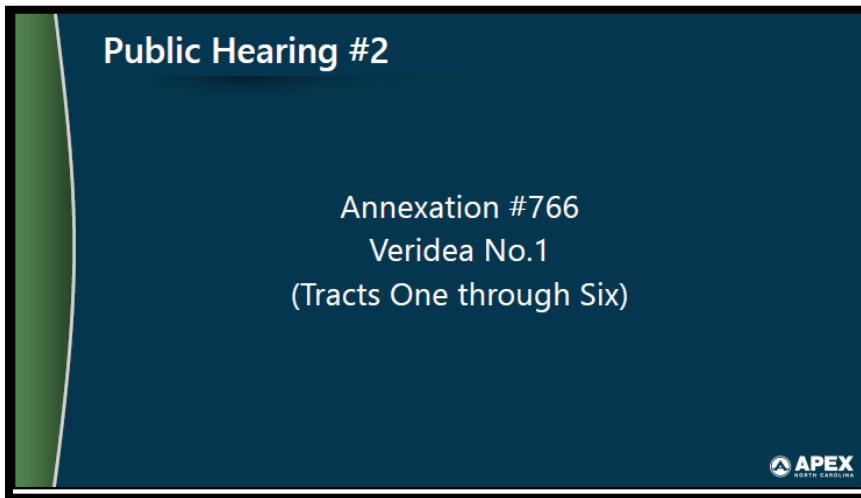
A **motion** was made by **Mayor Pro Tempore Killingsworth**, seconded by **Councilmember Zegerman**, to approve Annexation No. 765 - Alderwood - Two Remaining Parcels.

VOTE: UNANIMOUS (4-0)

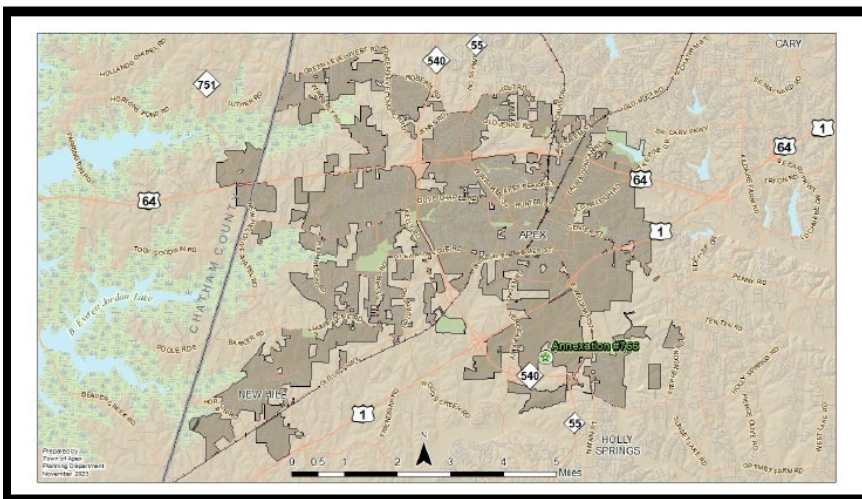
PH2 Annexation No. 766 - Veridea No. 1 (Tracts One through Six) - 111.02 acres (REF: ORD-2023-115)

Director Khin gave the following presentation regarding Annexation No. 766 - Veridea No. 1 (Tracts One through Six)

[SLIDE 8]

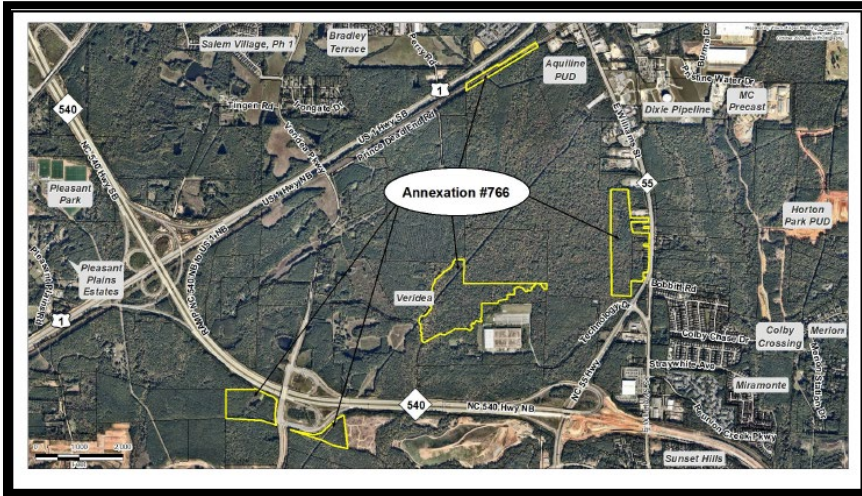


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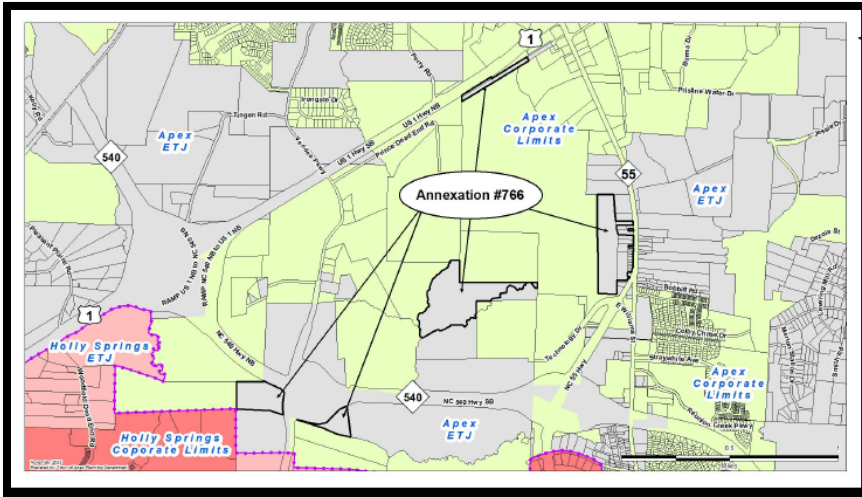


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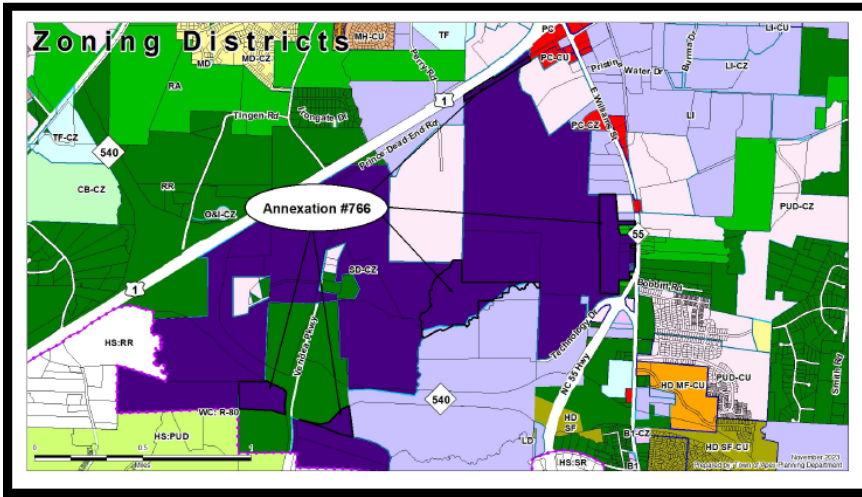
1 [SLIDE 10]



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5 [SLIDE 12]



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Councilmember Zegerman asked if this is a clean up because the properties were not previously included.

Director Khin said they were not owned or annexed at the time of the rezoning.

Mayor Gilbert opened up public hearing for this item. With nobody signed up to speak, he closed public hearing and moved discussion back to Council.

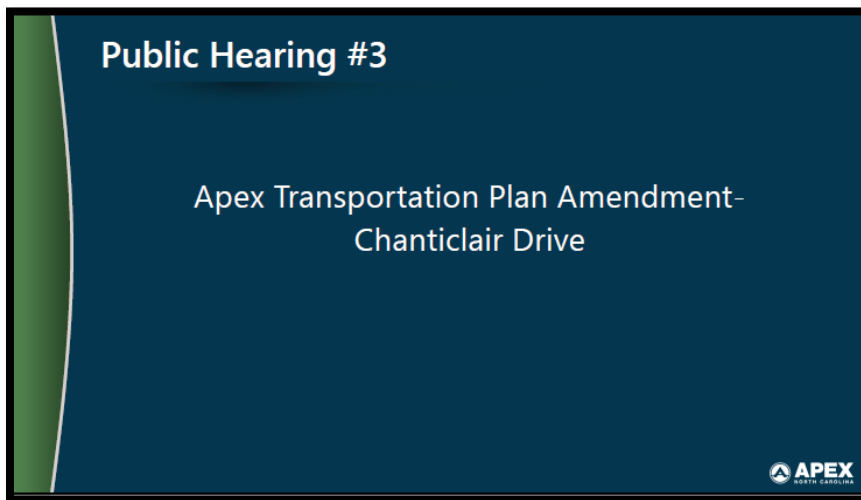
A **motion** was made by **Councilmember Gray**, seconded by **Mayor Pro Tempore Killingsworth**, to approve Annexation No. 766 - Veridea No. 1 (Tracts One through Six).

VOTE: UNANIMOUS (4-0)

PH3 Apex Transportation Plan Amendment - Chantclair Drive

Shannon Cox, Long-Range Planning Manager, gave the following presentation regarding the Apex Transportation Plan Amendment - Chantclair Drive.

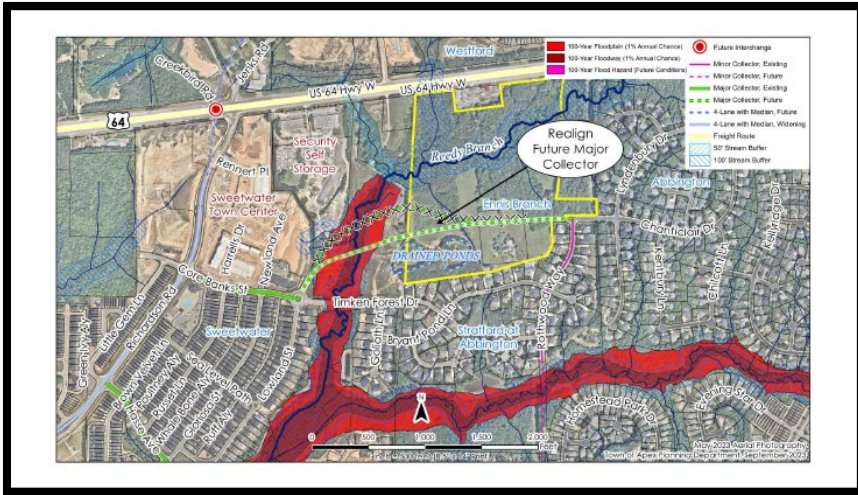
[SLIDE 13]



[SLIDE 14]



[SLIDE 15]



Mayor Gilbert opened up public hearing for this item. With nobody signed up to speak, he closed public hearing and moved discussion back to Council.

A **motion** was made by **Councilmember Zegerman**, seconded by **Councilmember Gray**, to approve the Apex Transportation Plan Amendment – Chanticleir Drive.

VOTE: UNANIMOUS (4-0)

PH4 Annexation No. 768 - 9613 Horton Road - 17.41 acres (REF: ORD-2023-116)

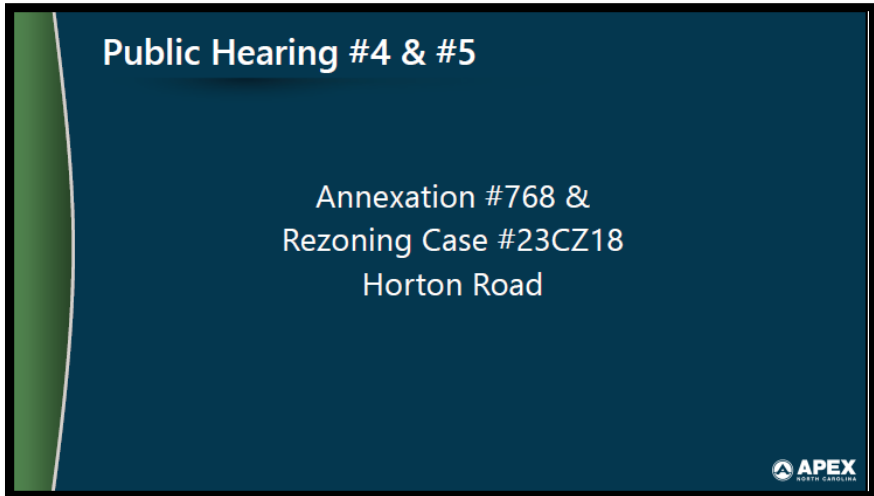
Shelly Mayo, Planner II, Planning Department

AND

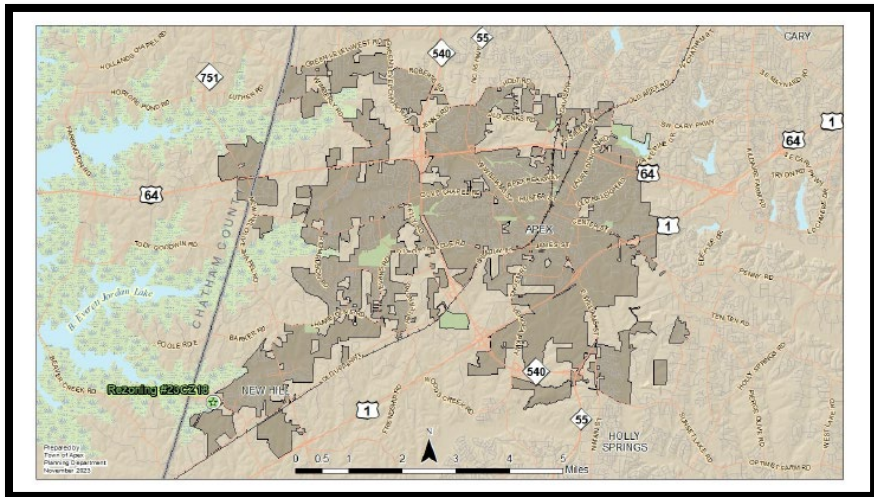
PH5 Rezoning Case No. 23CZ18 - 9551 and 9613 Horton Road (REF: ORD-2023-117)

Shelly Mayo, Planner II, gave the following presentation regarding Annexation No. 768 and Rezoning No. 23CZ18.

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3 [SLIDE 17]



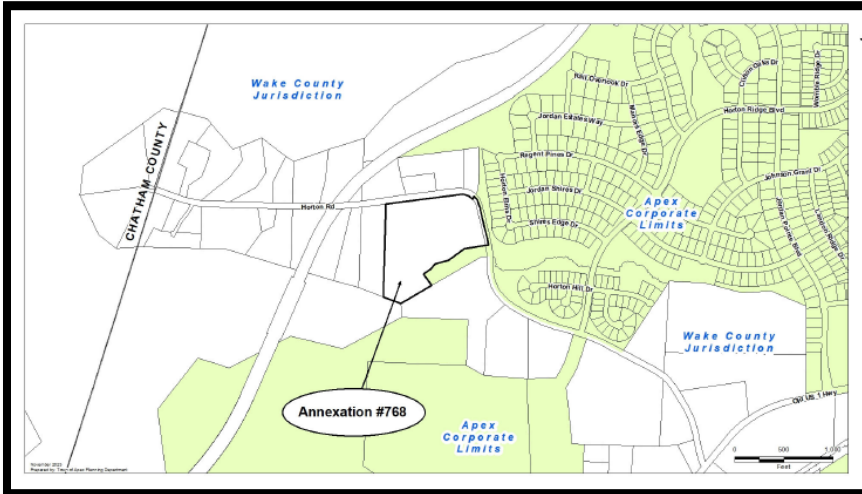
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6 [SLIDE 18]



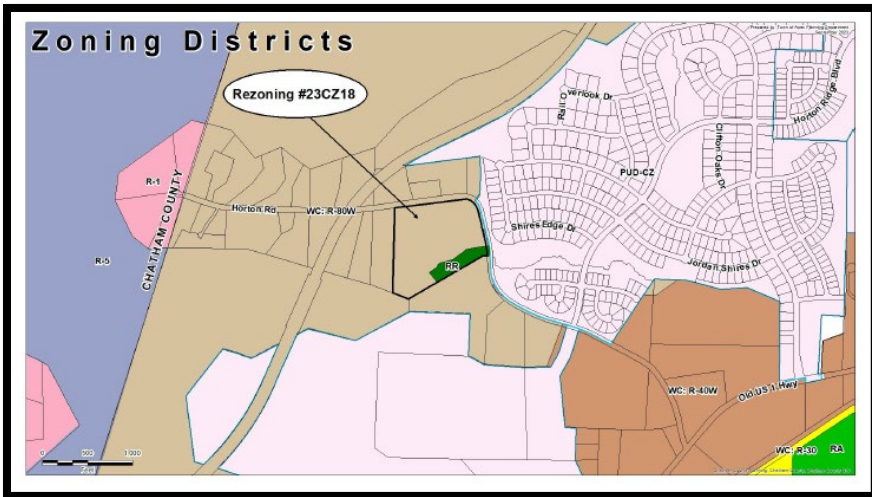
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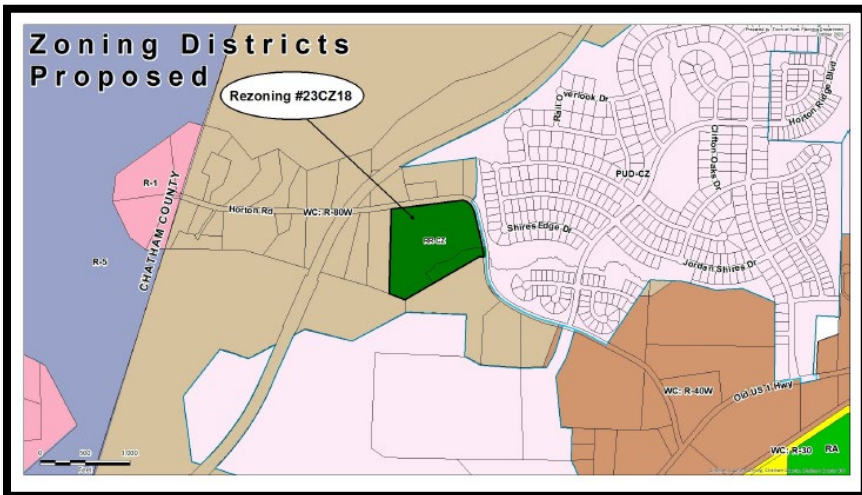
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1 **Councilmember Zegerman** asked if this was the first rezoning in a series, and properties to
2 its west would come in with the same zoning.

3 **Ms. Mayo** said it was possible, but she said staff may not recommend that because of
4 proximity to army land. She said it would have to be on a case-by-case basis.

5 **Councilmember Zegerman** asked if that would have already been incorporated into the
6 2045 Land Use Map.

7 **Ms. Mayo** the last update was when they added the Rural Residential Density Designation.
8 She said the 1 unit per 5 acres is much lower than what Wake County allows. She said the Rural
9 Transition was added in order to address places that need something in between. She said she
10 would think properties would likely come in south of this if that was proposed, but she could not be
11 sure.

12 **Councilmember Zegerman** asked if the buffer between army corps land was supposed to
13 be 450 feet.

14 **Ms. Mayo** said that was not a UDO requirement, but was a wildlife and game lands
15 recommendation. She said that was a recommendation for hunting safety. She said this
16 development got as close to that recommendation as possible to make the subdivision work.

17 **Councilmember Zegerman** asked why a 400-foot buffer would be enough in this scenario.

18 **Ms. Mayo** said this was a smaller parcel than a lot of their others. She said when staff looked
19 at the situation and the other things this property would offer, they felt it would be sufficient.

20 **Patrick Kiernan**, of Jones and Cnossen Engineering, on behalf of the applicant, gave some
21 comments regarding this development. She said the property owners have lived in Apex for a long
22 time, and have been good stewards of the community. He said they worked with the town to put the
23 Jordan Point Sewer Pump Station on this property, providing critical infrastructure to the town. He
24 said they feel the requested change is reasonable based on the 2045 Land Use Map. He said this
25 would preserve the character and provide a good density transition in this area. He said they are
26 proposing a variable buffer along the western and southern portions of the property. He showed
27 where the 400-foot buffer would be, and said it would be along a pond as well as a physical barrier.
28 He offered to answer any questions.

29 **Councilmember Mahaffey** asked if there was a grading plan for the property, and if it was
30 known how many stages it would have.

31 **Mr. Kiernan** said they are not near development. He said their intent is to follow the UDO,
32 which would allow up to 50% of the lots to be graded. He said they don't plan on doing anything
33 that would be unnecessary to putting in the infrastructure.

34 **Councilmember Mahaffey** asked if he would describe the topography as challenging.

35 **Mr. Kiernan** said no, it was relatively flat, and they do not anticipate any issues.

36 **Councilmember Mahaffey** said he would like to see more old-style developments, which
37 put in infrastructure and graded lots individually. He said what they are proposing isn't quite stage
38 grading but is a step towards it. He said the term for this within the town would need to be created
39 at some point in the future.

40 **Mr. Kiernan** said that is essentially the intent here. He said there may need to be certain lots
41 that are gone about differently, but he anticipates it going this way for most of them.

42 **Councilmember Gray** said this is continuing the legacy of the applicant in the care it is taking
43 in regards to the buffers. He thanked the applicant for their considerations.

DRAFT MINUTES

1 **Mayor Gilbert** opened up public hearing for this item. With nobody signed up to speak, he
2 closed public hearing and moved discussion back to Council.

3
4 **Councilmember Zegerman** said he also appreciated the staged buffers and taking care of
5 the neighbors. He said his main concern was that this proposal does not honor the density that is
6 outlined in the Land Use Map. He said the units would end up being denser because of the buffers
7 and topography on the property. He said this is inconsistent with the plan and with what residents
8 have said they wanted in this area. He said this would set a precedent for density in this area and
9 would make it harder for them to uphold the land use plans, and would cause more density to get
10 close to army corps lands and the Jordan Lake water supply. He said this is similar to the Castleberry
11 development as well. He said he appreciates the efforts on this, but he cannot be in support of this at
12 this point.

13 **Councilmember Gray** said he thinks the concern about the domino effect is valid, but that
14 Council are the people who control the dominoes. He said he thinks these things are best done with
15 a case-by-case analysis. He said he likes the use of creating these buffers, and this process was done
16 with consideration and care for neighbors. He said he would like to see a set of conditions for
17 controlling the dominoes in this area and keeping this approach. He said this project gives good
18 things in the conditions, and had creative steps by the applicant. He said he feels very good about
19 supporting this, and hoped it would be a model for other developments down the road.

20 **Councilmember Zegerman** said he agreed that they are in control of the dominoes falling
21 over, but he said this is the first domino they would knock over. He said if they don't do this, they
22 wouldn't put themselves in a position to potentially deny a similar request to this in the area in the
23 future.

24 **Councilmember Gray** said he thinks that is a fair statement. He said they are still in control of
25 the dominoes and would have to make a case-by-case analysis of each one. He said he does not see
26 this as the thing that would trigger everything else down the road. He said all he can do is look at
27 what is in front of them right now, and can't look at what may come down the road. He said they get
28 a lot out of this rezoning. He said he doesn't see it as setting precedent, but if it is, he likes the
29 precedent that is being set with regard to the conditions.

30 **Councilmember Mahaffey** said he was between them. He said this was not the first domino,
31 and was the third or fourth to make a denser zoning in this scenario. He said they have not been
32 clear with developers on what the criteria is to get denser zoning in critical areas. He said if they
33 keep approving them without saying anything like that, the 1 per 5 acres designation is essentially
34 just a 1 per 1-acre designation anyways. He said he thinks they need to articulate what specifically
35 the conditions are that can allow to get the upgrade in density, if that's why they like these rezonings.
36 He said he doesn't like continuing to do these kinds of rezonings "ad-hoc." He said he does like the
37 conditions on this, but would like the grading to be a little more explicit. He said setting a precedent
38 of individually grading lots is one he would like to set, and something he thinks would be worthy of a
39 density upgrade. He added he wished it also included a solar panel system. He said he also thought
40 they may could add a UDO requirement regarding buffers to army corps land so it didn't have to be
41 a condition every time. He said he may would be in favor of tabling this for now and seeing if they
42 could tweak some of the language. He also added he thinks they should have two meetings for
43 every rezoning.

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1 **Mayor Pro Tempore Killingsworth** said she thinks a lot of the conditions are great. She said
2 she is in favor of having 1 unite per 1 acre in this area. She said she is loving some of the EAB
3 suggestions as well. She said she does not have a problem with this one.

4 **Councilmember Zegerman** said he doesn't want to take away from the conditions offered,
5 he thinks they are great. He said this is more of a question of principle, and the precedent this may
6 set for them and future Councils.

7 **Councilmember Mahaffey** said they need to update to 2045 Land Use Map to reflect some
8 properties that have the rural transitions designation sooner rather than later. He said he feels like
9 the floodgates have opened with this kind of designation.

10 **Councilmember Zegerman** asked what the next planned date was for updating the Land
11 Use Map.

12 **Director Khin** said there is no timeline for it, but it is on the list of things to do. She said if
13 they changed the Land Use Map to this designation, there may be less leverage for Council during
14 the rezoning process. She said it may be difficult to determine which areas they would to keep as
15 rural versus changing to rural transition. She said it would be easier to make those determinations
16 within the context rezoning.

17 **Councilmember Zegerman** said that's fair, but he agrees with Councilmember Mahaffey that
18 they need some predictability and standards for these scenarios. He said it would be fairer.

19 **Mayor Gilbert** asked Mr. Kiernan if he would like to move forward tonight, in light of
20 Councilmember Mahaffey's suggestion to possibly table this item.

21 **Mr. Kiernan** said yes, they would like to move forward.

22 **Councilmember Mahaffey** said he was not there yet.

23 **Mr. Kiernan** said they would be willing to add a condition for one solar rooftop, but they
24 would like to call for a vote tonight.

25 **Councilmember Mahaffey** asked if they could commit to individually grading the lots
26 beyond the stage grading measures that are currently included.

27 **Mr. Kiernan** said he was not sure how that could be written to be enforceable.

28 **Ms. Mayo** said that if they put in a condition for individual zoning at this point, before they
29 have created a zoning plan, they would need to come back to Council for a change in conditions if
30 they had to do more grading for certain lots depending on circumstances.

31 **Director Khin** said doing individual lots is very difficult in areas with difficult topography and
32 geographic features such as streams. She said they would not be able to craft a zoning condition
33 that would be both valuable and enforceable for any project for this, as they would not have enough
34 information.

35 **Councilmember Zegerman** asked how Salem Village Phase I was done, because those lots
36 were done individually or two at a time.

37 **Ms. Mayo** said that was a very different setup at the time. She said that project was
38 developed under an old set of constraints with a different UDO. She said to her recollection, that
39 project graded 5-6 or more lots at a time. She said they look as good as they do now because they
40 have had 10-15 years to grow back in.

41 **Councilmember Zegerman** said if individual grading is not feasible, maybe they can take a
42 cue from the past with how those were done. He said they may could be graded in pods.

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Ms. Mayo said they could not make a condition for tonight, and that in her opinion, that would require having a more detailed grading plan up-front from the applicant. She said they do not have a topographical survey at this point so it would be more difficult to determine.

Director Khin added that Salem Village was done on much easier topography such as farm fields.

Mayor Gilbert said he appreciated all of the input, and that it was time for a vote.

A **motion** was made by **Councilmember Gray**, seconded by **Mayor Pro Tempore Killingsworth**, to approve Annexation No. 768 - 9613 Horton Road and Rezoning No. 23CZ18 - 9551 and 9613 Horton Road, with the additional condition of a minimum 4kW Solar PV System being installed on 1 single-family home within the development. (Clerk's Note: See *OTHER-2023-121* for the complete additional zoning condition.)

VOTE: 2-2, Councilmember Mahaffey and Councilmember Zegerman dissenting

Mayor Gilbert thanked staff and the applicant for working together on this rezoning, and thanked the property owners for all they have done for the community over the years.

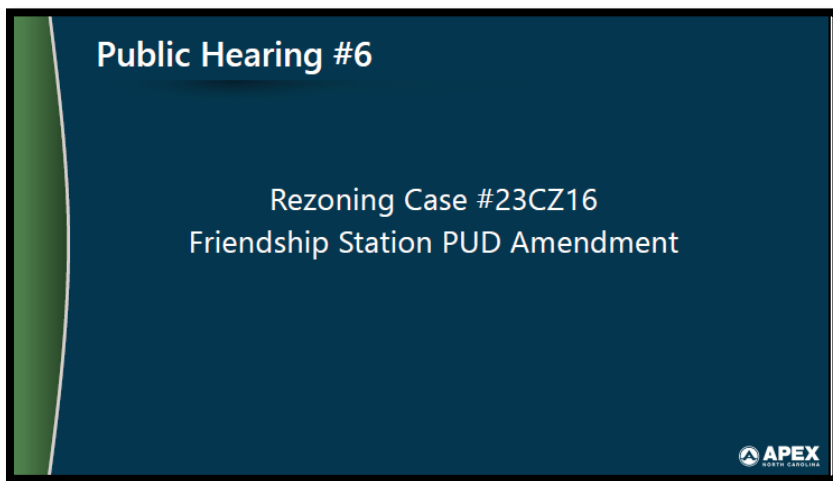
Pursuant to Town of Apex Charter, **Mayor Gilbert** voted in the affirmative in order to break the tie.

Motion Passed, 3-2.

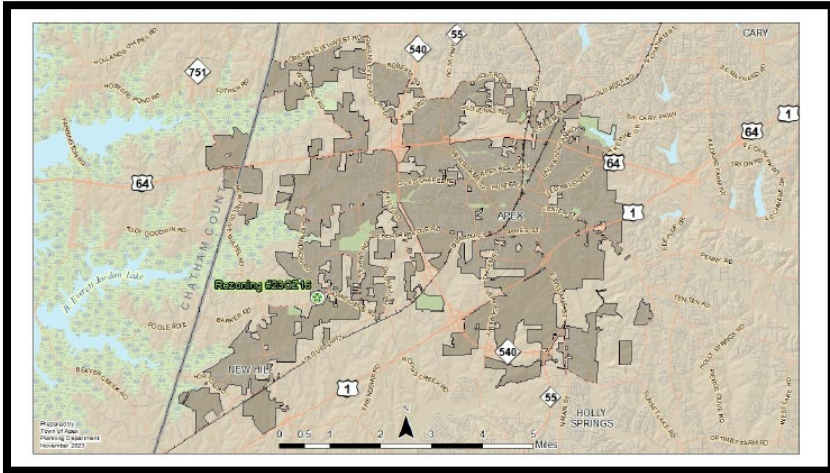
PH6 Rezoning Case No. 23CZ16 - Friendship Station PUD Amendment

Amanda Bunce, Current Planning Manager, gave the following presentation regarding Rezoning No. 23CZ16 - Friendship Station PUD Amendment.

[SLIDE 25]



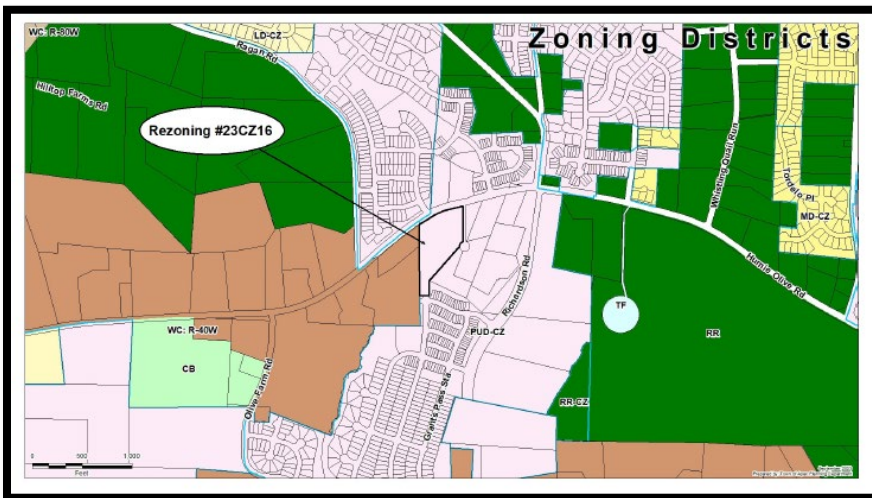
1 [SLIDE 26]



2
3 [SLIDE 27]



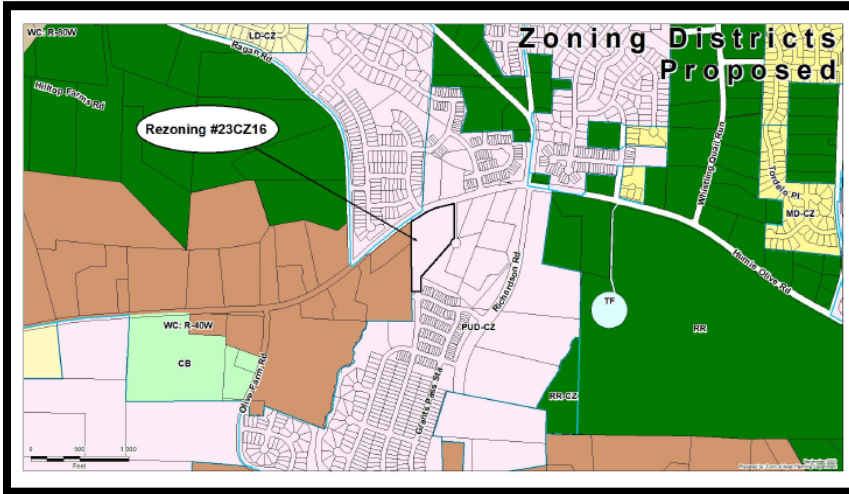
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5 [SLIDE 28]



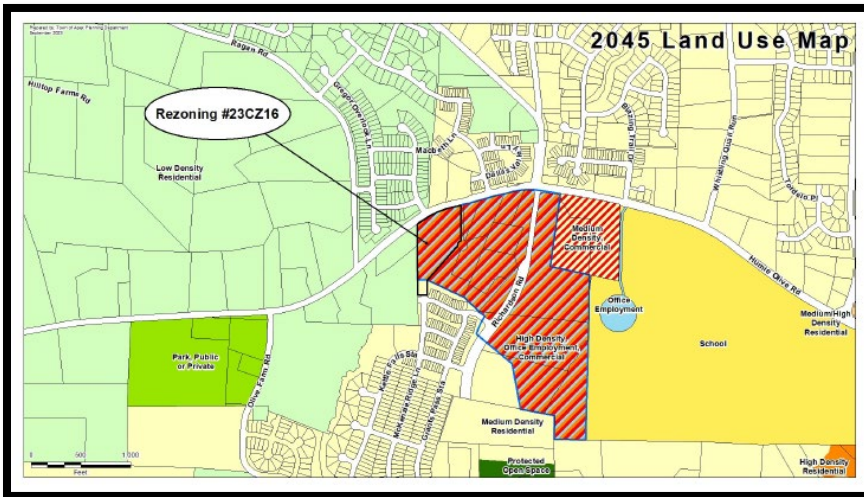
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1 [SLIDE 29]



2
3 [SLIDE 30]



4
5
6
7 [SLIDE 31]



8
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in January. He said there was a Work Session on November 30, and a tree lighting event on December 1st, then the Christmas Parade on December 2nd.

Mayor Gilbert said he wanted to commend Electric Utilities for installing new light poles on Tingen Road.

[CLOSED SESSION]

Town Attorney Hohe asked if a closed session item could be added to discuss the handling of the matter of Town of Apex v. CJS Assemblage.

A **motion** was made by **Councilmember Zegerman**, seconded by **Councilmember Mahaffey**, to enter into Closed Session for Consent Items 1 and 2, pursuant to **NCGS § 143-318.11(a)(5)** and **NCGS § 143-318.11(a)(3)**.

VOTE: UNANIMOUS (4-0)

Council entered into closed session at **7:37p.m.**

CS1 Steve Adams, Real Estate and Utilities Acquisition Specialist

NCGS § 143-318.11(a)(5)

"To establish, or to instruct the public body's staff or negotiating agents concerning the position to be taken by or on behalf of the public body in negotiating (i) the price and other material terms of a contract or proposed contract for the acquisition of real property by purchase, option, exchange, or lease."

CS2 ADDED - Town of Apex v. CJS Assemblage

NCGS §143-318.11(a)(3):

"To consult with an attorney employed or retained by the public body in order to preserve the attorney-client privilege between the attorney and the public body."

Council returned to open session at **8:27p.m.**

[ADJOURNMENT]

Mayor Gilbert adjourned the meeting at **8:28p.m.**

Jacques K. Gilbert
Mayor

Allen Coleman, CMC, NCCCC

Town Clerk to the Apex Town Council

Submitted for approval by Town Clerk Allen Coleman and approved on _____.

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**TOWN OF APEX
TOWN COUNCIL WORK SESSION
THURSDAY, NOVEMBER 30, 2023
3:30 P.M.**

The Apex Town Council met for a work session on Thursday, November 30, 2023 at 3:30 p.m. at the Apex Police Department located at 205 Sanders Street in Apex North Carolina.

This meeting was open to the public. Members of the public were able to attend this meeting in-person or watch online via the livestream on the Town's YouTube Channel:

<https://www.youtube.com/watch?v=XUmqlsr1Xc8>

[ATTENDANCE]

Elected Body

Mayor Jacques K. Gilbert (presiding)
Mayor Pro-Tempore Audra Killingsworth (late arrival)
Councilmember Brett Gantt
Councilmember Ed Gray
Councilmember Terry Mahaffey
Councilmember Arno Zegerman
Absent: None

Town Staff

Interim Town Manager Shawn Purvis
Assistant Town Manager Demetria John
Assistant Town Manager Marty Stone
Town Attorney Laurie Hohe
Town Clerk Allen Coleman
Police Chief Jason Armstrong
All other staff members will be identified appropriately below.

[COMMENCMENT]

Mayor Gilbert called the Work Session to order, and led in a recitation of the Pledge of Allegiance. He noted that Mayor Pro Tempore Killingsworth would be arriving in about 15 minutes.

Interim Town Manager Purvis said they are at a point where they need some direction from Council on some ordinances they are working on.

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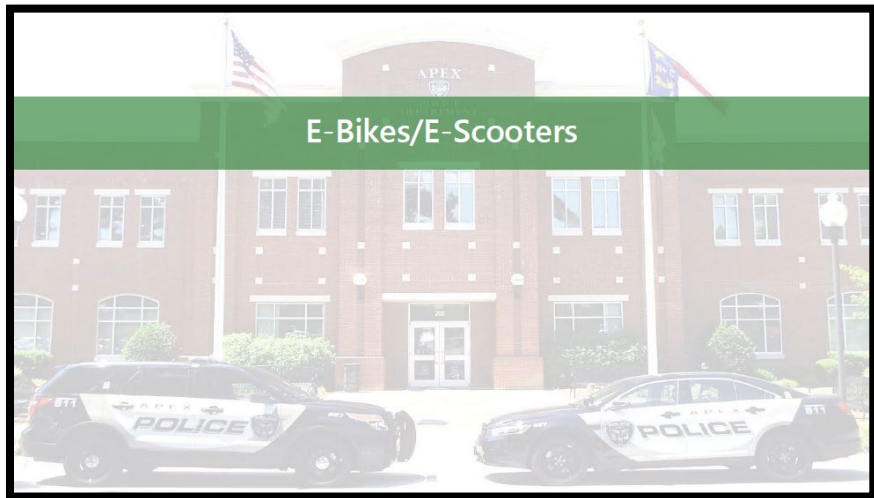
[AGENDA ITEM NO. 1 - PUBLIC SAFETY BI-ANNUAL UPDATES - APEX POLICE DEPARTMENT (APD)]

Chief Armstrong said one of the things they were going to talk about today was e-bikes and e-scooters, and looking at how other places handles those things. He said they were looking to review how they defined those things and what they have on the books in regards to them. He gave the following presentation:

[SLIDE 1]



[SLIDE 2]



1 [SLIDE 3]

North Carolina Definitions

Vehicle. – Every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, excepting devices moved by human power or used exclusively upon fixed rails or tracks; provided, that for the purposes of this Chapter bicycles and electric assisted bicycles shall be deemed vehicles and every rider of a bicycle or an electric assisted bicycle upon a highway shall be subject to the provisions of this Chapter applicable to the driver of a vehicle except those which by their nature can have no application.

Motor Vehicle. – Every vehicle which is self-propelled and every vehicle designed to run upon the highways which is pulled by a self-propelled vehicle. Except as specifically provided otherwise, this term shall not include mopeds or electric assisted bicycles.

Motorcycles. – Vehicles having a saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, including autocycles, motor scooters, and motor-driven bicycles, but excluding tractors and utility vehicles equipped with an additional form of device designed to transport property, three-wheeled NC General Statutes - Chapter 20 10 vehicles while being used by law-enforcement agencies, electric assisted bicycles, and mopeds as defined in subdivision d1. of this subdivision.

2
3 [SLIDE 4]

North Carolina Definitions

Electric Assisted Bicycle. – A bicycle with two or three wheels that is equipped with a seat or saddle for use by the rider, fully operable pedals for human propulsion, and an electric motor of no more than 750 watts, whose maximum speed on a level surface when powered solely by such a motor is no greater than 20 miles per hour.

Motor-driven bicycle. – A vehicle with two or three wheels, a steering handle, one or two saddle seats, pedals, and a motor that cannot propel the vehicle at a speed greater than 20 miles per hour on a level surface. This term shall not include an electric assisted bicycle as defined in subdivision (7a) of this section.

Moped. - A vehicle, other than a motor-driven bicycle or electric assisted bicycle, that has two or three wheels, no external shifting device, a motor that does not exceed 50 cubic centimeters piston displacement and cannot propel the vehicle at a speed greater than 30 miles per hour on a level surface. The motor may be powered by electricity, alternative fuel, motor fuel, or a combination of each.

4
5 **Councilmember Zegerman** asked if these e-bikes not covered would classify as
6 motorcycles.

7 **Chief Armstrong** said it depends. He said some of them have a classification that only
8 accounts for the speed that can be reached by the engine only without pedal assist.

1 [SLIDE 5]

E-Bike Class System

- o **Class 1:** e-Bikes that are pedal-assist only, with no throttle, and have a maximum assisted speed of 20 mph.
- o **Class 2:** e-bikes that also have a maximum speed of 20 mph, but are throttle -assisted.
- o **Class 3:** e-Bikes that are pedal-assist only, with no throttle, and a maximum assisted speed of 28 mph. **(Not covered within State Law)**

2
3 [SLIDE 6]

Apex Local Ordinances

Sec. 20-3. - Protective helmets required.

Every person less than 16 years of age operating or riding a bicycle, moped, inline skates, roller skates, skate board, scooter, or other similar vehicle or device on a public street, sidewalk, greenway, or other right-of-way or on any property owned or controlled by the town shall wear a protective helmet on his head, with the chin strap securely fastened under the chin. Such helmet shall be fitted to the size of the wearer and shall meet or exceed the standards for bicycle helmet use and wear asset by ANSI (American National Standards Institute) or the Snell Memorial Foundation. Riding a vehicle or device includes riding as a passenger. No parent or guardian of any juvenile shall knowingly allow such juvenile to violate this section.

Sec. 20-143. - Riding bicycles, scooters and skateboards on sidewalk.

No person shall ride a bicycle, scooter or skateboard on any public sidewalk without due caution and shall yield the right-of-way to all pedestrians and persons on other permitted devices using said sidewalks. Speed shall be limited to ten miles per hour on sidewalks and paths of five feet or less in width and when crossing the intersection of a public street or driveway along any sidewalk or path. No person shall ride a bicycle, scooter or skateboard on the sidewalks along North Salem Street between Chatham Street and Templeton Street or along Chatham Street between Seaboard Street and Commerce Street.

4
5 **Councilmember Zegerman** asked about e-bikes that went faster than 20 miles per
6 hour.

7 **Chief Armstrong** said in his research, there weren't instances of those in other place's
8 ordinances that classified those as e-bikes. He said most were classified as motorcycles.

9 **Councilmember Zegerman** said there were a lot of cases of bike modification that
10 could make things go faster than the base limits.

11 **Chief Armstrong** said that makes it all become a different animal. He said the e-bike
12 community outlines things a bit differently to help capture that, and that it caps out at about
13 28 miles per hour. He said above 30 miles per hour it really gets to be a motor vehicle.

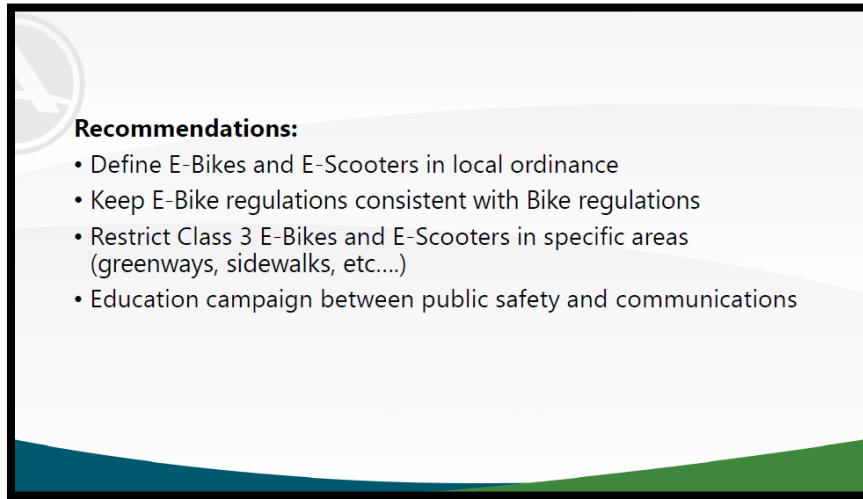
14 **Councilmember Gray** said his understanding was that the class system was based on
15 what was allowed in New York City. He said lots of place don't allow the sale or operation of
16 Class 3's, but with modifications other ones can get to that range.

17 **Chief Armstrong** said most that are sold are around the 20 mile per hour range,
18 sometimes up to 22. He said less are 28, but they do exist.

1 **Councilmember Zegerman** said it was still important to look at classifying ones that
2 get to 28 miles per hour.

3 **Chief Armstrong** said that would be coming in the recommendation piece of his
4 presentation later.

5 **[SLIDE 7]**



6
7 **Councilmember Zegerman** said there should be a cutoff at a certain speed when
8 they are classed as motorcycles.

9 **Chief Armstrong** said the cut-off miles per hour should be 20 miles per hour (MPH),
10 and that's what it is in state law. He said that would be his recommendation, and anything
11 faster would not be allowed on sidewalks/greenways, or require an additional license.

12 **Councilmember Gantt** said he thought this conversation was going to be about kids,
13 not about the industry of E-Bikes and E-Scooters.

14 **Chief Armstrong** said this will encompass everyone and not just kids. He said the E-
15 Bike and Bikes are not being split up and keeping the same regulations. He said there will be
16 some additional conditions and protections for kids, but in general they are consistent.

17 **Councilmember Mahaffey** asked why the town couldn't make a distinction between
18 the two.

19 **Chief Armstrong** said the elected body could do that if Council chooses. He said
20 from what he has seen, there is a line where it becomes parental jurisdiction rather than the
21 role of Council. He said kids are going to ride bikes, and often they aren't going to know the
22 rules. He said there is going to be a large education campaign for parents, and that
23 additional ordinances likely won't change how kids behave on bikes.

24 **Councilmember Mahaffey** asked are there enforcement concerns if such ordinance
25 were to exist.

26 **Chief Armstrong** said yes. He said this would take away from their other concerns,
27 and some kids may not even have IDs. He said they can't give a 13-year-old a ticket, it would
28 go to the parent. He said the Education Campaign is to help with these concerns as well as
29 parental control. He added that overall there is not a high frequency of incidents of kids on

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1 bikes. He believes there is not a need to enact an ordinance on how old a kid needs to be to
2 ride a bike.

3 **Mayor Gilbert** said the District Attorney's (DA) office would need to weigh in.

4 **Chief Armstrong** said yes. He said the DA's office may go against the ordinance, but
5 they are not going to govern how the town enforces the laws.

6 **Councilmember Gray** said there is an element of soft enforcement that is still very
7 important to define exactly what is a scooter and a bike. He said the town is going to run into
8 the same problem that parents are thinking their kids are on scooters but may actually be
9 motorcycles by definition. He said having certain things on the books allows a justification for
10 why behaviors should be encourages, such as requiring a helmet.

11 **Chief Armstrong** said the biggest objective in the Education Campaign is informing
12 people on the new laws and rules, and communicating on the front end with the community.

13 **Mayor Gilbert** said he wants to revisit the conversation of the DA's office. He said
14 when you take a case to the DA's office, he said they will count that. He said that needs to be
15 factored in before making ordinances.

16 **Councilmember Mahaffey** asked how many cases were taken to the DA's office
17 about kids wearing helmets.

18 **Mayor Gilbert** said the town can't write a 13-year-old a ticket for not wearing a helmet
19 on a bike. He said the skate park doesn't have an enforceable helmet rule. He said making it
20 more enforceable moves away from the community policing principles.

21 **Councilmember Zegerman** said something needs to be on the books, and they can
22 also do positive reinforcements.

23 **Councilmember Gray** asked what is the vision for how the Education Campaign will
24 unfold.

25 **Chief Armstrong** said the first one is being able to post on social media. He said he
26 has received some positive feedback on digital videos that are being posted, and changes
27 can be included in those. He said as a light enforcement, police can do a campaign with the
28 Traffic Unit. He said if he starts to see more violations in certain areas then they would get out
29 in the community with the helmet tickets, ice cream tickets, and get people to stop in and
30 look at the education piece. He said this will help people understand what the ordinances are
31 and understand some of the dangers and concerns that some of the devices have especially
32 for young people. He said he would also like to look at other community entities to partner
33 with and do different initiatives for neighborhoods.

34 **Assistant Town Manager John** said a question came up during a meeting is how
35 could the Police Department partner with the schools.

36 **Councilmember Zegerman** said it's important to have definitions laid out in the
37 ordinance to know what kind of vehicle goes where in the regulations and lanes. He said the
38 other issue is there aren't really separations for different modes of transportation, it's all
39 within roads that include cars.

40 **Councilmember Gantt** said presumably if they were these scooters were not allowed
41 on sidewalks and greenways, they would have to use roads, which would make it much less

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1 safe for them, while making it safer for walkers. He asked about the framework for this
2 concern.

3 **Chief Armstrong** said some of the concerns are already built into the ordinance. He
4 said most people have not read the towns ordinance and they go out and ride. He said that's
5 where the education component comes in at. There needs to be a way to get people to
6 follow the rules to preserve safety.

7 **Councilmember Gantt** said he feels unsafe on his personal scooter on the road in
8 downtown Apex. He uses the sidewalk until downtown, then switches to the road to follow
9 the rules. He said he feels safer on a bike than a scooter on busy roads.

10 **Chief Armstrong** said he thinks it's more dangerous for bikes and scooters to be on
11 roads from all the cars, open car doors, and other factors than trying to govern those vehicles
12 on sidewalks along with pedestrians.

13 **Councilmember Mahaffey** said the difference between the E-Bikes and regular bikes
14 is E-Bikes have throttles and that's what makes them different. He said the throttles are hard
15 to control for someone who is inexperienced and it makes it more dangerous. He said to Chief
16 Armstrong that he had emailed regarding the road access for E-Bikes in Durham being
17 restricted to only ages 16 and up.

18 **Chief Armstrong** said to Councilmember Mahaffey that the statute was specific to the
19 rental bike system.

20 **Councilmember Mahaffey** said there is an interpretation of state law that it's
21 restricted to 16 and over on the road. He said in GS § Chapter 20 - Section 4.01 - Sub
22 Paragraph 49 it talks about Vehicles. He read the paragraph and asked if that means they
23 need a driver's license.

24 **Chief Armstrong** said he does not think so. He said there is a difference in definition
25 of vehicle and motor vehicle.

26 **Councilmember Gray** said the town could make a similar statute that would govern all
27 class two's if they wanted to. He said Class one, two and three, or even non-classifications is
28 not anywhere in the North Carolina statutes. He said the town could create the definitions of
29 e-bikes and e-scooters, regular bikes, etc. and that would make it a lot easier to regulate
30 within each one of those classes.

31 **Mayor Gilbert** asked Council what their direction is in this recommendation.

32 **Mayor Pro-Tempore Killingsworth** said she would like to have a really thorough
33 definition of bikes, e-bikes, scooters and e-scooters, so residents know exactly what it means.
34 She said it seems like the North Carolina General Statute (NCGS) is due for an update.

35 **Chief Armstrong** said the North Carolina General Statute (NCGS) in 2019 or 2020
36 where legislation introduced to address stand up scooters but it never made it into law.

37 **Mayor Pro-Tempore Killingsworth** said it's to the town's benefit to define each one
38 thoroughly and break down the different classes. She said the throttle on the e-scooters and
39 e-bikes need to be pointed out because it's worth restricting in certain areas.

40 **Councilmember Mahaffey** said his question was related to the email he sent Chief
41 Armstrong was ages 16 and under on roads who may not know the rules of the road and
42 provide higher danger on throttles compared to ages 16 and over.

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1 **Mayor Gilbert** asked to hear from legal on this subject.

2 **Town Attorney Hohe** said there are some regulations under state law. She said
3 Council will want to make sure that whatever definitions that the town is applying are still
4 consistent with state law. She said they don't want to try to outlaw something that is lawful
5 under state law. She asked Councilmember Mahaffey to his point of e-bikes on sidewalks and
6 not roadways, what would happen if the e-bike came to an intersection.

7 **Chief Armstrong** said there is a state law provision, even for kids they can cross over
8 the roadway just like pedestrians.

9 **Councilmember Zegerman** asked wouldn't the town have the exact same situation
10 there because of pedestrians because they are not allowed technically in the roadway.

11 **Chief Armstrong** said when we talk about kids and their knowledge based on if they
12 are allowed to ride in the roadway at various places potentially is a dangerous deal.

13 **Councilmember Mahaffey** said he's still processing the idea, so it's just a question he
14 had asked in the email. He said it makes sense to him that the throttles are different and that's
15 what's creating the danger. He said his concern is specifically the rules of the road and
16 someone younger than 16 who hasn't gone through the licensing procedure may not know
17 when to stop or when to turn.

18 **Councilmember Zegerman** said it looks like everyone agrees that better definitions
19 are needed. He asked to get a proposed set of definitions and then lay that out against a grid
20 of different types of roadways where the town could allow bicycles, versus a class one e-bike,
21 versus a class two e-bike, etc. to determine which one is more prevalent and more important
22 for the town to account for.

23 **Councilmember Mahaffey** said many other towns are also struggling with the same
24 question because of the safety concerns that are being created. He said it's really only the
25 past couple years that this has been an issue and new ground for all of us.

26 **Interim Town Manager Purvis** asked was the focus of defining definitions with
27 locations was for 16 and under.

28 **Mayor Pro-Tempore Killingsworth** said council should lay out everything.

29 **Interim Town Manager Purvis** said Council is looking at all ages and said to look at
30 type and location.

31 **Councilmember Zegerman** asked for part of it to be where would we see the users of
32 the vehicles in the town when the new definitions are created.

33 **Councilmember Gantt** said instead of regulating type, just regulate speed on the
34 Greenways.

35 **Councilmember Mahaffey** said his primary concern is a vehicle hitting a bicyclist or
36 other similar vehicle. He said he's not interested in restrictions for adults or those over 16.

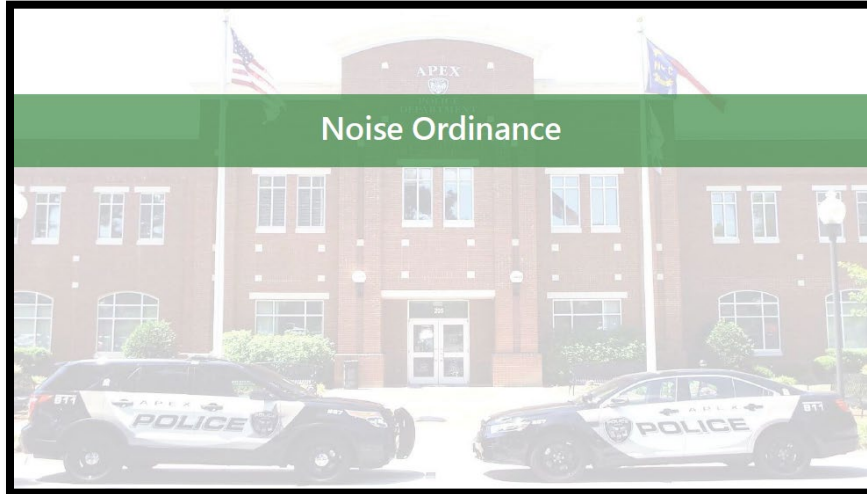
37 **Councilmember Gantt** said adults need to be driving slower on greenways if they're
38 using those kinds of vehicles.

39 **Councilmember Mahaffey** said he would be fine with a speed limit on greenways if
40 one didn't exist.

DRAFT MINUTES

Councilmember Gantt said that could also apply to all sidewalks so that people didn't have to get onto and off of roadways in areas like downtown. He said it may need to be 5 mph in downtown.

[SLIDE 8]



[SLIDE 9]

Apex Local Ordinance

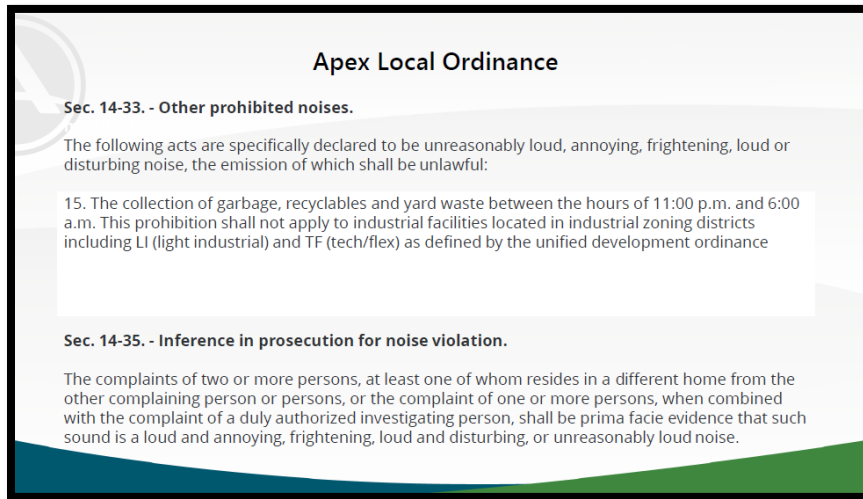
Sec. 14-29. - Noise; definitions.

Construction means on-site erection, fabrication, installation, alteration, repair, demolition or removal of any structure, facility or addition thereto, including all related activities including, but not restricted to, clearing of land, earth moving, blasting and landscaping. Construction does not include owner occupied residential projects completed solely by the property owner and which do not require a building permit.

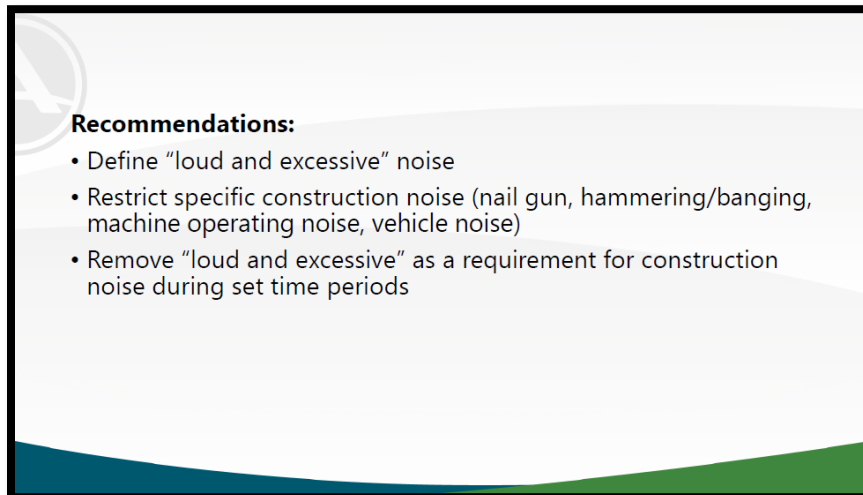
Sec. 14-31. - Sound emission standards and limitations.

Unless otherwise specifically indicated, it shall be unlawful during the daytime or nighttime hours for any person to cause or allow the emission of sound from any source or sources which when measured pursuant to [section 14-30](#), exceed the maximum decibel limits specified in table 1 more than ten percent of any measuring period, which shall be the length of time to take 100 readings at consecutive ten-second intervals.

1 [SLIDE 10]



2
3 [SLIDE 11]



4
5 **Councilmember Gantt** asked regarding a particular neighborhood is it actually
6 excessive or if they oppose the development they're using this as a way to go against it.

7 **Chief Armstrong** said he doesn't think they are not opposed to it because they
8 bought one of the new houses that had just been built.

9 **Councilmember Zegerman** said the construction noise isn't realistic if someone is
10 laying down a floor on a Sunday inside of a closed house using a nail gun, he asked if the
11 town really want to restrict that, and that it seems excessive.

12 **Chief Armstrong** said there are some things that can be restricted such as outdoor or
13 indoor construction.

14 **Mayor Pro-Tempore Killingsworth** said it would be by defining outside construction
15 noise.

16 **Chief Armstrong** said Council can make it as specific as they choose.

17 **Councilmember Mahaffey** said this ordinance was just written in 2021. He said at
18 that time there was a conversation about what was excessive noise. He said there is a

DRAFT MINUTES

1 difference between commercial needs and the quality of life people living in subdivisions. He
2 said its what people who live their think is loud and excessive noise. He said having two
3 people that need to be part of a complaint is a good rule because it gives balance between
4 the neighbors and the construction noise. He said the original proposal was more restrictive
5 as far as the times.

6 **Mayor Gilbert** asked when the police officers respond, do they decide that's it's an
7 excessive noise.

8 **Chief Armstrong** said he would have to go look back and see what those interactions
9 look like. He said what would also need to be taken into consideration is the backing up of
10 vehicles.

11 **Mayor Gilbert** said he received several calls in the past year about modified exhausts,
12 and asked if the Chief has received anything about that.

13 **Chief Armstrong** said he recalls about two, and he will send an officer out in the
14 neighborhoods to catch them.

15 **Councilmember Mahaffey** asked when someone calls now, it has only been one
16 person calling and complaining. He said if you get multiple people complaining it wouldn't
17 be an issue.

18 **Chief Armstrong** said that was correct. He said for the Linden Property, the
19 developers have restrictions, and they have fined work crews which are higher than what the
20 town would do.

21 **Councilmember Gantt** asked is the time or day of the week more of the problem.

22 **Chief Armstrong** said both. He said sometimes it's vehicle reversing noise from
23 people parking at sites before 7, but not actually beginning work.

24 **Mayor Pro-Tempore Killingsworth** said her preference would be to define outside
25 construction noise so we have a specific set of rules to go by for working outside of the
26 house.

27 **Chief Armstrong** asked if that included the 100 readings.

28 **Mayor Pro Tempore Killingsworth** said yes.

29 **Councilmember Mahaffey** said that 100 readings thing has come up in other
30 properties. He said this can be used in other scenarios other than construction as well.

31 **Councilmember Gray** asked Town Attorney Hohe in regards to loud and excessive
32 noise, is the recommendation that one definition applies throughout all aspects of the
33 ordinance.

34 **Town Attorney Hohe** said loud and excessive was added in 2020 when there was a
35 change regarding the hours and it's not in the definition section. She said council would
36 definitely would want to make sure that the definition is going to be consistently applied.

37 **Councilmember Mahaffey** asked if the definition of two people complaining is
38 defining excessive noise complaint.

39 **Chief Armstrong** said what he is referencing is prima facia evidence of a violation and
40 that would be separate from a loud and excessive definition.

41 **Councilmember Gray** said the closest that we have to a definition of loud and
42 excessive is in 14.31 and that means 100 readings.

DRAFT MINUTES

1 **Chief Armstrong** said that's correct.

2 **Councilmember Gantt** asked if Chief was suggesting to get rid of the readings
3 entirely.

4 **Councilmember Gray** said he would.

5 **Town Attorney Hohe** said the County just proposed an amendment to their noise
6 ordinance which removes the decimal readings requirement.

7 **Chief Armstrong** said other places consider something a violation if it can be heard
8 from a certain distance away.

9 **Councilmember Mahaffey** said to look at what Wake County just did and look at
10 adopting their standards directly so it will not only apply to the unincorporated area but also
11 the town for that section.

12 **Councilmember Gantt** asked if there's was related to gunshot complaints.

13 **Town Attorney Hohe** said it appears they are overhauling their ordinance
14 substantially.

15 **Councilmember Mahaffey** said he said he worries about specifics that are
16 prohibited, because the noise could apply to other stuff not what's on the list.

17 **Councilmember Gray** said he agrees that it's probably easier to figure out a loud and
18 excessive definition.

19 **Councilmember Mahaffey** said he found the Wake County ordinance and it defined
20 their standards as a reasonable person and unreasonable noise and have definitions for both.
21 He said the standard will either be subjective or objective. He said if it isn't decibels, it will
22 somewhat be subjective. He said at the time you couldn't specifically outlaw construction so it
23 was a noise ordinance and the intention was for if someone wanted to work inside on a
24 Sunday they could

25 **Councilmember Gray** said the intention of the ordinance was to provide a day where
26 no construction would work, but it didn't say that.

27 **Mayor Pro-Tempore Killingsworth** asked does he need direction from council.

28 **Interim Town Manager Purvis** asked if Council is good on the noise ordinance and
29 where were the discussion is headed.

30 **Chief Armstrong** and Councilmembers said yes.
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1 **[SLIDE 12]**



2
3 **[SLIDE 13]**

National Incident Based Reporting System (NIBRS)

An "incident" is defined for NIBRS reporting purposes as one or more offenses committed by the same offender, or group of offenders acting in concert, at the same time and place. "Acting in concert" requires offenders actually commit or assist in the commission of the crime(s). The offenders must be aware of, and consent to, the commission of the crime(s); or even if nonconsenting, their actions assist in the commission of the offense(s). This is important because all of the offenders in an incident are considered to have committed all of the offenses in the incident. If one or more of the offenders did not act in concert, then there is more than one incident involved.

"Same time and place" means that the time interval between the offenses and the distance between the locations where they occurred were insignificant. Normally, the offenses must have occurred during an unbroken time duration and at the same or adjoining location(s). However, incidents can also be comprised of offenses which by their nature involve continuing criminal activity by the same offender(s) at different times and places, as long as the activity is deemed to constitute a single criminal transaction.

4
5 **[SLIDE 14]**

Public Dashboards

- [Crime Dashboard](#)
- [Community Policing Dashboard](#)

6

DRAFT MINUTES

1 **Councilmember Gantt** asked about the tracking of incidents in the system.

2 **Chief Armstrong** explained that certain crimes have to be tracked separately with
3 separate incident reports, even if they occurred at the same time and place. Some crimes
4 may start as a group robbery, but expand into an individual committing different crimes at
5 the scene.

6 **Mayor Gilbert** asked what is the process of navigating through the varying reports
7 crime and reports over the years.

8 **Chief Armstrong** said Crime Analyst Jennifer Conley will put a remark in there to
9 explain the transition from year to year and how it's being reported. He said Jennifer Conley
10 is still working on how to pull victim information to highlight that aspect of the report. He said
11 a tab to the dashboard so people in the community can have some insight to the reports.

12 **Mayor Gilbert** asked if UCR is different to FBI at how they look at areas
13 geographically as far as where crimes occur. He asked is that victim based or is it incident
14 based.

15 **Chief Armstrong** said it is incident based at well. He said this is a part of the transition
16 as the difference in reporting and tracking made crime look different. He said it looks like
17 there is more crime as NIBRS tracks things differently than incident based.

18 **Mayor Gilbert** asked what is the definition of adjoining locations.

19 **Chief Armstrong** said it doesn't give a definition. He said a parking lot will have more
20 incidents in the same location than a subdivision, because they are different properties, even
21 though they may be similar absolute distances apart.

22 **Councilmember Gray** said with NIBRS that it's much more of an educational piece.
23 He said the tool will help the public to understand where these clusters keep happening, but
24 there is less clarity on what is within the cluster.

25 **Chief Armstrong** said NIBRS focuses on capturing the criminal act.

26 **Mayor Gilbert** asked how do we get the message out to the community regarding
27 these crimes and the people they are impacting.

28 **Chief Armstrong** said there are multiple ways. He said there is an internal tracking
29 event log that report information out and is shared internally. He said this report is sent out
30 twice a day and updated every shift. He said the police department doesn't have any real
31 public component other than a dashboard that residents can go and open a link and read
32 things. He said what he's looking at with this moving forward is the community to have the
33 information at their fingertips so they have the same information as the police department
34 and can see what's going on in Apex.

35 **Councilmember Zegerman** said a concern is that data from 2018 is not comparable
36 to 2023 because there were different things being applied.

37 **Mayor Gilbert** said yes. He asked if there were 15 break-ins, is the suspect is being
38 charged with 15 counts or charged for one incident.

39 **Chief Armstrong** said it's still 15 counts for the suspect. He said the charge is based
40 off the victims and the number of victims doesn't change with how the reports are done.

41 **Councilmember Gray** said this is just an aggregation.

DRAFT MINUTES

1 **Mayor Gilbert** said we report crime in 2023 and it's being compared to previous
2 years. He asked when did the NIBRS reporting change.

3 **Jennifer Conley, Apex Police Crime Analyst**, said the town has been doing incident
4 base reporting since 2006.

5 **Councilmember Zegerman** said there needs to be historical data comparable on
6 how to bridge the old data linked to the new data, which will help to be more transparent on
7 how the numbers are presented to the community.

8 **Councilmember Mahaffey** asked what was the change that was made.

9 **Chief Armstrong** said when he first started with Apex his assessment was different
10 than previously before so he changed how police were doing reports and incidents.

11 **Councilmember Mahaffey** said it's always been incident based, it's a matter of what
12 counts as one incident, and how that is reported.

13 **Mayor Gilbert** asked if police were doing separate reports for one incident.

14 **Chief Armstrong** said yes, until he started as Police Chief.

15 **Councilmember Mahaffey** asked does the NIBRS alter our reporting data.

16 **Chief Armstrong** said looking at the number of incidents or number of victims does
17 not give you your crime rate because you have to factor in population.

18 **Councilmember Zegerman** said the concern is we how we now view our crime rate
19 or incident statistics by changing the separate reports to one report.

20 **Councilmember Mahaffey** said its more complicated this is all happening roughly at
21 the same time as the pandemic which had a massive impact on crime rates.

22 **Chief Armstrong** said one thing has never changed is the number of victims and how
23 that's reported.

24 **Councilmember Mahaffey** asked will we have that data out to the public.

25 **Chief Armstrong** said that's what he's working on building that out right now.

26 **Mayor Gilbert** said he appreciate what is being done but he does get a lot of calls
27 about the crime rate.

28 **Interim Town Manager Purvis** said we have the data and now it's figuring out how to
29 get the data out there and updating it regularly, in order to provide an "apples to apples"
30 comparison.

31 **Councilmember Zegerman** said he would like to see an assessment of change from
32 the past few years and how that has impacted the overall data.

33 **Interim Town Manager Purvis** said if you put it out there you would have to state the
34 changing of methodology and its important to have transparency. He said to Councilmember
35 Zegerman about building data, he said the data is all there and can be looked into. He said
36 methodology is important because that's the source of the data.

37 **Councilmember Gray** said it's important that Council is communicating that the idea
38 of crime rate and safety is much more complicated than it seems on the surface. He said
39 different crimes become more prevalent over time as well.

40 **Mayor Gilbert** asked if this also includes crimes that are found within an existing
41 traffic stop.

DRAFT MINUTES

1 **Jennifer Conley** said this dashboard is just crime so it's going to be case report
2 information.

3 **Councilmember Zegerman** said if data is going to be out there then the town needs
4 to have a description of what the data tells us.

5 **Councilmember Gray** said the tough part when it comes to the national reporting's
6 and trying to do the tracking and identify a number that is necessarily not a binary question.

7 **Chief Armstrong** said laws change as people get into legislative positions. He said
8 something that's going to be in the crime data 5 years ago could be completely void today.

9 **Councilmember Mahaffey** asked are there any public facing dashboards from the
10 FBI or NIBRS or is it only local agencies have to pull data and make their own dashboards.

11 **Chief Armstrong** said NIBRS reports a public facing dashboard.

12 **Jennifer Conley** said the state does one too and after the month is complete
13 everybody sends their data to the state and you can go on the state's website and look at
14 different counties and sometimes different agencies.

15 **Councilmember Mahaffey** asked is the state pulling from NIBRS too.

16 **Jennifer Conley** said we send it to the state and then the states pushes it to the
17 federal government.

18 **Interim Town Manager Purvis** asked Council do they want a map on the public
19 facing dashboard, or are there certain categories they want to see, or if they want to have full
20 access to seeing the numbers for the different types of crimes. He said the map cannot be
21 changed and can be zoomed in on to see detailed locations.

22 **Councilmember Zegerman** asked if they could simply group them into a higher-level
23 category and to not make the crimes so specific.

24 **Jennifer Conley** said they could do crimes against property, or crimes against
25 persons, and crimes against society, and just have those three categories. She said that
26 would eliminate residents from seeing specific information on what crime was committed
27 near them. She also suggested to have a static map of the last 30 days of crime.

28 **Councilmember Zegerman** asked how is the map the police are using different from
29 the Lexus Nexus map that we are already have publicly.

30 **Jennifer Conley** said both are very similar except one is kind of a contour map and
31 the other states individual points and it can also do a density map as well. She said she didn't
32 think rapes were on the report.

33 **Mayor Pro-Tempore Killingsworth** asked there are zones up right now.

34 **Jennifer Conley** said yes, they group things by zones.

35 **Councilmember Zegerman** asked if rapes and sexual assaults are on the map.

36 **Jennifer Conley** said they don't report sexual assaults on the map to protect the
37 integrity of the victim's information.

38 **Councilmember Zegerman** asked if it could be included as a filter.

39 **Jennifer Conley** said it doesn't map to their specific address.

40 **Councilmember Gray** said its important for residents to know if there is a crime spree
41 going on around town.

DRAFT MINUTES

1 **Councilmember Gantt** said the EPA reports on neighborhoods that are polluted, and
2 it impacts property values, even though they are working on it.

3 **Councilmember Mahaffey** said there is a balance between the right of the public to
4 know what's going on and the rights of the victim of the crimes to not have their information
5 on the map.

6 **Chief Armstrong** said the map can be taken out if Council chooses too.

7 **Councilmember Mahaffey** said he likes the idea of the map but having broader
8 categories but still being able to filter on the charts.

9 **Councilmember Zegerman** said he liked the look of the bar charts and grids for the
10 dashboard.

11 **Mayor Gilbert** said the map wasn't what he was looking for but thanked them for
12 providing the map. He said he is more into the numbers.

13 **Interim Town Manager Purvis** said he has consensus from council to move the map
14 but continue to work with police on building a map for the transparent piece to be
15 aggregated into the dashboard.

16 **Councilmember Zegerman** asked from the community dashboard if he can see a
17 police officer is patrolling certain neighborhoods on Monday, Wednesday and Fridays and
18 never on Tuesday and Thursday.

19 **Chief Armstrong** said what he sees is not all the movement. He said these categories
20 are things we have identified that falls under that umbrella. He said officers are not able to
21 track every street they drive down or doing. He said they are targeting things that are related
22 to crime or related for specific purposes. He said at the end of the day, this is the way officers
23 get credit for their work because were able to see it and quantify it.

24 **Councilmember Mahaffey** asked what happens on Tuesday's shift.

25 **Chief Armstrong** said Tuesdays is when the most people are on shift and that's why
26 Tuesdays have the highest number.

27 **Mayor Gilbert** asked about DWI.

28 **Chief Armstrong** said DWI would be on the crime dashboard.

29 **Councilmember Mahaffey** asked is there an overlap between the Crime Dashboard
30 and the Community Dashboard.

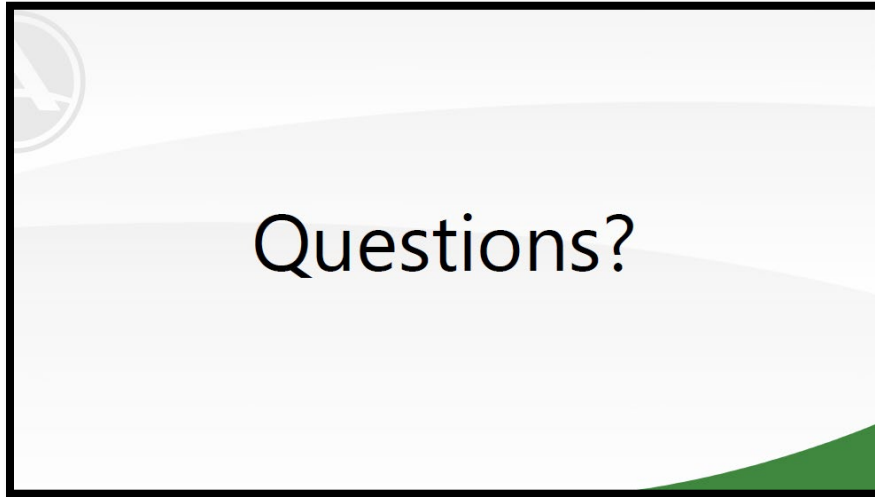
31 **Chief Armstrong** said it depends on the situation and the crime. The community
32 dashboard shows what a police officer is doing when not responding to a specific incident,
33 which would be tracked on the crime dashboard.

34 **Councilmember Gray** said he appreciates the data gathering and finds it useful. He
35 said his concern is about police officers not policing and inputting in data. He asked will this
36 interfere from them doing their job.

37 **Chief Armstrong** said it's all at the police officers' fingertips by a click of a button. He
38 said they do not have to type anything in with this.

39 **Mayor Pro-Tempore Killingsworth** said she really likes the community policing
40 board and it's showing what we're doing and how we're responding to the community.

[SLIDE 15]



Councilmember Zegerman asked for a follow-up on what's going on with the Civilian Advisory Committee.

Town Clerk Coleman said he sent an email about that earlier this week.

[ADJOURNMENT]

Mayor Gilbert thanked everyone and adjourned the meeting at 5:26 p.m.

Jacques K. Gilbert
Apex, Mayor

Allen Coleman, CMC, NCCCC

Apex, Town Clerk

Submitted for approval by Apex Town Clerk Allen Coleman.

Minutes approved on _____ of _____, 2023.

DRAFT MINUTES
TOWN OF APEX
REGULAR TOWN COUNCIL MEETING
TUESDAY, DECEMBER 12, 2023
6:00 PM

The Apex Town Council met for a Regular Town Council Meeting on Tuesday, December 12, 2023 at 6:00 PM in the Council Chambers at Apex Town Hall, located at 73 Hunter Street in Apex, North Carolina.

This meeting was open to the public. Members of the public were able to attend this meeting in-person or watch online via the livestream on the Town's YouTube Channel. The recording of this meeting can be viewed here: <https://www.youtube.com/watch?v=PvGF9xx6jyQ>

[ATTENDANCE]

Elected Body

Mayor Jacques K. Gilbert (presiding)
Mayor Pro Tempore Ed Gray
Councilmember Audra Killingsworth
Councilmember Brett Gantt
Councilmember Arno Zegerman
Councilmember Terry Mahaffey

Town Staff

Interim Town Manager Shawn Purvis
Assistant Town Manager Demetria John
Assistant Town Manager Marty Stone
Town Attorney Laurie Hohe
Town Clerk Allen Coleman
All other staff members will be identified appropriately below

[COMMENCEMENT]

Mayor Gilbert called the meeting to order, and invited all to join him in a moment of silence, highlighting the transition into the Holiday Season.

Mayor Gilbert then invited everyone to join him in a recitation of the Pledge of Allegiance.

[CONSENT AGENDA]

DRAFT MINUTES

A **motion** was made by **Mayor Pro Tempore Gray**, seconded by **Councilmember Killingsworth**, to approve the Consent Agenda as presented.

VOTE: UNANIMOUS (5-0)

CN1 Capital Project Ordinance Amendment No. 2024-9 - Apex Cemetery Columbarium Project - Phase 2 (REF: ORD-2023-118)

Council voted to approve Capital Project Ordinance Amendment 2024-9 allocating funding for Phase 2 - Landscape Architecture and Civil Engineering for the Apex Cemetery Columbarium project.

CN2 Council Meeting Minutes - November 14, 2023

Council voted to approve Meeting Minutes from the following meeting:
November 14, 2023 - Town Council Regular Meeting Minutes

CN3 Position Authorizations - New FTEs - Water Resources and Parks, Recreation, and Cultural Resources

Council voted to approve the following new position authorizations:

One (1) Full-Time, Benefited Water Resources Specialist Position [Water Resources Dept.]

Two (2) Full-Time, Benefited Park Attendant Positions [Parks, Recreation, and Cultural Res. Dept.]

Two (2) Part-Time, Benefited Park Attendant Positions [Parks, Recreation, and Cultural Res. Dept.]

CN4 Tax Report - October 2023 (REF: OTHER-2023-126)

Council voted to approve the Wake County Tax Administration Tax Report for the Town of Apex dated November 6, 2023.

[PRESENTATIONS]

PR1 Western Wake Crisis Ministry Presentation

Seaira Green, Executive Director of Western Wake Crisis Ministries (WWCM) gave the following presentation:

[WWCM - SLIDE 1]



DRAFT MINUTES

[WWCM - SLIDE 2]

Vision: A brighter future for all by cultivating a healthy, hunger-free and housing-stable community.

Mission: Partnering with those in crisis, helping them gain stability through basic supports for food, financial/housing assistance, education, and opportunity.

Values: Compassion, Community, Equity, Optimism, Relationship, Vision, and Impact

[WWCM - SLIDE 3]

Services

FOOD SECURITY

- Curbside Pickup & Open-Air Market – weekdays (M-Th)
- Saturday Distribution (monthly)
- Latinx/Hispanic Outreach
- Home Delivery (monthly)
- Emergency Food Support

HOUSING SECURITY

- Rental Assistance
- Utility Assistance Program
- Short-term Case Management
- Resource Assistance

[WWCM - SLIDE 4]

WWCM & Covid Response

- Curbside food distribution & home delivery
- Limited volunteers & staff in building
- Monthly meat & produce distribution to all Wake County
- Resource Assistance provided virtually or by appointment outside
- Collaboration with Emergency Meal Program, Local Agencies & Churches

DRAFT MINUTES

[WWCM - SLIDE 5]

Operational Snapshot

- Serve Approximately 400 families per month with food assistance
- Serve Approximately 55+ families per month with financial support (rent & utilities), Receives approximately 330 calls for screening
- Partnered with Town of Apex to assist customers with past due utility bills
- WWCM only has 5 employees, 2 of which are part-time
 - Approximately 100 regular volunteers
 - Interdependent relationships with volunteers
 - Numerous donors and partners that support the overall operations of WWCM including the Interfaith Food Network, Food bank of NC, Food Lion, United way, Apex Chamber of Commerce and Wake County.

[WWCM - SLIDE 6]



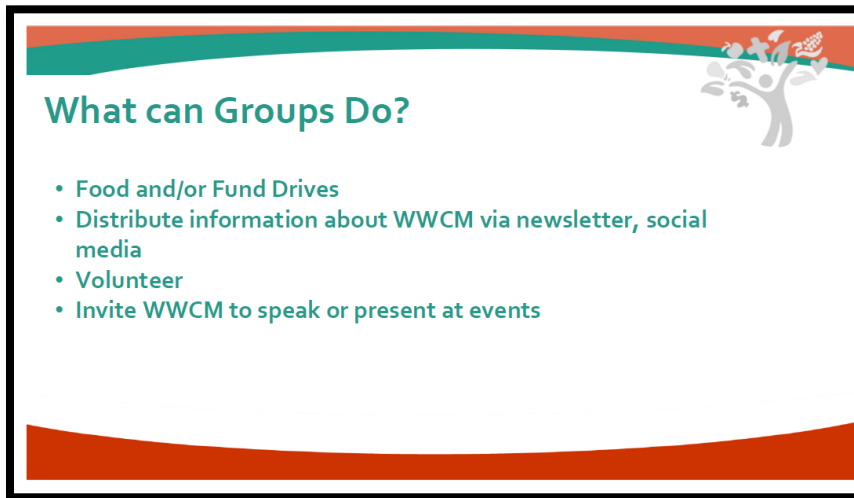
[WWCM - SLIDE 7]

What's Happening at WWCM

- Several food collection drives for Thanksgiving Meal-Goal is to serve 300 families
- Holidays and Beyond campaign to combat food security past the holidays
- Collaboration with Apex Police Department to support a family that actively fleeing domestic violence
- Hiring additional support staff to meet the needs of the community.
- Working directly with landlords, hotels, property managers to facilitate housing
- Hosting Coffee & Chat sessions, community tours and Lunch and Learns

DRAFT MINUTES

[WWCM - SLIDE 8]



What can Groups Do?

- Food and/or Fund Drives
- Distribute information about WWCM via newsletter, social media
- Volunteer
- Invite WWCM to speak or present at events

The slide features a decorative header with a teal and orange wavy line and a small tree icon in the top right corner. The footer has an orange wavy line.

[WWCM - SLIDE 9]



Where to Find Us

1600 Olive Chapel Road, Suite 408 (540 Flex), Apex, NC 27502

919-362-0657

WWCM.ORG

@westernwakecrisisministry
@westernwakecrisisministry
@wwcm2017

The slide features a decorative header with a teal and orange wavy line and a large tree icon on the right side. The footer has an orange wavy line.

Mayor Gilbert said Western Wake Crisis Ministries has been around for 40 years, and is a great organization for the community. He asked if she could speak about her background.

Ms. Green said she has worked in non-profits for 16 years, having worked in Orange and Durham Counties, and the Greater Wake County Area, running many kinds of programs. She said she was a therapist after college, but felt she could make more of a difference in the lives on families through life and family coaching, and working with families as a unit. She said it's a pleasure to serve the community, and the outpouring of support and donations has been overwhelming.

Councilmember Zegerman asked about the overall financial health of the organization in terms of balancing donations with the current demand and need in the community.

Ms. Green said she just started in September, and has not seen a crunch like that in this "season of giving". She said the support has been generous through finances and tangible items, but she would like to continue going on "Holidays and beyond" to help donations come in during less prevalent times.

DRAFT MINUTES

Councilmember Zegerman said a volunteer he had spoken said the pantry seemed emptier than it had in previous years, so he was wanting to gauge what the status currently is.

Mayor Pro Tempore Gray thanked Ms. Green for the work she is doing. She said this is an embodiment of what it means to be a member of the community. He said it's important to remember that the need does not end on January 1st.

[REGULAR MEETING AGENDA]

A **motion** was made by **Councilmember Gantt**, seconded by **Councilmember Zegerman**, to approved the Regular Meeting Agenda as presented.

VOTE: UNANIMOUS (5-0)

[PUBLIC FORUM] (Note: To view public forum and public hearing sign in sheets, please see OTHER-2023-125)

First to speak was **Dawn Cozzalino** of 3632 Bosco Road:

"I have two themes tonight for the Town Council. Be an advocate for Apex taxpayers, this is a checkbook, they've trusted you with fiscal responsibility, to make planning choices that are the least costly, and provide the best benefit to the people, community, and the least impact to the environment. There're two pictures here but they're actually the same. One's just a map and one's a satellite view, and we're talking about the Western Big Branch Force Main tonight. You can see that above the US-1 line, it's all New Hill and Bosco and Friendship and those communities of farms, and people's lands and buildings, you can see that in the map on the satellite. You can see US-1, then you see below it, there is an existing utility easement. There's really nothing here, it kind of looks like a trail. It's already an easement for electric, it's already cleared, there's no trees in the way, just a little grass, and the cost would be minimal for choosing that, upfront cost and the maintenance cost ongoing, than looking at doing a project with eminent domain in the New Hill/Friendship community. The next theme, be an environmental exponent. This is where you can really invest in a win/win situation. And what I mean by that is for the Apex Town and the Apex citizens that are taxpayers, that this is going to help lower costs, it's going to also help in protecting our environment, our tree canopy, lowering our urban heat island, all the things that are so detrimental and so confusing in this time with climate change. So, I ask you to consider the big picture, and I've showed this before, please consider this. There's an existing easement. It's already there, you can see it by the lower pictures, you can see at the ground view very easy to access. Already there. Thank you."

Mayor Gilbert thanked Ms. Cozzalino for her comments.

Next to speak was **Judy Ives** of 3413 Pleasant Plains Road:

"My father, Willard Pleasant, bought the farm that is now Pleasant Park in 1967. I was a teenager then, and although our family lived in Raleigh, I loved my parent's rural roots and my father and grandfather's love of the land. And I loved the Apex farm we affectionally called "the 100-acre

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wood", after the Winnie the Pooh stories. Because so much of it was woodland. In the early 80's my sister and her husband renovated the old farmhouse and I followed them by building my little house in the woods in 1983, thus putting down my own rural roots. But, with all of the development and 540, my sister and brother-in-law decided they just couldn't stay anymore, so that left me to fend off developers and make Pleasant Park happen. I was up against 3 sisters who all just wanted their money. So, I will say that I was a little misinformed about what this park was going to be in the beginning, and I'm not going to go into that now because I don't have time, but I do want to say that it is a beautiful park, and as wonderful as it is, it has hit me really hard. When I built my house Pleasant Plains was a dirt road, so I built my house at the front of the property, now cars stream by my house day and night, and cars leaving the park at night shine their headlights on their house as they leave the park. And sometimes cars back up in the park to the curb where their lights shine in my house, all the way out to old US-1 and the railroad, and the stoplight. So, I might have 6 or 7 cars standing in line at a standstill, to leave the park, all shining at the front of my house. I talked to Angela Reincke yesterday about the problem with the headlights, and she said she going to work on it, and I really do appreciate that. I would also like to say that the noise from the park is much more than I expected, and I cringe when I think about the baseball diamonds right across the street from me. I hope I can work with Angela and the town to resolve the issues that arise from further development of the park. Today, the 100-acre wood is down to the 4 and a half acres I call home. Please be respectful of what I have done and don't let this park spoil my beautiful home.

Mayor Gilbert thanked Ms. Ives for her comments.

Next to speak was **Dean Krupa** of 2001 Simco Court:

"I'd like to continue the theme of speaking about trees. Recently, in my neighborhood, I drive up Olive Chapel Road and there was a large tree removal happening right before me, and I guess it was a 55 and over community being put in there. Those trees were right against the sidewalk, and it was just sickening to be driving through there, and see the sawdust and the construction vehicles, and just like that mature trees coming down. My heart sunk. I went on social media, and there was a lot of comments about it, and it's too bad those folks can't come here and voice their sorrow over that incident. It's happening all over my neighborhood, there's big developments going on right now. A few months ago, we had the tree canopy study, which was very informing, there was some great conversation around that. I really liked the questions by the Council on that study. It was disappointing that Apex was number 1 in tree loss over the 10-year study period, we lost 23% of our canopy, and almost 2,200 acres. So, the study had some good recommendations as far as strengthening the ordinances, preventing the mass tree-cutting that I know was talked about here. But also planting, re-planting perhaps on sidewalks, schools, HOAs, freeways, parks. And how do we better account for developers doing this removal and making sure that they're staying with the RCA ordinance. So, I'm working with a group to become more active and vocal with the Town Council, we're trying to get the citizens mobilized from social media into this forum. We just got engaged with the Tree CAP, and we look forward to getting more engaged with this Council and the staff. But I encourage us not to just have these three-minute dialogues, and have a back and forth conversation at Town Hall. Some type of community outreach. I watched the acceptance speeches of the candidates, Mayor Gilbert yours I especially liked when you said we need to work together. On

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this issue specifically, we need to work together. And I like forward to working with all of you, thank you.”

Mayor Gilbert thanked Mr. Krupa for his comments.

Next to speak was **Elizabeth Stitt** of 3113 Friendship Road:

“So, I have been coming to these meetings now for 20 months. Talking about all kinds of concerns for my community, but always circling back to why the Big Branch Force Main should not be on our side of US-1. But I’ve been holding back on one of the reasons, because I always end up in tears, but we are going to go there tonight, so you may have to bear with me for a few moments while I gather myself at certain points. If you’re lucky enough to get to my age, where I have outlived my father and many of the people in my family, you start realizing that money isn’t everything. I’ve held onto my property for 32 years, and I could have timbered my trees twice, in the time that I’ve been there, but I haven’t, because some things are more important than the money. Some things can not be replaced. Once it’s gone, it’s gone. The portion of my property that you want to take has been frozen in time. I don’t talk about it much, because this is where I am going to get very upset. This small little 5-acre tract has been landlocked for 6-7 decades. You don’t know what my struggles were to eventually get it. You don’t know how beautiful and gorgeous it is, because you haven’t walked down there. Not only has it been landlocked for 6-7 decades, there has never been a timber deed on it, so I suspect it’s never been logged. On it, there are massive trees, that are 8, 9, and 10 feet in circumference. When you calculate the age of these trees, they’re all over 160 and 170 years old. You don’t see these kinds of trees in Wake County. When you construct the force main, there is no protection for these trees. You will be clear-cutting a 30-foot strip, and then there will be another 10 feet cut for a temporary construction easement. And based on how far these roots go, I’m going to realistically lose another 15 on either side, so probably a total of 70 feet of trees. I am losing hundreds of mature trees in that 70 feet, but that number of these massive trees I’m losing, is something that keeps me awake at night. These trees will not grow in my lifetime, in my kid’s lifetime, or my grandchildren’s lifetime. And it feels so incredibly unjust, where I can stand and look across the highway, and see trees that are only 20 or 30 years, that have volunteered itself. The town preserved historical homes, you preserve the town’s history, the town’s been around for 150 years. But there is nothing to preserve these trees. I don’t know how we can call this the Peak of Good Living and destroy something that will never come back, never. And I will have to say the town has offered to maybe re-route the force main on my property, but there’s nowhere to re-route it on my property, that’s what these 5 acres are. So, I would like to host any of you, and bring your children, bring your neighbor’s children, watch them run down there, they will see things that they’ve never seen. And I’ve been encouraged to tell you guys this before, but I don’t want to stand up here and cry, I shouldn’t have to. All the reasons why it should be on the other side should be on the other side. But if you guys need to see me cry, fine I’ll cry. But come see the trees, they’re magical, I’m never going to cut them. I mean this is something that needs to be preserved for all of Apex. Once you cut it down, you put the force main through, there may be some left, but you’re going to have these ugly concrete massive things running through the property. You’ll destroy it, and we won’t get it back. So, thank you for your patience, I apologize for the emotion, but this keeps me up at night, and I will keep coming back. Thank you.”

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Mayor Gilbert thanked Ms. Stitt for her comments, and for all community members who spoke tonight.

With no further signups, Mayor Gilbert closed Public Forum and continued the meeting along.

[UPDATES BY TOWN MANAGER]

Interim Town Manager Purvis said last week was the Employee Awards Ceremony and the Public Safety Awards, and thanked everybody for their support and recognition of town staff. He gave a special shoutout to Kerrin Cox, who was the 2023 recipient of the Apex Employee of the Year Award. He said earlier today, the Apex Police Department children's book was featured on Good Morning America, which highlight Apex's Community Connections. He added that there will be a way to highlight the many cultural events the town does, as a news-style program from Lisa Raschke and Celeste Sherer. He said the budget survey was online on the town's webpage, and is for residents to help prioritize the budget at a high level.

[ADJOURNMENT]

Councilmember Gantt said Mayor Gilbert did a great job speaking about the expansion on the S-Line from Raleigh to Richmond, which is a project that helps Apex extend its goal of commuter rail.

Mayor Gilbert said it was good to be there with Governor Cooper and Secretary Buttigieg, and it help moves the region forward. He said growing up here, he never thought passenger rail was something that would be considered in Apex, but that it was something that was needed. He also thanked Councilmember Gantt for his work on this over the years.

Councilmember Gantt said that passion is something that has been shared among Council and staff.

Mayor Gilbert thanked Yunjun Jung for providing IT Service, and Corporal Steward for Police Service.

Mayor Gilbert adjourned the meeting at **6:36 p.m.**

Jacques K. Gilbert
Mayor

Allen Coleman, CMC, NCCCC
Town Clerk to the Apex Town Council

Submitted for approval by Town Clerk Allen Coleman and approved on _____.

DRAFT MINUTES
TOWN OF APEX
TOWN COUNCIL WORK SESSION
THURSDAY, DECEMBER 14, 2023
3:30 P.M.

The Apex Town Council met for a work session on Thursday, December 14, 2023 at 3:30 p.m. at the Apex Town Hall located at 73 Hunter Street in Apex North Carolina.

This meeting was open to the public. Members of the public were able to attend this meeting in-person or watch online via the livestream on the Town's YouTube Channel:

<https://www.youtube.com/watch?v=plHF6B21Zml>

Elected Body

Mayor Jacques K. Gilbert (presiding)
Mayor Pro-Tempore Ed Gray
Councilmember Brett Gantt
Councilmember Terry Mahaffey
Councilmember Arno Zegerman
Absent: Councilmember Audra Killingsworth

Town Staff

Interim Town Manager Shawn Purvis
Assistant Town Manager Demetria John
Assistant Town Manager Marty Stone
Town Attorney Laurie Hohe
Town Clerk Allen Coleman
Planning Director Dianne Khin
Public Works Director John Mullis

All other staff members will be identified appropriately below.

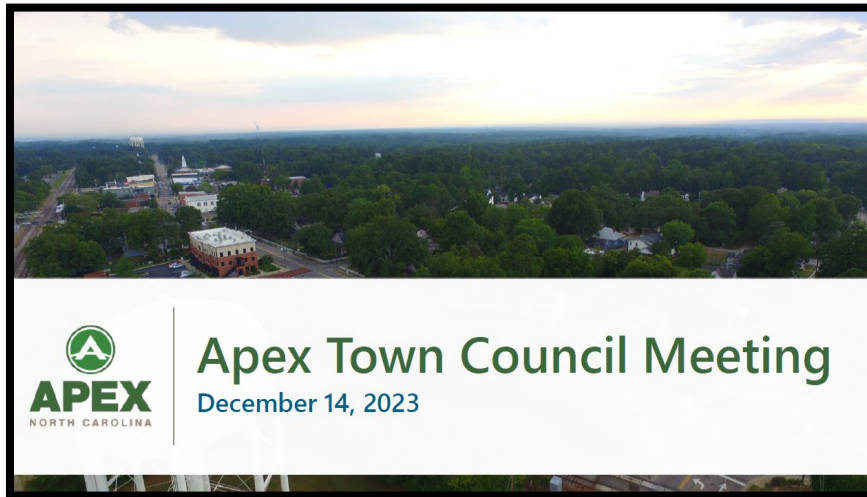
[COMMENCEMENT]

Mayor Gilbert called the Work Session to order, and led in a recitation of the Pledge of Allegiance.

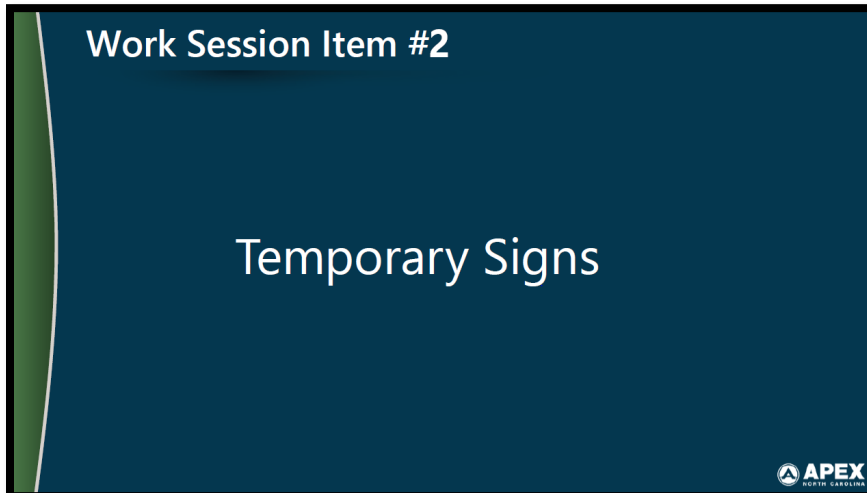
[AGENDA ITEM NO. 1 - TEMPORARY SIGN ORDINANCE DISCUSSION]

Director Khin gave an update on discussion of Temporary Sign Ordinance within the Town.

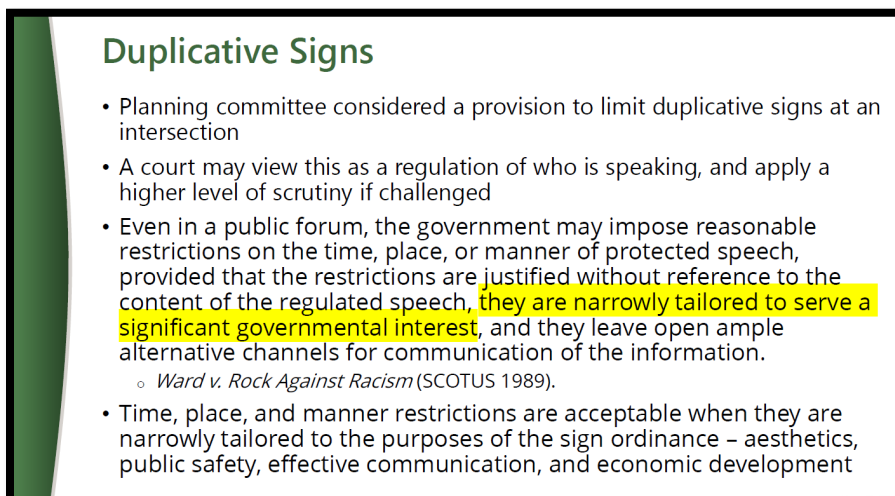
1 [SLIDE-1]



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3 [SLIDE-2]



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5 [SLIDE-3]



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1 [SLIDE-4]

Sign Ordinance – Purpose Statement

The purpose of this Chapter is intended to accomplish the following objectives:

- A. To ensure that signs are designed, constructed, installed, and maintained so that public safety and traffic safety are not compromised.
- B. To minimize distractions and view obstructions that contribute to traffic hazards and endanger public safety.
- C. To allow for adequate and effective signs while preventing visual clutter.
- D. To ensure a high standard for the design and size of signs so that they enhance the aesthetic appearance and attractiveness of the community, and create an aesthetic environment that has a positive impact on economic development.

From Charlotte Zoning Ordinance 13.1 Purpose

2
3 [SLIDE-5]

Temporary Sign – Definition

- **Sign, Temporary** means a sign intended for a use not permanent in nature. For the purposes of this Chapter, a sign which is intended for use of one (1) year or less shall be deemed a temporary sign.

From Cary LDO 9.1.3 Definitions

4
5 [SLIDE-6]

Obsolete Signs

- A sign relating to or identifying a business or activity that has not been conducted on the premises for six months or to a transpired election or event, or to a political party or non-profit organization that no longer exists.
- The structure for a sign that is not allowed under this Ordinance if such structure cannot be used for a legal use or does not comply with the height, size, or other physical requirements of the Ordinance.
- Including this provision makes enforcement more efficient.

From Durham UDO Sec. 11.3 Prohibited Signs

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7

1 [SLIDE-7]

Governmental Signs – Exempt

- Any official or public notice or warning sign required by a valid and applicable federal, state, or local law, regulation or chapter; by a public utility company; or by order of a court of competent jurisdiction.
- Any sign located within the right-of-way or on private property that is used as a traffic control device. This includes, but is not limited to, any sign that is described and identified in the Manual on Uniform Traffic Control Devices (MUTCD) and approved by the Federal Highway Administrator as the National Standard, regulatory signs (that give notice of traffic laws or regulations), warning signs (that give notice of a situation that might not readily be apparent), and guide signs (that show route designations, directions, distances, services, points of interest, and other geographical, recreational, or cultural information).

2
3 [SLIDE-8]

Governmental Signs – Exempt (continued)

- Signs erected by or on behalf of a governmental or quasi-governmental agency including, but not limited to, noncommercial signs identifying a government building or service, traffic control signs, street name signs, street address signs, warning signs, safety signs, informational signs, traffic or other directional signs, public notices of events, public notice of government actions, proposed changes of land use, any proposed rezoning, or any other government speech.

From Cary LDO Sec. 9.1.4.B Signs Exempt from Regulations

4
5 [SLIDE-9]

Temporary Signs on Private Property

- Commercial temporary signs that are on-premise of the business advertised or doing on-premise work (e.g. construction, real estate sales, etc.) are allowed on private property provided they meet size/height requirements, are limited to a certain number per property, and are limited in time posted. Non-commercial temporary signs on non-residential property will be subject to the same rules. This is a land use/zoning regulation.
- Commercial temporary signs are not allowed off-premise of the business advertised/doing on-premise work on private or public properties. This is a land use/zoning regulation.
- Non-commercial temporary signs on residential properties are exempt from regulation.

6
7

1 [SLIDE-10]

Non-commercial Message Substitution

- Any sign permitted by these regulations may display or publish a non-commercial message. This includes signs that both require and do not require a permit.

From Charlotte UDO 22.2.B Noncommercial Messages.

2
3 [SLIDE-11]

Temporary Signs in State Rights-of-Way

- Commercial signs are not allowed in State rights-of-way.
- NCGS 136-32 allows some other types of signage in State rights-of-way:
 - Farm/agricultural
 - Political
- Enforcement would continue to be in compliance with State law.

4
5 [SLIDE-12]

Temporary Signs in Town Rights-of-Way

- Commercial signs are not allowed in Town rights-of-way.
- Non-commercial signs are currently allowed in Town rights-of-way provided they are not adjacent to Town property (e.g. parks, Town Hall Campus, etc.)
- Proposal is to continue to prohibit commercial signs, but also no longer allow non-commercial signs in **Town** rights-of-way. Farm/agricultural and political signs are still allowed by State law in **State** rights-of-way and Governmental Signs are still exempt under this proposal.

This proposal is consistent with Town of Cary's provisions.

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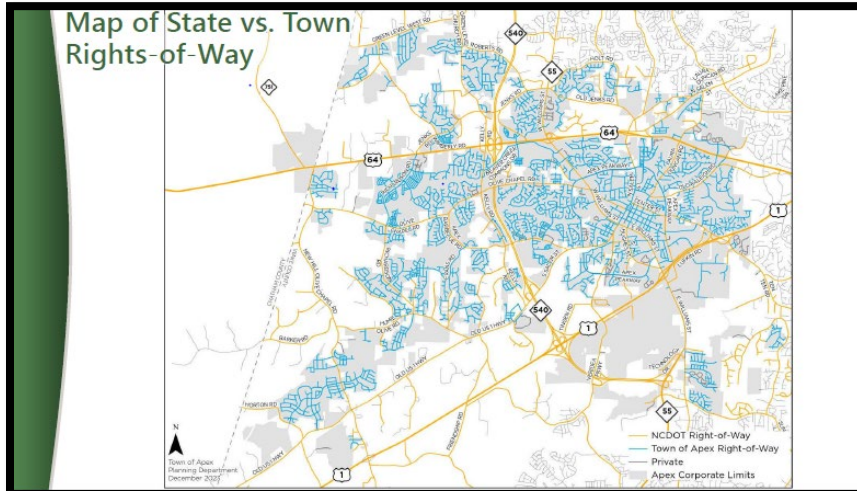
1 [SLIDE-13]

Temporary Signs in Town Rights-of-Way (continued)

- Prohibiting all signs in Town rights-of-way would be the most efficient enforcement option.
- Prohibiting non-commercial signs in Town rights-of-way would primarily affect non-profit entities (religious organizations, civic clubs, etc.)
- If the desire is to not prohibit non-commercial signs in Town rights-of-way, an alternative proposal would be to prohibit non-commercial signs unless they are associated with a valid Temporary Use Permit.
 - Temporary Use Permits are already required for outdoor non-profit events and there is no fee for non-profit event TUPs.

2
3 [SLIDE-14]

Map of State vs. Town Rights-of-Way



4
5 [SLIDE-15]

Downtown Signs

Common exceptions to the prohibition of signs in Town rights-of-way include signs typically seen in Downtowns:

- Sandwich Board (A-frame) signs
- Projecting signs
- Suspended signs
- Awnings

1 **Councilmember Mahaffey** said what he gathered from the discussion were some of
2 the items mentioned the town cannot do, such as regulate state rights-of-way and that's
3 going to stay the way it is. He said what's being proposed would bring the town in line with
4 what's similar to the Town of Cary's rules.

5 **Director Khin** said yes.

6 **Councilmember Gantt** asked where would you place a sign if a HOA is announcing
7 an annual meeting indoors somewhere on a town road.

8 **Director Khin** said they would place it on private property on the HOA land. She said
9 if a private citizen agrees that a sign can be placed in their yard that would be allowed.

10 **Councilmember Zegerman** asked about the use of enforcements regarding the non-
11 commercial signs on the towns right-of-way.

12 **Director Khin** said knows there is a long history of allowing the nonprofits to have
13 their non-commercial signs in the towns right-of-way. She said an alternative would be to
14 associate them with a temporary use permit in order for them to legally be defensible on the
15 right-of-way.

16 **Councilmember Zegerman** asked if it also includes advertising for Easter, Church,
17 Mass, signs along the streets.

18 **Town Attorney Hohe** said she needed to clarify the temporary use permit that is
19 being proposed would be to allow a sign associated with a temporary use permit not require
20 a temporary use permit. She said an important distinction to know is a special event that is
21 approved as part of that approval that would be assigned allowance.

22 **Mayor Pro-Tempore Gray** said all of our festivals go through our application process.

23 **Director Khin** said they would be exempt.

24 **Ms. Bunce** said they would be if the town was hosting.

25 **Director Khin** said the town has a special event policy but it's not a temporary use
26 permit.

27 **Councilmember Zegerman** asked if someone wants to advertise a Christmas Eve
28 Services, and it's not a special event that goes to the town they will never have to ask for an
29 event permit and no permit would be granted. He said it's the same as saying no signs
30 allowed.

31 **Ms. Bunce** said they could advertise on private property.

32 **Councilmember Mahaffey** said it's hard because most people want to put signs on
33 non-town roads.

34 **Councilmember Gantt** asked about the mattress sell from Apex High School band on
35 the Peakway in the right-of-way, which he said would not be allowed be allowed.

36 **Councilmember Mahaffey** said the place where people would want to put signs on
37 town roads would be on the Peakway.

38 **Councilmember Gantt** said that's why the impact's lower, because the town has
39 major state roads.

40 **Mayor Gilbert** asked about getting complaints.

1 **Director Khin** said she gets complaints all the time. She said she would like to update
2 the rules and get it done this winter so that the rules can be in place to communicate with
3 everyone effectively.

4 **Councilmember Mahaffey** said this is the time to make the change.

5 **Councilmember Zegerman** asked what does the sign enforcements look like.

6 **Director Khin** said there are two types of enforcements. She said one is in reaction to
7 a complaint. She said if the sign is not compliant, those signs are picked up. She said
8 quarterly they do sign sweeps which takes multiple days and they pick up hundreds of signs.

9 **Councilmember Zegerman** said does anyone take it back to the source.

10 **Director Khin** said she does not have the staff to do that currently and not sure if
11 that's an allowed type of enforcement.

12 **Assistant Town Manager Stone** said they would have to prove who put the signs out.

13 **Director Khin** said it's essentially litter.

14 **Councilmember Zegerman** said if there is no enforcement of the signs then one
15 could be written.

16 **Councilmember Mahaffey** said the enforcement would be at a cost.

17 **Councilmember Mahaffey** asked how would the signs work at intersections that
18 cross state road and a town road.

19 **Director Khin** said the roads overlap and that's where the signs are mostly put.

20 **Councilmember Gantt** asked about the sight triangle.

21 **Director Khin** said the sign can not be taller than 30 inches and that's being written
22 into the ordinance, that way it won't block the sight triangle. She said NCDOT allows them to
23 be up to 42 inches but the town never pulls them out of the rights-of-way.

24 **Mayor Pro-Tempore Gray** asked about mileage the town is covering.

25 **Councilmember Gantt** said the blue on the map, which are neighborhoods.

26 **Director Khin** said it's a lot of miles but it's inside the neighborhoods.

27 **Councilmember Zegerman** said a lot of HOA has rules against signs in them.

28 **Mayor Pro-Tempore Gray** said he wants to figure out the scope.

29 **Councilmember Mahaffey** said it comes down to what is possible and said the deal
30 with Cary is nice.

31 **Mayor Pro-Tempore Gray** said we need a purpose statement for it, so the town can
32 explain that it is for safety and that's why it needs to be regulated.

33 **Councilmember Gantt** asked the question about temporary signs in town right of
34 ways which still remains.

35 **Director Khin** said the proposal is not to allow the non-commercial signs in the towns-
36 right-of way, which are currently allowed, except next to Town Campus and parks. She said
37 this would make us more consistent with Cary. She said it's the easiest to enforce and it's
38 legally defensible.

39 **Mayor Gilbert** asked Council to take a vote to see if Council was in consensus with
40 the proposal from Staff.

41
42 **VOTE: UNANIMOUS (4-0), with Councilmember Killingsworth absent.**

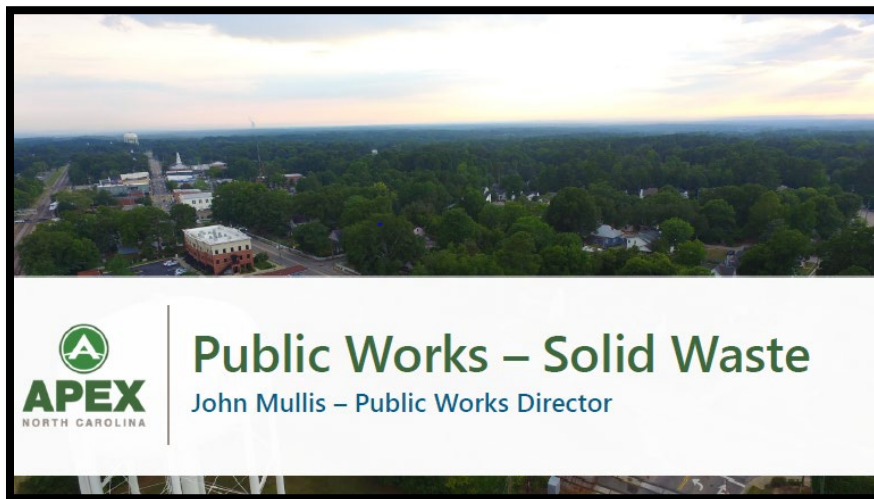
CLERK's NOTE: This vote was informal and does not automatically implement the recommendations. The recommended changes will come before Council in the form of a Unified Development Ordinance (UDO) amendment.

Councilmember Gantt said he wanted to acknowledge the planning staff on the Grant for the Safe Routes to Schools.

[AGENDA ITEM NO 2 - SOLID WASTE DIVISION UPDATES]

Director Mullis gave an overview of the yard waste program and the impacts it having in the Town.

[SLIDE-1]




[SLIDE-2]

Purpose:

Provide an overview of the town's current yard waste program and solicit input from the Town Council on potential ordinance and operational adjustments that minimize impacts to our watershed, improve cost recovery, and enhance service delivery for residents.

Requested Action:

- Receive Council feedback on current ordinances and willingness to consider ordinance revisions.
- Receive Council feedback on state of current yard waste curbside collection model. Seek guidance as to potential modifications.
- Receive Council feedback and direction on exploring potential for a transfer facility to support current and future operations.



[SLIDE-3]

Discussion Areas

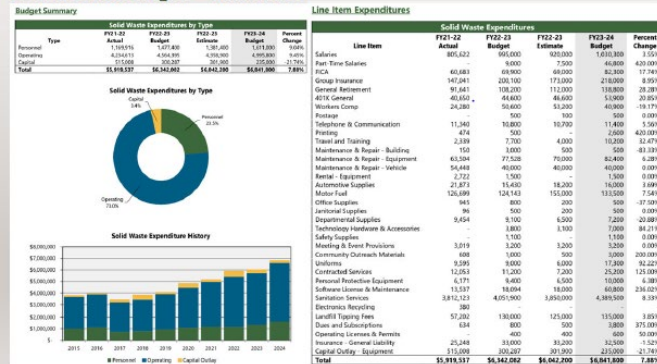
- Public Works at a Glance
 - Solid Waste Budget (FY23-24) & Fee Structure
 - Households Served and Tonnage by Type
 - Organizational Structure and Equipment Overview
 - Operations Resource Plan – Yard Waste & Bulk
- Apex Yard Waste Program
- Peer Community Information
- Local Trends – Raleigh and Holly Springs
- Why Conversation on Yard Waste?
- Strategic Plan Framework
- Stakeholder Relationships and Considerations
- Impacts and Concerns
 - Operational
- Growth in Population and Households
- Operational Challenges and Concerns
 - Community Appearance
 - Excess Yard Waste
 - Non-compliance with pre-collection requirements
 - Worker Safety
- Ordinances
- Disposal
- Challenges – Recap
- Conclusion
- Questions
- Requested Action
- Addendum



[SLIDE-4]

Public Works at a Glance

FY 2023-2024 Budget – Solid Waste



[SLIDE-5]

Public Works at a Glance

Fee Structure FY 2023-2024 Budget – Solid Waste

SOLID WASTE FEES			
Yard Waste Collection	\$7.83/month	Dumpster Service	
Residential Roll-Out Cart	\$9.85/month	- 4 CY Dumpster	\$145.86/month
Commercial Roll-Out Cart	\$20.62/month	- 6 CY Dumpster	\$173.32/month
Recycling (Per Bin or Cart)	\$5.24/month	- 8 CY Dumpster	\$198.85/month
Bulk Items	\$11/each	Bulk Items - Half Load	\$22
White Goods	\$18/each	Bulk Items - Full Load	\$40

Revenue – Yard Waste Program Portion
(Estimated: Sept 2023)
Based on 23,231 households @ \$7.83/month per household

Monthly: \$ 182,000
Annually: \$ 2,184,000

Description

The Solid Waste division of Public Works is responsible for all duties related to solid waste management in the Town. Its responsibilities include conducting contractor oversight, managing landfills, and bulk waste collection, handling and disposing of special materials, conducting public trash collection for the Central Business District, and coordinating and completing special clean-up projects. Additionally, the division handles the regular cleaning and maintenance of Town lots and property, manages and executes relevant weather response and recovery efforts, and provides support to other operations.

Recent Accomplishments

- Partnered with Public Works administration to provide G/L access to CityWorks for service requests.
- Obtained yard waste transfer and disposal agreement extension with Holly Springs.
- Worked with other Town departments on Customer Service Standards project.

Strategic Goal Activities

High Performing Government

- Utilize data analytics to increase operational efficiency and sustainability of the Town Solid Waste Program.
- Analyze long term solutions for yard waste preprogramming.

FY 2023-2024 Budget Highlights

- The Solid Waste department budget increased 7.88 percent in FY23-24.
- The Solid Waste budget accounts for 6.79 percent of the General Fund Budget and is equivalent to \$0.05 on the tax rate.
- The Town plans to spend \$95.67 per capita for Solid Waste services in FY23-24.
- Major budget changes include an increase in software licensing and a transition in uniform services.
- The budget includes \$4.39 million for contracted sanitation and recycling services.

Public Works at a Glance

Garbage, Recycling, Yard Waste (Curbside weekly Sept 2023)

23,231 – Residential Yard Waste Accounts
23,568 – Residential Recycling Accounts
23,325 – Residential Garbage Accounts

70,124 – Possible collection points each week

Tonnage Collected - Residential (annually FY 22/23)

5,120*	– Yard Waste tons collected (Avg#/stop = 8.5 lbs)
4,818	– Recycling tons collected (Avg#/stop = 7.8 lbs)
18,834	– Garbage tons collected (Avg#/stop = 31 lbs)
28,772 - Residential tons collected	

* Yard waste collected curbside exceeds recycling in tonnage.

Organizational Structure and Equipment Overview

Public Works Operations Manager (35)

Yard Waste & Bulky Operations Supervisor (18)

Yard Waste & Bulky Crew Leader

Chipper Driver	Chipper Collector	Vac Trk Operator
Chipper Driver	Chipper Collector	Vac Trk Operator
Chipper Driver	Chipper Collector	Vac Trk Operator
Chipper Driver	Chipper Collector	Vac Trk Operator
Grapple Truck Operator - Bulky	Grapple Operator - Vac	Seasonal Vac Trk Operator

Seasonal Collection Fleet

Typically (4) types of collection vehicles are used to collect curbside yard waste & bulk household

Leaf-Vac (2 engines)

Grapple Truck

Chip Truck & Chipper (2 units)

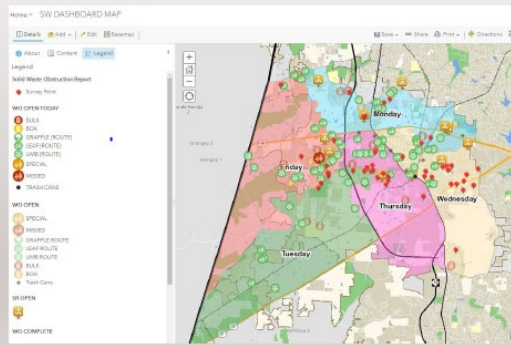
Small Dump Truck

- Page 159 -

Operations Resource Plan

Yard Waste and Bulk Item Collection - Routes

Zones (M-F):	5
Resource Plan (Daily)	
Leaf Vac Trucks	5
Chipper Combo	3
Grapple Truck	2
Small Dump truck	1
Routes per day	11
Routes per week	55
Households served	23,231
Solid Waste vehicles:	16
* Includes support vehicles	
Total Miles (FY22):	147,118
Total Gallons:	38,261
Fuel Cost:	\$121,336
Avg MPG:	3.18



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[SLIDE-9]

Apex Yard Waste Program (Weekly: non-containerized, manual collection)

Curbside Collection Ordinances

Home » Government » Town Departments » Public Works » Garbage, Recycling & Yard Waste » Yard Waste Collection

Yard Waste Collection

Yard waste collection is performed by the Town of Apex Public Works Department personnel for residential customers. To learn about ordinances that regulate Yard Waste collection in Apex, click https://library.municode.com/nc/apex/codes/code_of_ordinances?nodeId=CH22MUTSSE_ARTVIVAWACO_112-126DE

Collection occurs weekly on the business day following garbage and recycling collection. On occasion, weekly collection is not possible, due to these reasons:

- **Inclement weather** (this includes periods of heavy rain, ice, or snow)
- **Holidays** (Yard waste collection observes the published Town of Apex [holiday calendar](#))
- **High Demand** (increases following a big weather event and during the loose-leaf collection season, November-February)

Pre-Collection Key Reminders

- Yard waste is required to be separated by type and not combined with other yard waste types
- Yard waste is to be placed at least ten (10) feet away from any storm drain
- Yard waste should not be blocked by vehicles on collection day
- Yard waste should not be placed at curbside for collection more than 48 hours in advance of the scheduled collection date

Missed Collection
Report missed collection to our customer service team one of two ways:

- Complete an [online service request form](#)
- Call Customer Service at (919) 362-8676

No mention of set out volume or weight

3

4

[SLIDE-10]

Apex Yard Waste Program (Weekly: non-containerized, manual collection)

Curbside Collection Ordinances

3 Types of Trucks that may visit your street on yard waste collection day

Truck Type	Accepted Items	Restrictions / Notes
Vacuum Truck	<ul style="list-style-type: none"> Leaves Grass Clippings Pine cones Pine Straw Stumps (no dirt) Small Shrubbery Clippings less than 4 inches in length and less than 1 1/4 inches in diameter 	<ul style="list-style-type: none"> Do not bag yard waste. Please make sure that leaves are placed outside and separated from other yard waste types. Leaves mixed with other debris will not be collected due to the possibility of damaging equipment. Place yard waste 10 feet away from storm drains. Please separate yard waste by type. Dirt, sod, mulch, and rocks are NOT accepted items for yard waste collection. Separate any sticks / limbs, as those items can damage the vacuum equipment.
Chipper Truck	<ul style="list-style-type: none"> Sticks and Limbs Christmas Trees (remove all lights and decorations) 	<ul style="list-style-type: none"> Limbs must be no more than 8 feet long, and a maximum diameter of 8 inches. Please separate sticks from limbs and other yard waste types. Place limbs with the cut ends facing the same direction. Extremely Rare Place Christmas trees curbside, but not in the roadway. Christmas trees are collected throughout the month of January.
Grapple Truck	<ul style="list-style-type: none"> Limbs 	<ul style="list-style-type: none"> Supports both chipping and bulk collection operations

Check your schedule using our [address lookup tool](#). Please note that there may be slight delays in programming this tool with newly constructed home addresses.

Difficult to Enforce Compliance

Difficult to Enforce Compliance

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[SLIDE-11]

Apex Yard Waste Program (Weekly: non-containerized, manual collection)

Curbside Collection Ordinances

Grass Recycling

encourages the use of mulching blades on mowing equipment. Lawn clippings usually do not need to be bagged. Recycling grass clippings can reduce your fertilizer needs, improve your soil, and does not contribute to thatch.

Composting

In an effort to divert inappropriate materials from Wake County landfills, the Town of Apex encourages the use of compost bins to help residents dispose of yard waste.

More Information

If you have a question regarding your collection day, or to report missed collection, contact Customer Service at (919) 362-8676.

Yard Waste Disposal locations

Chipped and Brush: McGill Environmental (New Hill, NC)

Vacuumed material: Town of Holly Springs (transfer & transportation)

*material transported to Earthtec in Sanford for re-use. Material mixed with contaminated soil (operational hours impacted by weather).

Greenway Waste – 50 Loads per month (no fee)



[SLIDE-12]

Peer Community Fee Structure

FY 2023 - 2024 Fee Structure - Peer Community Comparison (excludes Bulk)	Funding / Services (X) Monthly billing utility invoice (PP) - Annual Property taxes	Solid Waste	Recycling	Yard Waste	Total
APEX	X - YW in-house	\$9.85	\$5.24	\$7.83	\$22.92
CARY	X - YW-T-R in-house				\$22.00
FUQUAY-VARINA	X - YW-T-R in-house				\$21.00
GARNER	PP Tax -contracted	\$10.69	\$2.42	\$5.88	\$18.99
HOLLY SPRINGS	X - YW in-house	\$10.95	\$4.93	\$7.50	\$23.38
KNIGHTDALE	X - YW in-house	\$12.50	\$5.00		\$17.50
MORRISVILLE	PP Tax -contracted	\$11.30	\$6.10	\$1.34	\$18.74
RALEIGH	X - YW-T-R in-house	\$14.45	\$4.60		\$19.05
ROLESVILLE*	PP Tax -contracted	\$10.71	\$5.62	\$3.10	\$25.00
WAKE FOREST	X - YW in-house	\$13.77	\$5.47	\$2.76	\$22.00
WENDELL**	X - contracted	\$11.37	\$3.90	\$3.72	\$25.00
ZEBULON	X - YW in-house	\$11.97	\$4.46	\$8.32	\$24.75

* Rolesville - \$3.57 Town processing fee
** Wendell - \$6.01 Town processing fee



[SLIDE-13]

Peer Communities: Collection Methods & Frequency – Yard Waste

Collection Method	Raleigh	Cary	HS Knight	Apex	Morris	FV	WF	Zebulon	Roles	Wendell
Weekly Collection		X	X	X		X	X			X
Bi-Weekly Collection	X		X		X			X	X	
Modified Schedule for Fall	X	X	X	X		X	X		X	X
Vacuum Truck Year Round				X						
Local Convenience Center	X	X	X							
Allows Compostable Paper Bags	X	X	X		X		X			
Allows Small Bins	X	X	X		X	X	X		X	
96 Gallon Carts	X		X							X

Peer communities are most similar in the following areas:

Yard Waste fees are compulsory in that every household pays them.
Containerization is the most common form of collection used curbside.

Set out limits and weight restrictions per stop. Excess yard waste can be collected in Cary and Holly Springs for an additional fee based on per visit or volume.

* Cary offers chipping service for \$ 350 per visit.

* Holly Springs offers fee based collection based on volume levels (Example- minimum rate (Level 1): \$80 per 2.5 cubic yards).

Contractors (Lawn care/Tree Service firms) hired to perform residential service work is responsible for removal of yard waste debris.

Yard waste to be placed behind the curb (not in the street or gutter) so that debris does not interfere with traffic or drainage.



Councilmember Mahaffey asked how does Zebulon gets rid of grass if they don't have collectors and they don't have vacuum trucks.

Director Mullis said they are processing it at the composting yard and they get it hot enough to mix.

Mayor Pro-Tempore Gray asked how does pine needles work since we basically have three fall seasons for those.

Director Mullis said they accept them currently. He said the pine needle problem is related to dirt.

[SLIDE-14]

Local Trends: Automation and Containerization

June 2021: Raleigh City Council approved Yard Waste Cart project and service improvements.

July 5, 2022: City of Raleigh suspends collection of customer owned containers and provided Town issued 95 gallon yard waste carts to approximately 110,000 residents.

Cart Details

The City of Raleigh added adding 95-gallon yard waste carts to our residential curbside pickup service during the summer of 2022.

The height green 95-gallon carts with wheels means:

- greater convenience and safety for you and our crews;
- much more room - carts offer three times the capacity as a standard container;
- more reliable bi-weekly pickup schedule;
- reduced carbon emissions with fewer truck runs;
- protecting the environment - reduces material sent to the landfill; and,
- more products from the City's Yard Waste Center (your yard waste is processed into mulch and compost).

The new roll cart is just like your City-issued olive-green garbage cart and blue recycling cart, only it's height green.

March 9, 2022: Holly Springs Town Council authorized Yard Waste model changes to include transition to 95 gallon yard waste carts and explore opening a yard waste citizens convenience center.

June 7, 2022: Holly Springs Town Council authorized sale source purchase of (3) New Way Rotopac 14 ASL refuse collection bodies and approved purchase of (3) CCC LET2-26 low entry truck chassis.

March 2022: Supply Chain issues delayed the Yard Waste cart launch by 9 months.

September 13, 2023: Holly Springs opens up Yard Waste Convenience Center. Hours are Wed through Sunday, 7am-3pm.

KEEPING IT GREEN in Holly Springs

Pine Keeping: Green in Holly Springs with a new way of collecting yard waste. Early next year, your home will receive a new yard waste cart. Keep it green. It's the cart with new design, new wheels, and other types of yard waste. And place the cart back at the curb on the same day as recycling collection.

Carts help keep debris out of storm drains that empty into local water, streams, and estuaries. Benefits of your waste carts also include:

- ✓ More efficient collection
- ✓ Less pollution & dust in the spring
- ✓ Cleaner workdays - less time waiting for vehicles
- ✓ Less noise

Want to order additional carts or do have a need? Call Holly Springs and get pre-authorized to receive the new 95 gallon. Or call 252-388-0777 or 252-388-0777 if outside Town limits.

March 2024: Town of Holly Springs to suspend weekly loose yard waste collection and will provide a Town issued 95 gallon yard waste cart. The Town will continue its Fee based excess collection as an enhanced service; however, residents will now have a free option to dispose of any amount of yard waste at the Holly Springs Yard Waste Convenience Center off of Rex Rd.

Councilmember Zegerman asked how big is the towns recycling container.

Director Mullis said 95 gallons, and GFL has a 65-gallon recycling and 65-gallon trash.

[SLIDE-15]

Why Conversation on Yard Waste?

- Alignment to Strategic Plan Framework
- Environmental & Safety Considerations
- Service Demand Model and Cost Recovery
- Aesthetics of our Communities
- Operational Challenges (related to current ordinances)
- Material Transfer and Disposal Challenges



[SLIDE-16]

Strategic Plan Framework

Relationship to Yard Waste Programming



Mission

Provide exceptional public service that fosters opportunity for the individual and community to live, thrive, and reach their peak.

Vision

A community unified in the stewardship of our small-town character and natural environment for a future where all succeed.

Values

Performance
Empowerment
Accountability
Knowledge



Goal A: Welcoming Community

Create a safe and welcoming environment fostering community connections and high-quality recreational and cultural experiences supporting a sense of belonging.

Objectives

- Foster safe places and spaces
- Foster community connections
- Create a sense of belonging
- Encourage a healthy and active lifestyle
- Enhance communication for a more informed community



Goal B: High Performing Government

Deliver exceptional service valuing an engaged workforce with an emphasis on efficiency, collaboration, innovation, and inclusion.

Objectives

- Use resources efficiently and effectively
- Provide customer-focused service
- Attract, retain, and develop our workforce
- Promote a culture of innovation and creativity
- Maintain transparency in stewardship of public resources
- Enhance communication for a more informed workforce



Goal C: Environmental Leadership

Commit to sustaining natural resources and environmental well-being throughout the community.

Objectives

- Adopt clean energy and efficiency measures
- Preserve natural resources and habitats
- Reduce environmental waste
- Proactively address climate vulnerability



Goal D: Responsible Development

Encourage equitable and sustainable development that provides accessibility and connectivity throughout the community.

Objectives

- Plan for and invest in infrastructure
- Provide and promote mobility
- Support diverse housing choices
- Balance impacts of growth and development



Goal E: Economic Vitality

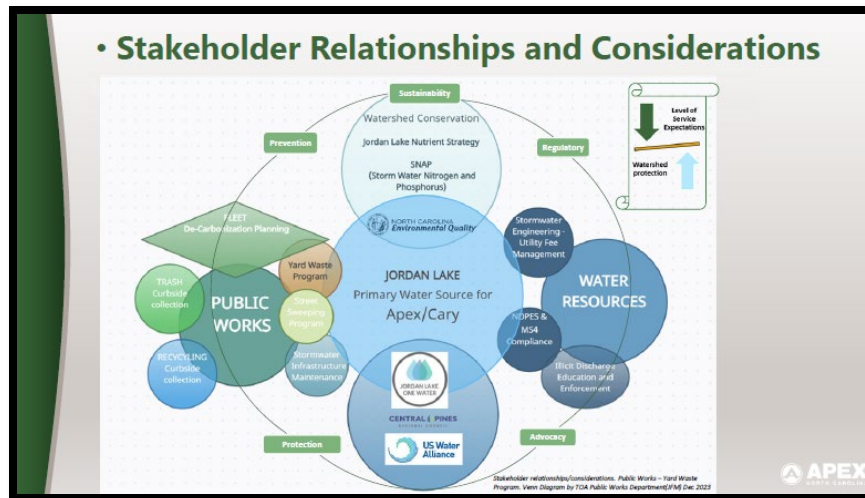
Improve and sustain an environment that invites and retains a diversity of residents, employment opportunities, and businesses.

Objectives

- Recruit, retain, and develop businesses
- Leverage community assets to benefit businesses and residents
- Engage in planning
- Identify key opportunities to strengthen economic environment



[SLIDE-17]



Assistant Town Manager Purvis said he wants to make one thing clear. He said we are in compliance with our permits and we have National Pollutant Discharge Elimination System (NPDES) permit that allows us to do exactly what we are doing. He said we just got our permit renewed last year. He said it says material is only to be placed out 48 hours to pick up and shouldn't be out all week.

Councilmember Gantt asked is the problem that the storm drain gets clogged and the water is sitting on the road for longer and puddling up.

Stormwater Field Supervisor Misciango said when you have the organic materials flowing into the storm drains and causes a havoc in our water. He said it's more the grass than the leaves.

Councilmember Zegerman said it also ends up in the retention ponds that now need to be drained more frequently.

Mr. Misciango said there are neighborhoods that discharge directly to streams and creeks. He said the they do have a federally mandated permit called a phase two permit. He said it's a program called solicit detection elimination that mandates that the town enforce impacts where it's intentional or accidental to the storm water system. He said if anyone takes yard waste, whether its grass clippings or wooden trees, and dump it in a storm drain, the town can enforce it by making sure the resident removes it and educate them on the rules.

[SLIDE-18]

Impacts and Concerns

Environmental

- Jordan Lake, located in the Cape Fear River Basin, was impounded in February of 1982 and was placed on the EPA's list of impaired waters in 2002 due to nutrient over-enrichment (eutrophication).
- Jordan Lake Watershed supports 10 counties, 27 municipalities, and provides drinking water to approximately 700,000 customers.
- In 2017, conversations led to the formation of what is now called Jordan Lake One Water (JLOW) in support of watershed management while ensuring water quality of the regional resource. This has now become guidance from the U.S. EPA.
- Current yard waste program of allowing loose material curbside is not in alignment with watershed nutrient reduction best management practices.
- According to the U.S. EPA, phosphorous is one of the most troublesome pollutants in stormwater runoff and is considered the primary cause of water quality problems in our lakes, ponds, and streams.
- Municipalities located within the Jordan Lake watershed should anticipate continued efforts to reduce nutrient loading in support of Jordan Lake Rules.



[SLIDE-18]

Impacts and Concerns

Clogging – Impacts Stormwater Conveyance



[SLIDE-19]

Impacts and Concerns

Operational

- Stormwater conveyance - town infrastructure is increasingly being compromised, potentially leading to environmental concerns such as localize flooding and compliance with stormwater permits.
- Community appearance – Bulk yard waste randomly strewn about and placed on the street regardless of collection schedule. Residual staining nullifies street sweeping.
- Continual escalating costs and widening gap in cost recovery.
- Difficulty in communicating acceptable collection compliance and enforcement of ordinances.
- Difficulty in monitoring landscapers who bring in yard waste debris from other contracted jobs.
- Difficulty in meeting ongoing resident service delivery expectations due to excess volume per stop.
- Excess volume equates to additional costs for labor and equipment.
- Rapid residential growth requires a more sustainable yard waste collection model.



Councilmember Gantt asked about the needs and requirements of single-family homes and apartments.

Director Mullis said the standard is if the municipality provides a trash can and recycling can, they would also have a yard waste can.

Councilmember Gantt said with City of Raleigh and Town of Holly Springs they have some bigger apartments that have big properties, would they request more cans.

Director Mullis said both municipalities went bi-weekly to collect. He said the recommendation also is to get another trash can and that's what most people would do.

Assistant Town Manager Stone said we do not collect commercial trash.

Director Mullis said that is correct, he said we do not offer that service.

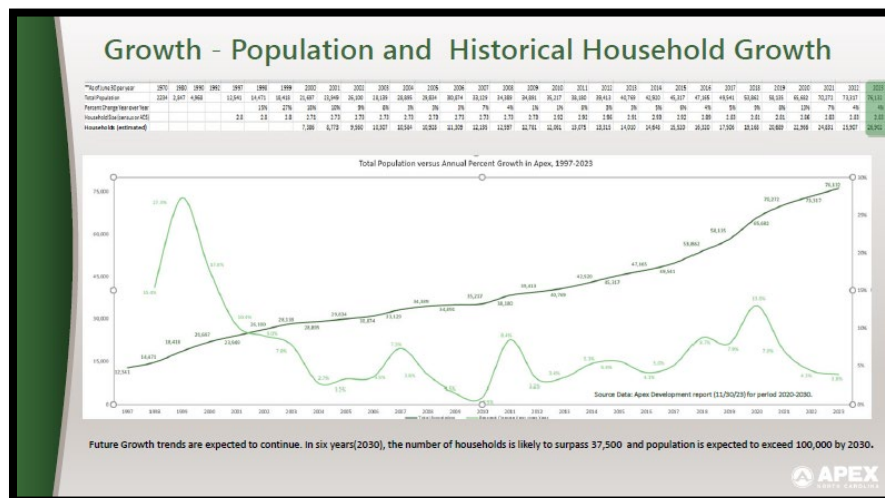
Councilmember Gantt asked if townhomes and apartments have dumpsters and yard wastes.

Assistant Town Manager Stone said townhomes do, but apartments do not. He said they handle that pickup.

Mayor Gilbert asked how hard is it for broom trucks to get around vehicles.

Director Mullis said the on-street parking is challenging.

[SLIDE-20]



[SLIDE-21]

Operational Challenges and Concerns

- Inconsistent yard waste volume.
- Excessive amounts of yard waste with no weight or volume set out limit.
- Comingled / mixed type yard waste.
- Non-Compliant yard waste.
- Improper placement of yard waste.
- Utilizing equipment other than what it was designed for.
- Resident understanding of how to properly prepare for yard waste collection.
- Intrusion of yard waste in the roadway (motorist safety).
- Intrusion of yard waste on the sidewalk (pedestrian safety).
- Grass is not commercially desirable (due to persistent herbicides) and is becoming more difficult to dispose of.
- Uncertainty related to long-term disposal of curbside generated yard waste.



[SLIDE-22]

Operational Concerns

Community Appearance



[SLIDE-23]

Operational Challenges

Excess Yard Waste – Contractor

This is not allowed anywhere in Wake County per ordinance



Councilmember Mahaffey said this should make people angry. He said the Apex

- 1 taxpayers are essentially subsidizing commercial and contractors not only for the labor but for
2 the cleanup.
3 **[SLIDE-24]**



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16 **[SLIDE-25]**



- 17
18 **[SLIDE-26]**

Operational Challenges

Manual Collection – worker safety concerns



APEX

Councilmember Zegerman asked if we can chase the service and call the resident.

Director Mullis said the Town of Cary and City of Raleigh has a requirement of a 4-foot length tree. He said Council can decide to implement that if they want. He said he thinks the best way to handle this would be to offer it as a service, rather it is charged or not.

Councilmember Zegerman said we can write in our town ordinances starting with commercial and enforce proper enforcement.

Councilmember Zegerman asked who would pick up the containers.

Director Mullis said if you change your model you have to change equipment. He said GFL would be glad to bid it, but he doesn't think they would have the bandwidth.

Councilmember Mahaffey asked if there was a way to reduce costs for a majority of residents. He said lots are getting smaller and there are less waste. He said newer residents are subsidizing older, larger lots.

Director Mullis said other places offer free drop up to disposal, and an option for curbside collecting. He said there's also a task in managing the perception, and offering the residents a convenience center, or paying the town a fee to pick up excess. He said it would be normalized by volume.

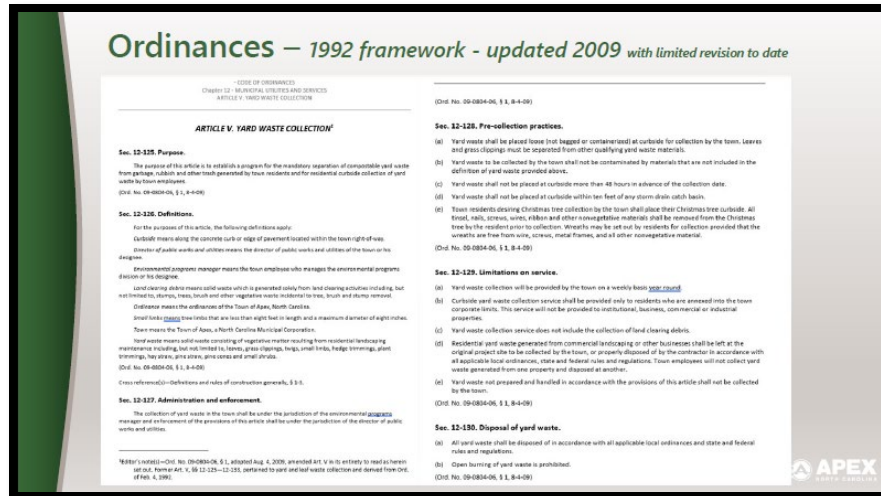
Councilmember Gantt said that seems like the service would be more for smaller lots, and there may too much for a bin for larger lots.

Director Mullis said they could get a second bin. He said the fee is the same for that cart.

Councilmember Mahaffey asked he was mostly wondering about how the base fee could be lowered. He asked about the cost recovery.

Director Mullis said he would estimate about 60% cost recovery, before factoring in the cost of equipment.

[SLIDE-27]



Assistant Town Manager Stone said in the town's ordinance, it allows facilities who offer yard waste dumping the ability to purchase water from the town at an in-town rate without having to be annexed. He said there was an amended agreement in 2021 that changed it to 50 trucks per month. He said in the future they would eventually need to pay to remove yard waste as the town grows and space at that center is limited.

Councilmember Zegerman asked if that might would change based on collection method.

Councilmember Mahaffey said the method matters, because people may have more than others, or they could encourage reusing yard waste.

Director Mullis said Holly Springs gives tags for excess yard waste, and about 30% of the time instead of scheduling a time and fee for it to be picked up, the resident does not reschedule and gets rid of it themselves.

Councilmember Zegerman said the grass would be put in containers rather than on the curb, and people may throw it out as regular trash.

[SLIDE-28]

Ordinances – 1992 framework - updated 2009 with limited revision to date

- Population in 1992 was approximately 6000.
- Household estimate in 1992 at time of ordinance adoption – 2000.
- By 2030 (6yrs), population is expected to exceed 100,000 with an estimated 37,500 households.
- Current ordinances and yard waste collection practices are difficult to manage in a growing community.
- Recent development and higher density PUD's such as Depot 499 are allowed under the APEX 2045 Land Use Plan. Minimum lot sizes of 2550 sq. ft. (.058 acres) (36 min (w)' x 85' min (l) for single-family residential).
- Townhomes have a minimum lot width of 16 ft and depth of 65 ft. (1040 sq. ft).
- Current average residential parcel lot size within the Apex Corporate Limits is 10,469 sqft (0.24 acres). ETJ parcels are 122,517 sqft (2.8 acres). Source: TOA GIS 12/6/23
- Modern home design in Apex has less vegetative area, resulting in a less harvestable yield of yard waste debris.



Minimum Building Setbacks - Front Yard	
Minimum Building Setbacks - Front Yard	10 feet (10' min)
Minimum Building Setbacks - Side Yard	5 feet (5' min)
Minimum Building Setbacks - Rear Yard	10 feet (10' min)
Minimum Building Setbacks - Corner Lot	10 feet (10' min)
Minimum Building Setbacks - Alley	5 feet (5' min)
Minimum Building Setbacks - Other	5 feet (5' min)



[SLIDE-29]

Disposal

Short-term operational agreement

- May 26, 2021, Town of Apex received notice of termination without renewal from the sole receiver of yard waste collected from the Town of Apex. The agreement had been in place since November of 2002. Ultimately, the town was able to negotiate acceptance of 50 loads of vacuumed material per month.
- January 4, 2022, Town of Apex entered into a 6-month yard waste interlocal agreement (ILA) with the Town of Holly Springs for the use of their transfer facility and transportation of yard waste to a disposal facility.
- April 28, 2022, the ILA was extended an additional 6 months to January 3, 2023.
- February 28, 2023, the ILA was extended an additional 12 months (Feb 2024).
- Right to limit Volume
- Termination: 90 day notice

6. Right to Limit Volume of Material Disposal

- Holly Springs reserves the right to limit the volume of Material that it will accept from Apex on a daily, weekly, or monthly basis. Holly Springs shall provide reasonable notification to Apex of its intent to limit the volume it accepts.
- In the event that Contractor becomes unable or unwilling to accept additional truckloads of Material, Holly Springs reserves the right to suspend or terminate this Agreement.



[SLIDE-30]

Challenges – Recap

Yard Waste Collection and Disposal

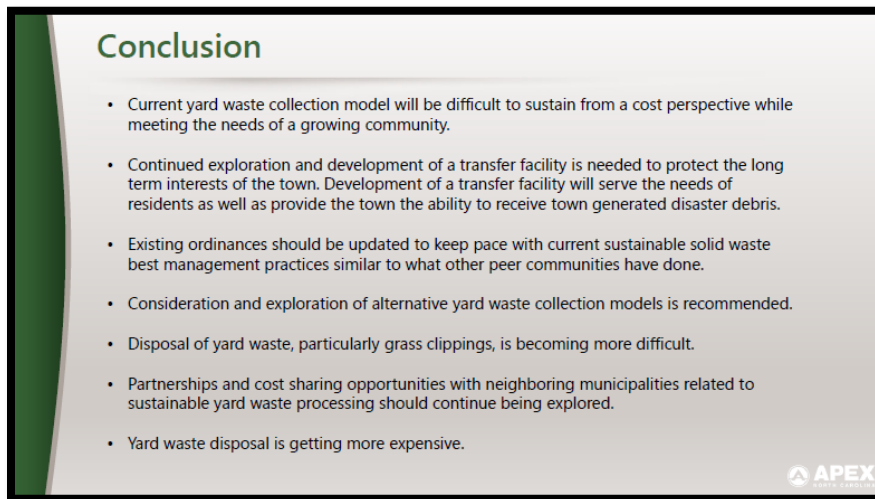
- Sustainability of the yard waste program
- Last large town in Wake County to have "mow it and throw it" yard waste model
- Landscapers hired can dispose yard waste on site in current program
- High non-compliant comingled yard waste piles
- Smaller piles collected manually by hand creating opportunity for injuries
- No containerization of yard waste
- Weekly service with no limits on weight or volume per household
- 8" diameter / 8' length limb limits (hard to enforce)
- No excess yard waste fees
- Current program is labor and capital intensive
- Yard Waste is allowed in the street
- Yard waste can be placed on the street not more than 48 hours prior to weekly scheduled service (difficult to enforce)
- Loss of free disposal of all yard waste at Greenway Waste (5/6/21)
- Grass clippings are not desirable (Town encourages use of mulching blades)
- No permanent transfer center to support disaster events and daily yard waste collection
- No yard waste convenience center for residents to dispose of excess waste



Councilmember Zegerman asked about the agreement with RXR.

1 **Assistant Town Manager Stone** said they are looking at getting things permitted,
2 and there may be something they could do to remove the waste at a cost.

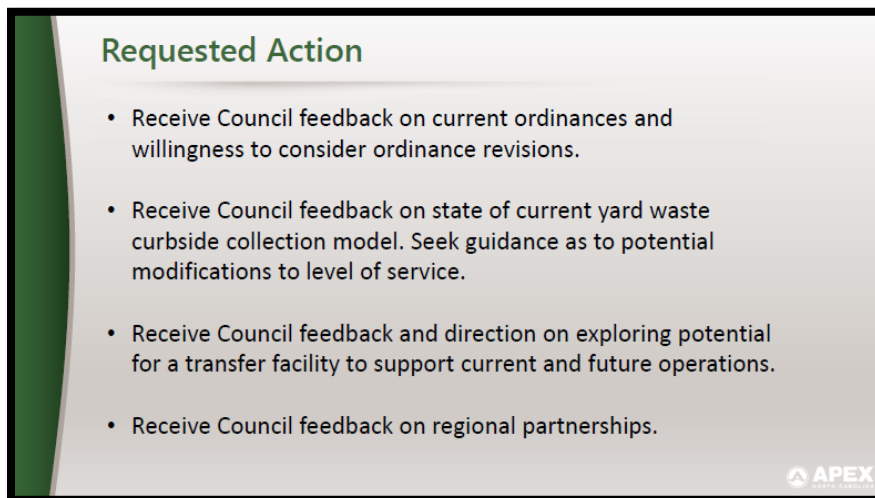
3 **[SLIDE-31]**



4
5 **Councilmember Mahaffey** asked if there was the possibility of an agreement with
6 Cary or Holly Springs.

7 **Director Mullis** said that is something to look at in the future.

8 **[SLIDE-32]**



9
10 **Mayor Pro Tempore Gray** asked if contractor-based pickup is what all the other areas
11 are using.

12 **Director Mullis** said in most places, contractors take it with them after doing work. He
13 said the ordinances in other places make that compulsory.

14 **Mayor Pro Tempore Gray** said this would be a good data point to make changes,
15 and to help save in costs. He said he thinks these agreements need to be looked at again,
16 since the town has modernized and grown now. He said it would take baby steps, and
17 unlearning a town's behaviors.

1 **Councilmember Zegerman** said he would like to see an ordinance change ensuring
2 contractors follow the yard waste rules. He said he would like to continue looking at other
3 locations and researching the issue. He asked Director Mullis to lay out all of the options and
4 show them a full proposal.

5 **Mayor Gilbert** asked what the timeline looked like.

6 **Councilmember Zegerman** said he would like to do it by about mid-year.

7 **Director Mullis** said they would like to have ordinances in place before growing
8 season, so things are not put out yet. He said he also wants to determine how there can be an
9 enforcement mechanism.

10 **Councilmember Zegerman** said he would like to look at a program where the town
11 offers free or low-cost mulch to residents that is recycled from yard waste such as limbs.

12 **Councilmember Gantt** said he would be ready to proceed with containers as soon as
13 tomorrow.

14 **Councilmember Zegerman** said he thinks they need to understand the economics of
15 it better first.

16 **Director Mullis** said he is happy to provide them with a list of options to choose from.

17 **Councilmember Gantt** said to him it seems like long-term it would be cheaper.

18 **Councilmember Zegerman** said he just wanted to be sure on the costs. He said in
19 the next 6 months they can do a lot of leg work, and they could work on the proposals and
20 plans.

21 **Councilmember Gantt** asked how long he would want to wait after Holly Springs
22 containerizes to get their feedback.

23 **Councilmember Zegerman** said he would want to ask them how things are going
24 after a couple of months. He said if things can be done quicker that's good. He said they can
25 execute once they have all the data that they need. Additionally, he asked if there was a way
26 GFL could provide a smaller bin for yard waste, and a bigger bin for recycling.

27 **Director Mullis** said he could bring that up, but he said he does not think we should
28 use a smaller bin for yard waste.

29 **Councilmember Zegerman** said he was concerned about having three large bins
30 outside every home, especially smaller ones.

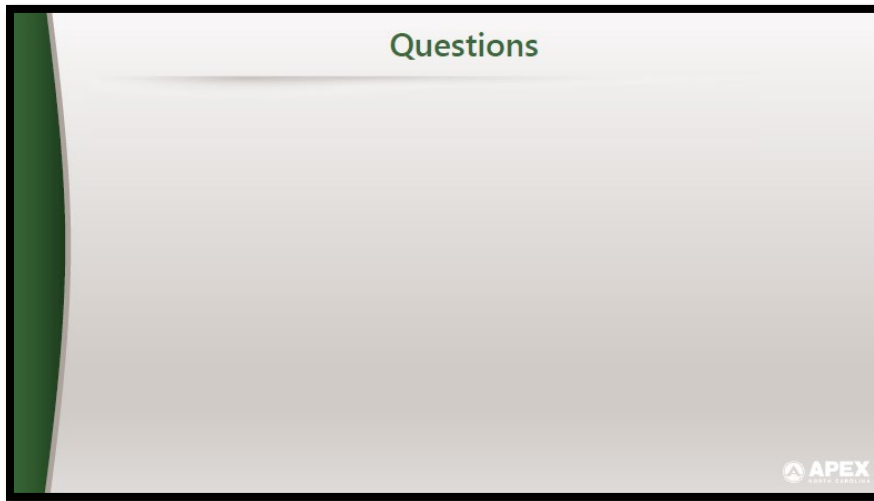
31 **Councilmember Gantt** said he would like to have something in the upcoming budget
32 regarding this.

33 **Director Mullis** said they need to look at if land needs to be purchased for something
34 like a convenience center.

35 **Councilmember Zegerman** said this is an example of a lot of unknowns in this
36 situation. He said they may could do things in stages, but they need to plan.

37 **Director Mullis** said there is an urgency with this, because they need a place to take
38 it. He said they are prepared to come back to them as soon as they can with some options
39 and continue discussions.

1 **[SLIDE-33]**



2
3 **[ADJOURNMENT]**

4 **Mayor Gilbert** thanked everyone and declared the meeting adjourned at 5:19 p.m.

5
6
7 Jacques K. Gilbert
8 Apex, Mayor
9

10
11 Allen Coleman, CMC, NCCCC
12 Apex, Town Clerk
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14 Submitted for approval by Apex Town Clerk Allen Coleman.

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16 Minutes approved on _____ of _____, 2023.
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| Agenda Item | cover sheet

for consideration by the Apex Town Council

Item Type: CONSENT AGENDA

Meeting Date: January 9, 2024

Item Details

Presenter(s): Karen Spurlin, Assistant Director

Department(s): Human Resources

Requested Motion

Motion to approve an amendment to the Town's Personnel Policies.

Approval Recommended?

Yes

Item Details

Town staff met with the Personnel Committee on Friday, December 8, 2023 and the following updates to the Town's Personnel Policies were unanimously approved to move forward for Town Council approval:

Additional Sick Leave Policy

A recent memorandum released by the NC Local Government Employees' Retirement System (LGERS) has caused question regarding the correct method of calculation for converting Additional Sick Leave into "creditable service" for retirement purposes. The calculation proposed by LGERS would significantly reduce the "value" of the Town's Additional Sick Leave in regards to converted creditable service. Therefore, the Town proposes amending the current Additional Sick Leave policy to remove language that requires the leave to be used only for Family Medical Leave qualifying events, and allow it to be used for any sick-related reason that is allowed under the Town's traditional sick leave policy. This would allow employees to use the Additional Sick Leave prior to their traditional sick leave, since under the LGERS proposed calculation, the traditional sick leave calculation provides more value at retirement.

The Town's Additional Sick Leave Policy would be amended to read as follows (red font is new language, strikethrough is language being removed):

Additional Sick Leave

In addition to regularly accrued sick leave, at the beginning of the 15th year of active service, employees holding a full or part-time regular position will have an Additional Sick Leave account established and accrue ten (10) days per month for the next 12 consecutive months. Beginning at the 25th year, employees will accrue an additional ten (10) days of Additional Sick Leave per month for the next 12 consecutive months.

~~To use the additional sick leave, an employee must have a family medical leave qualifying event of either their own serious health condition or to care for an immediate family member with a serious health condition. "Serious health conditions" include conditions covered under the Family Medical Leave Act, and a medical certification document. The need for the leave will be required.~~

Additional Sick Leave may be used for the same purposes as the Town's traditional sick leave policy. Additional Sick Leave is not eligible for payout but may be used towards years of service requirements for retirement and retiree health insurance purposes. Leave will be prorated based on the Town's sick leave earning rates for employees who do not work a 40 hour per week schedule.

Other Policy Updates

Administrative updates would be made to the following policies (red font is new language, strikethrough is language being removed):

Conduct and Working Environment

Employees are expected to conduct themselves in an appropriate manner as judged by a reasonable person.

The Town encourages a congenial work environment of respect and professionalism. Decorum, collegiality, kindness, respect, and professional courtesy are ideals to be pursued amongst employees.

Disrespectful conduct or actions are prohibited. This prohibition includes but is not limited to intentional acts such as:

- Verbal abuse: slandering, ridiculing or maligning a person or his/her family; persistent name calling which is hurtful, insulting or humiliating; using a person as butt of jokes; abusive and offensive remarks
- Physical abuse: pushing; shoving; kicking; poking; tripping; assault, or threat of physical assault; damage to a person's work area or property
- Hostile Gestures: non-verbal threatening gestures
- Exclusion: socially or physically excluding or disregarding a person in work-related activities
- Persistent singling out of one person
- Shouting and/or yelling at an individual in public and/or in private
- Personal insults and use of offensive nicknames
- Deliberately interfering with mail and other communications
- Spreading rumors and gossip regarding individuals
- Refusing reasonable requests for leave in the absence of work-related reasons not to grant leave
- Using intimidation tactics and making threats
- Sabotaging another's work
- Stalking others
- Making malicious, false, and harmful statements about others or the Town
- Publicly disclosing another's private information (outside of public records law requirements)
- Fraud
- Falsification of records for personal profit

Any of the above actions, or conduct that is otherwise deemed as bullying or discriminatory, will not be tolerated and will be handled in accordance with ~~the Town's Job Discrimination and Workplace Harassment policy~~ **Article IX. Unsatisfactory Job Performance and Detrimental Personal Conduct.**

Section 4. Unsatisfactory Job Performance Defined

Disciplinary Action may be taken for unsatisfactory job performance. Unsatisfactory job performance includes any aspect of the employee's job that is not performed as required to meet the standards set by the supervisor. Examples of unsatisfactory job performance include, but are not limited to, the following:

- 1) Demonstrated inefficiency, negligence, incompetence, or lack of prudent judgment in the performance of duties.
- 2) Careless, negligent or improper use of Town property or equipment.
- 3) Physical or mental inability to perform duties after reasonable accommodation.
- 4) Discourteous treatment of the public or other employees.
- 5) Disruption of work environment – displaying unproductive behaviors such as promoting rumors, bad-mouthing others and other demeaning behaviors distracting from a positive working environment.
- 6) Excessive absences, late reporting, absence without approved leave, or repeated improper use of leave privileges.
- 7) Failure to meet work standards established in work plan.
- 8) Failure to follow established departmental or Town policies and procedures.
- 9) Failure to carry out supervisor's assignments or instructions.
- 10) Failure to maintain credentials or license required for position.

Section 5. Detrimental Personal Conduct Defined

Detrimental personal conduct includes behavior, whether on-duty or off-duty, intentional or unintentional, of such a serious detrimental nature that the functioning of the Town may be or has been impaired; the safety of persons or property may be or have been threatened; the laws of any government may be or have been violated or public confidence in Town government is likely to be undermined. Examples of detrimental personal conduct include, but are not limited to, the following:

- 1) Fraud, theft or dishonesty
- 2) Conviction of a felony or the entry of a plea of *nolo contendere* thereto.
- 3) Falsification of records for personal profit, to grant special privileges, or to obtain employment.
- 4) Misusing or directing the misuse of Town work time, funds, equipment or property.
- 5) Careless, negligent, reckless, willful or wanton damage to or destruction of Town property.
- 6) Careless, negligent, reckless, willful or wanton acts that endanger the lives or property of others.
- 7) Possession of unauthorized firearms or other lethal weapons on the job.
- 8) Communication of a threat or engaging in threatening behavior;
- 9) Brutality in the performance of duties.
- 10) Any violation of the Town's Drug and Alcohol Policy.
- 11) Engaging in incompatible employment or serving a conflicting interest.
- 12) Request or acceptance of gifts in exchange for favors or influence.
- 13) Engaging in political activity prohibited by the Town's Personnel Policies.
- 14) Engaging in acts during or outside duty hours that negatively affect the image of the Town and which interfere with the working relationship between the employee and co-workers or between the employee and the public that employee serves.

15) Inharmonious work environment – an employee displaying unproductive behaviors such as promoting rumors, bad-mouthing others and other demeaning behaviors distracting from a positive working environment.

16) Harassment of an employee or the public with threatening, obscene or derogatory language or gestures.

17) Stated refusal to perform assigned duties (insubordination) or flagrant violation of work rules and regulations.

18) Flagrant behavior or repeated rude or uncivil behavior directed toward citizens or co-workers.

19) Workplace Violence or workplace harassment.

Attachments

CN8-A1: Personnel Policy - Human Resources (HR) Policy Updates - Town's Personnel Policies



TOWN OF APEX
PERSONNEL POLICY
January 10, 2023

BE IT RESOLVED by the Town Council of the Town of Apex that the following policies apply to the appointment, classification, benefits, salary, promotion, demotion, dismissal, and conditions of employment of the employees of the Town of Apex.

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ARTICLE I. GENERAL PROVISIONS

Section 1. Purpose of the Policy

This policy manual is designed to acquaint all employees with the Town of Apex rules and regulations set forth to establish a fair and uniform system of personnel administration and to provide information concerning working conditions, employee benefits, and some of the policies affecting Town employment.

Employees shall understand and comply with all provisions of this manual. If an employee is unclear of the meaning or purpose of a policy, he or she should seek assistance from a supervisor, Director of Human Resources for clarification or interpretation. The policy manual describes many responsibilities of an employee and outlines the programs the Town has developed to benefit our employees. One of our Town objectives is to provide a work environment that is conducive to both personal and professional growth.

No policy manual can anticipate every circumstance or question about every one of our policies. Furthermore, there may be situations where the need arises to revise, add, or cancel policies. Therefore, the Town reserves the right to add new policies, and to change or cancel existing policies at any time.

Employment by the Town of Apex is “at-will” employment. Employment-at-will permits the employee or the Town to end the employment relationship at any time. Nothing in this policy creates an employment contract or term between the Town and its employees. This policy is established under authority of Chapter 160A, Article 7 of the General Statutes of North Carolina. The Town’s Human Resources Department will notify employees of any changes to the policies as they occur.

Section 2. Responsibilities of the Town Council

The Town Council shall be responsible for establishing and approving personnel policies, the position classification and pay plan, and may change the policies and benefits as necessary. They also shall make and confirm appointments when so specified by the general statutes.

Section 3. Responsibilities of the Town Manager

The Town Manager shall be responsible to the Town Council for the administration and technical direction of the personnel program. The Town Manager shall appoint, suspend, and remove all Town officers and employees except attorneys providing legal advice to the Town Council and those elected by the people or whose appointment is otherwise provided for by law. The Town Manager shall make appointments, dismissals and suspensions in accordance with the Town Charter and other policies and procedures spelled out in other Articles in this Policy.

The Town Manager shall:

- a) recommend rules and revisions to the personnel system to the Town Council for consideration;
- b) make changes as necessary to maintain an up to date and accurate position classification plan;
- c) recommend necessary revisions to the pay plan;
- d) determine which employees shall be subject to the overtime provisions of FLSA;
- e) develop and administer such recruiting programs as may be necessary to obtain an adequate supply of competent applicants to meet the needs of the Town;
- f) perform such other duties as may be assigned by the Town Council not inconsistent with this Policy.

Section 4. Responsibilities of the Human Resources Director

The responsibilities of the Human Resources Director are to make recommendations to the Town Manager on the following:

- a) recommend rules and revisions to the personnel system to the Town Manager for consideration;
- b) recommend changes as necessary to maintain an up to date and accurate position classification plan;
- c) recommend necessary revisions to the pay plan;
- d) recommend which employees shall be subject to the overtime provisions of FLSA;
- e) maintain a roster of all persons in the municipal service
- f) establish and maintain a list of authorized positions in the municipal service at the beginning of each budget year which identifies each authorized position, class title of position, salary range, any changes in class title and status, position number and other such data as may be desirable or useful;
- g) develop and administer such recruiting programs as may be necessary to obtain an adequate supply of competent applicants to meet the needs of the Town;
- h) develop and coordinate training and educational programs for Town employees;
- i) investigate periodically the operation and effect of the personnel provisions of this policy; and
- j) perform such other duties as may be assigned by the Town Manager not inconsistent with this Policy.

Section 5. Application of Policies, Plan, Rules, and Regulations

The personnel policy and all rules and regulations adopted pursuant thereto shall be applicable to all Town employees, unless otherwise noted. The Town Manager, Town Attorney, members of the Town Council and advisory boards and commissions will be exempted except in sections where specifically included. An employee violating any of the provisions of this policy shall be subject to appropriate disciplinary action, as well as prosecution under any civil or criminal laws which have been violated.

Section 6. Departmental Rules and Regulations

Due to the particular personnel and operational requirements of the various departments of the Town, each department is authorized to establish supplemental written rules and

regulations applicable only to the personnel of that department. All such rules and regulations shall be subject to the approval of the Town Manager or their designee, except the rules for the Legal Department which are approved by the Town Attorney, and shall not in any way conflict with the provisions of this Policy, but shall be considered as a supplement to this Policy. A copy of the approved supplemental departmental rules shall be provided to the Human Resources Department and all employees of said department.

Section 7. Definitions

For the purposes of this policy, the following words and phrases shall have the meanings respectively ascribed to them by this section:

Full-time employee. An employee who is in a position for which an average work week equals at least 40 hours, and continuous employment of at least 12 months, are required by the Town.

Part-time, benefited employee. An employee who is in a position for which an average work week of at least 20 hours and less than 40 hours and continuous employment of at least 12 months are required by the Town.

Part-time, non-benefited employee. An employee who is in a position for which an average work week of less than 20 hours and continuous employment of at least 12 months are required by the Town.

Regular employee. An employee appointed to a full or part-time position who has successfully completed the designated probationary period.

Probationary employee. An employee appointed to a full or part-time position who has not yet successfully completed the designated probationary period.

Temporary/Seasonal employee. An employee who is hired to work up to 40 hours per week for a limited period of time. Generally, term of employment does not exceed one year.

Trainee. An employee status when an applicant is hired (or employee promoted) who does not meet all of the requirements for the position. During the duration of a trainee appointment, the employee is on probationary status.

Intern. A status that enables students (or persons new to a field of study) to gain practical knowledge of their particular occupational area of interest through service with the Town.

Regular position. A position authorized for the budget year for a full twelve months and budgeted for twenty or more hours per week. All town positions are subject to budget review and approval each year by the Town Council and all employees' work and conduct must meet town standards. Therefore, reference to "regular" positions or employment should not be construed as a contract or right to perpetual funding or employment.

ARTICLE II. POSITION CLASSIFICATION PLAN

Section 1. Purpose.

The position classification plan provides a complete inventory of all authorized and permanent positions in the Town service, and an accurate description and specification for each class of employment. The plan standardizes job titles, each of which is indicative of a definite range of duties and responsibilities qualifications needed, and other required factors.

Section 2. Composition of the Position Classification Plan

The classification plan shall consist of:

- a) a grouping of positions in classes which are approximately equal in difficulty and responsibility which call for the same general qualifications, and which can be equitably compensated within the same range of pay under similar working conditions;
- b) class titles descriptive of the work of the class;
- c) written specifications for each class of positions; and
- d) an allocation list showing the class title of each position in the classified service.

Section 3. Use of the Position Classification Plan

The classification plan is to be used:

- a) as a guide in recruiting and examining applicants for employment;
- b) in determining lines of promotion and in developing employee training programs;
- c) in determining salary to be paid for various types of work;
- d) in determining personnel service items in departmental budgets; and
- e) in providing uniform job terminology.

Section 4. Administration of the Position Classification Plan

The Human Resources Director shall allocate each position covered by the classification plan to its appropriate class, and shall be responsible for the administration of the position classification plan. The Human Resources Director shall periodically review portions of the classification plan and recommend appropriate changes to the Town Manager.

Section 5. Authorization of the Position Classification Plan

The position classification plan shall be approved by the Town Council and on file with the Human Resources Director. Copies will be available to all Town employees for review upon request. New positions shall be established upon recommendation of the Town Manager or designee and approval of the Town Council after which the Town Manager, assisted by the Human Resources Director, shall either allocate the new position into the appropriate existing class, or revise the position classification plan to establish a new class to which the new position may be allocated. New classifications may be created mid-year without Town Council approval if the fiscal year's authorized FTEs and budget are not exceeded; however, the new classification must be presented to and approved with all other classifications by Town Council during the following budget process.

Section 6. Request for Reclassification

Any employee who considers the position in which classified to be improper shall submit a request in writing for reclassification to such employee's immediate supervisor, who shall immediately transmit the request to the Department Head. The Department Head shall share the request with Human Resources, to determine the merit of the request and whether the position shall be studied out-of-cycle and during the next scheduled position study.

ARTICLE III. THE PAY PLAN

Section 1. Definition

The pay plan includes the basic salary schedule and the "Position Classification Plan" adopted by the Town Council. The pay plan consists of ranges for minimum to maximum rates of pay for all classes of positions.

Section 2. Administration and Maintenance

The Town Manager, assisted by the Human Resources Director, shall be responsible for the administration and maintenance of the pay plan. All employees covered by the pay plan shall be paid at a rate listed within the salary range established for the respective position classification, except for employees in trainee status or employees whose existing salaries are above the established maximum rate following transition to a new pay plan. Employees whose salaries reach the maximum of that grade will be paid in lump sum bonuses for any pay increases awarded.

The pay plan is intended to provide equitable compensation for all positions, reflecting differences in the duties and responsibilities, the comparable rates of pay for positions in private and public employment in the area, changes in the cost of living, the financial conditions of the Town, and other factors. To this end, the Town Manager shall request the Human Resources Director to make comparative studies of all factors affecting the level of salary ranges and may make minor adjustments in the allocation of positions to salary grades as long as the fiscal year budget and authorized FTEs are not exceeded. When major adjustments encompassing numerous positions are needed, or when a general adjustment is needed to the pay plan, the Town Manager shall recommend such changes in salary grades as appear to be warranted to the Town Council. The Town Council shall adopt the Pay Plan and Position Classification Plan, including any minor adjustments made by the Town Manager during the previous budget year, annually as part of the budget process.

Section 3. Starting Salaries

All persons employed in positions approved in the position classification plan shall be employed no lower than the minimum salary for the classification in which they are employed. Candidates that exceed the education and experience identified on the class specification may be employed above the minimum and up to the market rate of the established salary range. Offers that exceed the job market rate require approval of the Human Resources Director or their designee.

Section 4. Trainee Designation and Provisions

Applicants being considered for employment or Town employees who do not meet all of the requirements for the position for which they are being considered may be hired, promoted, demoted, or transferred to a "trainee" status. In such cases, a plan for training, including a time

schedule, must be prepared by the Department Head. "Trainee" salaries shall be one or (no more than) two grades below the minimum salary established for the position for which the person is being trained. A new employee designated as "trainee" shall concurrently serve a probationary period. However, probationary periods shall be no less than six months and trainee periods may extend from three to eighteen months. A trainee shall remain a probationary employee until the trainee period is satisfactorily completed.

If the training is not successfully completed to the satisfaction of the Town, the trainee shall be transferred, demoted, or dismissed. If the training is successfully completed, the employee shall be paid at least at the minimum rate established for the position for which the employee was trained.

Section 5. Merit Pay

Employees may be considered for advancement within the established salary range based on the quality of their overall performance. Guidelines for determining performance levels and performance pay increases shall be established in procedures recommended by the Human Resources Director and approved by the Town Manager.

Section 6. Merit Pay Bonus

Employees who are at the top of the salary range for their position classification are eligible to be considered for a merit bonus at the time of their regular performance review date. Merit bonuses are awarded based on the performance criteria set in the performance pay matrix established each year. Merit bonuses are awarded in lump sum payments and do not become a part of base salary.

Section 7. Merit Pay Eligibility

Employees in regular positions are eligible to receive merit pay if they have been employed in the same position for the entire year. Merit pay is pro-rated for any employee who is out of work on any combination of paid and unpaid leave for greater than 12 weeks. New Employees are eligible to receive merit pay if they are hired before March 1 in the performance year. Merit pay is prorated for new employees based on the number of months as an active employee during the annual review period.

Temporary/seasonal Employees who are promoted to a regular position are also eligible for merit pay, pro-rated based on the number of months in the regular position during the annual review period. Employees who vacate a full-time position for a Temporary/seasonal position are considered to have been "separated" for purposes of merit, and are therefore not eligible for merit pay.

Employees promoted, transferred or demoted into different positions by March 1 are eligible

for merit pay, awarded at the same time as the rest of the Town. Position changes that occur on or after March 1 will be eligible for merit pay after 6 months in the position. In either of these circumstances, employees will be eligible for full merit pay (not pro-rated), as long as the employee has served in a regular position for the entire annual review period.

Section 8. Career Progression Pay Increases

The Town Manager may approve the use of an established career development ladder and associated schedule of salary increases, either provided as in-range salary adjustments or as a promotion to a different position classification. Career progression increases recognize and reward employees for attaining and maintaining a higher level of skill, knowledge, training and certification which provide added value to the Town.

The Human Resources Department will maintain a copy of the approved career development ladders and associated pay progressions established for Town positions.

Section 9. Special Salary Adjustments

Once a year, the Town Manager may adjust an employee's salary if the employee has taken on added responsibilities that may not warrant a positions reclassification, but which increase the responsibility and complexity of the employee's work, or to establish equitable salary relationships. A justification for each adjustment will be documented in the employee's personnel file and may not exceed 10% of the employee's current salary.

Salary adjustments are not intended to be used as counter-offers to allow employees who get job offers to be rewarded for seeking new jobs while other employees have remained committed to Town employment. Special salary adjustments will become effective the first full pay period after approval, unless otherwise specified.

Section 10. Salary Effect of Promotions, Demotions, Laterals, Transfers, and Reclassifications

Interim Promotions. Interim promotional increases may be approved by the Town Manager or their designee when an employee is anticipated to be in an "acting" capacity assuming the majority of the position's responsibilities for greater than two consecutive pay periods. Upon completion of the interim assignment, the employee's salary will revert to the salary that it would have been had the acting increase not occurred.

Promotions. When an employee is promoted, the employee's salary shall normally be advanced to the minimum level of the new position, or to a salary which provides an increase of at least approximately 5% over the employee's salary before the promotion, provided, however, that the new salary may not exceed the maximum rate of the new salary range.

The purpose of the promotion pay increase is to recognize and compensate the employee for taking on increased responsibility; however, if such action would create internal inequity within that classification, the salary shall be set appropriate to the employee's qualifications for the job in relationship to other employees in the same classification.

Demotions. When an employee is demoted to a position for which qualified, the salary may be set at the rate in the lower pay range which provides the smallest decrease in pay if action is not for cause or voluntary. If the current salary is within the new range, the employee's salary may be retained at the previous rate. If such action would create internal inequity within that classification, the salary shall be set appropriate to the employee's qualifications for the job in relationship to other employees in the same classification.

If the demotion is for cause (disciplinary), the salary shall be decreased by a minimum of at least approximately 5%, or to the maximum of the new range if that is a greater decrease.

Lateral Transfers. For non-competitive lateral moves or reassignments, there will normally be no change in salary. For a lateral move into a competitively recruited position, a salary increase may be granted based on the qualifications of the employee and the requirements of the position.

Reclassifications. An employee whose position is reclassified to a higher salary grade due to a change in the labor market will receive a pay increase according to guidelines established by the Human Resources Department and Town budget availability.

If a position is reclassified to a lower pay range, the employee's salary shall remain the same. If the employee's salary is above the maximum established for the new range, the salary of that employee shall be maintained at the current level until the range is increased above the employee's salary. An employee must be meeting performance expectations to receive a pay increase based on position reclassification

An employee whose position is reclassified due to significant job duty changes, such as taking on a supervisory role, or added responsibility for a major function at a higher level of responsibility which changes the employee's role, will be handled as a Promotion in accordance with the guidelines for promotional increases. A reclassification of this type typically results in a salary grade change of 2 or more grades.

Special Assignment An employee may be eligible for special assignment pay if assigned to a duty of greater than 30 days where the duties differ significantly from those duties typical in the employee's normal job classification, or when the duties are increased significantly due to the additional assignment (such as serving as training officer for a new Police recruit.) The assignment pay increase amount may vary depending on assignment, but typically will not exceed of 5% and does not change the employee's classification or salary grade. Assignment pay is rescinded upon the expiration of the special assignment, unless otherwise stated in departmental policies.

Section 11. Salary Effect of Salary Range Adjustments

The Town's salary ranges will be evaluated annually to determine if adjustments are needed for inflation or other competitive pay purposes. Any recommended salary adjustments will be presented to Town Council for approval as part of the annual budget process. Approved adjustments will be effective the first full pay period of the fiscal year, or as determined by Council as part of the budget approval.

If, as a result of adjusting the salary ranges, the salary of an employee falls below the minimum of the adjusted pay range, that employee's salary will be increased to the minimum of the pay range.

Employees whose salaries remain within the adjusted pay range may receive an increase up to the amount of the pay range adjustment, based on Town budget availability and Council approval.

Section 12. Transition to a New Salary Plan

The following principles shall govern the transition to a new salary plan:

- 1) No employee shall receive a salary reduction as a result of the transition to a new salary plan.
- 2) All employees being paid at a rate lower than the minimum rate established for their respective classes shall have their salaries raised to the new minimum for their classes.
- 3) All employees being paid at a rate below the maximum rate established for their respective classes shall be paid at a rate listed in the salary schedule; all employees not at a listed rate shall have their salaries raised to a listed rate.
- 4) All employees being paid at a rate above the maximum rate established for their respective classes shall be maintained at that salary level until such time as the employees' salary range is increased above the employees' current salary.

Section 13. Effective Date of Salary Changes

Salary changes shall become effective as of the effective date of the change that warranted the salary adjustment, or at such specific date as may be provided by procedures approved by the Town Manager or their designee.

Section 14. Overtime Pay Provisions

Employees of the Town can be requested and may be required to work overtime hours as necessitated by the needs of the Town and determined by the Department Head.

To the extent that local government jurisdictions are so required, the Town will comply with the Fair Labor Standards Act (FLSA). The Human Resources Director shall determine which jobs are

"non-exempt" and are therefore subject to the Act in areas such as hours of work and work periods, rates of overtime compensation, and other provisions.

Non-exempt employees will be paid at a straight time rate for hours up to the FLSA established limit for their position (usually 40 hours in a 7 day period; 171 hours for police and 212 for fire personnel in a 28 day cycle). Hours worked beyond the FLSA established limit will be compensated in either time or pay at the appropriate overtime rate. In determining eligibility for overtime in a work period, only hours actually worked shall be considered. In no event will vacation, sick leave or holidays be included in the computation of hours worked for overtime compensation.

The Town prefers for employees to take comp-time at the appropriate rate wherever possible, as this reduces the budget impact to the Town. However, employees who have worked more than 40 hours in the workweek (171 hours in a 28-day cycle for non-exempt sworn law-enforcement officers and 212 in a 28-day cycle for firefighters) may receive paid overtime wages if approved in advance by their supervisor, and based on budget availability. In all cases, if the method for compensating overtime changes, the employee shall be made aware of the change prior to working the overtime. Compensatory leave balances may not exceed 100 hours at any time; however, departments may enforce a lower comp-time balance threshold, if needed, for budget related reasons. Employees must use compensatory leave time in advance of using accrued vacation leave to account for time off.

Whenever practicable, departments will schedule time off on an hour-for-hour basis within the applicable work period for non-exempt employees, instead of paying overtime. When time off within the work period cannot be granted, overtime worked will be paid in accordance with the FLSA.

Non-exempt employees will be compensated for any remaining balance of compensatory time upon separation from the organization. Requests to 'cash in' earned compensatory time while employed are not allowed; however, the Town reserves the right to pay out or pay down comp balances at any time.

Employees are required to report any time in which they have worked but may not have been compensated; however, authorization to work overtime should be approved prior to working the extra hours; failure to do so may result in disciplinary action.

Employees in positions determined to be "exempt" from the FLSA will not receive pay for hours worked in excess of their normal work periods. These employees may be granted "professional leave" on an hour-for-hour basis, as approved by the Department Head. Exempt employees may not exceed a balance of 40 "professional" leave hours. Such leave time is not guaranteed to be taken and will not be compensated for any remaining hours upon separation from the organization.

The Town intends to make deductions from the pay of exempt employees only for authorized reasons as allowed under the Fair Labor Standards Act, and prohibits improper pay deductions. Exempt employees who wish to question deductions they believe to be improper should notify their supervisor and the Human Resources Director who will promptly investigate the concern. If the deduction is found to be improper the Town will reimburse the employee for lost pay and take corrective action to ensure that such deductions do not occur again.

In emergency situations, where employees are required to work long and continuous hours, the Town Manager may approve compensation at time and one half for those hours worked and/or grant time off with pay for rest and recuperation to ensure safe working conditions.

Section 15. Call-back and Stand-by Pay

The Town provides a continuous twenty-four hour a day, seven day a week service to its customers. Therefore, it is necessary for certain employees to respond to any reasonable request for duty at any hour of the day or night. One of the conditions of employment with the Town is the acceptance of a share of the responsibility for continuous service, in accordance with the nature of each job position. If an employee fails to respond to reasonable calls for emergency service, either special or routine, the employee shall be subject to disciplinary actions up to and including dismissal.

Stand-by Status – A non-exempt employee who is on “stand-by” status and is required to remain on Town premises, or so close to the Town's premises that the employee cannot use the time effectively for his own purposes, is considered to be working and all hours are compensable under the FLSA as “engaged to wait.”

On Call Status – Non-exempt employees who are required to remain “on call” but are otherwise able to lead their normal off duty activities will not be compensated for time spent in on-call status. Under the FLSA, this type of situation is defined as “waiting to be engaged.” Although the employee is not limited in where and how they spend their time, they must carry a cell phone or pager and remain available with a professional demeanor in the event they are called back to respond to a critical situation. Employees are required to respond to the call back request within 10 minutes and must arrive at the designated work site of the emergency within 1 hour (or other agreed upon time, as approved by the supervisor) from the time the call was made.

On Call Pay – Non-exempt employees required to be “on-call” will be paid 1.25 hours per day, not to exceed 8 hours a week.

Call-back Pay – When employees are called back to work outside of normal working hours, compensation will be provided for a minimum of 2 hours if the completion of the task(s) is less than two hours. Tasks performed over 2 hours will be compensated for the actual time worked.

Note: Additional calls that are received while responding to the initial call are not subject to the 2 hours minimum rule. A new 2 hour minimum only applies if the employee returns home and is then called away from home an additional time.

For non-exempt employees, compensable time in call back duty begins when the person leaves home and ends when the person returns home. If the employee does not go directly home after the call back, the normal travel time from the employee's residence to the applicable department building shall be added to the time when the employee left home originally plus the hours worked during the call back. For the purposes of overtime, hours worked when responding to a call will be handled in accordance with the Fair Labor Standards Act.

Employees who are able to respond to calls from home (are not required to leave home or return to work to resolve the issue) will receive a minimum of one hour for responding to calls outside of normal working hours. Tasks performed over one hour will be compensated for the actual time worked. Additional calls that come in during the initial hour are not eligible for the minimum hour compensation, but will be included in total time worked for the employee.

Failure to be available for callback or failure to report to the duty station when called back to work may constitute insubordination and may be subject to disciplinary action. Employees who are assigned to positions that are subject to be called back but are unable to report due to legitimate environmental conditions or situations outside of their control, shall immediately contact their supervisor to inform them of the situation and to provide documentation of their circumstances. Based on the circumstances surrounding the individual situation, the Department Head, in consultation with the Human Resources Director, shall have discretion in deciding any further course of action.

Employees who hold positions that are classified as exempt from the provisions of the Fair Labor Standards Act are not eligible for call back pay.

Section 16. Fee-based Pay

Employees who offer a specialized Town service after normal working hours may be eligible for fee-based pay provided that the after-hours work generates a fee large enough to reimburse the full personnel costs of the service in addition to providing revenue to the Town. Fee-based pay rates may be set by the Town Council upon approval of the specialized Town service. Employees are not eligible for fee-based pay for work done during the Town's normal operating hours.

Section 17. Special Event Pay

Special Event Pay is provided to non-exempt employees who are required/volunteer to work in a special event that occurs outside of their regularly scheduled work hours. Special Event Pay would provide pay at 1.5 times the employee's hourly rate. Special event pay is for hours worked on an employee's regular day-of-rest, Saturday, Sunday, or "special days" and is

therefore not subject to overtime hours/calculations and cannot be treated as compensatory time. Special event pay is provided regardless of whether or not:

- a holiday falls within the week
- an employee has worked their required hours in the week (ex: 40)
- other leave has been used during the workweek (not subject to offsetting)

Exempt employees who work special events may either flex their schedules or accrue professional time per the personnel policy.

Section 18. Payroll Deduction

Deductions shall be made from each employee's salary, as required by law. Additional deductions may be made upon the request of the employee on determination by the Town Manager or their designee as to capability of payroll equipment and appropriateness of the deduction.

ARTICLE IV. RECRUITMENT AND EMPLOYMENT

Section 1. Equal Employment Opportunity Policy

It is the policy of the Town to foster, maintain and promote equal employment opportunity. The Town shall select employees on the basis of the applicant's qualifications for the job and award them with respect to compensation and opportunity for training and advancement, including upgrading and promotion, without regard to age, race, religion, religious belief or non-belief, ethnicity, color, national origin, creed, sex, sexual orientation, gender identity, marital status, natural hair style, genetic information, pregnancy, familial status, disability, veteran or military status, or disabled veteran status. Applicants with physical disabilities shall be given equal consideration with other applicants for positions in which their disabilities do not represent an unreasonable barrier to satisfactory performance of essential duties with or without reasonable accommodation.

It is a violation of Town policy to retaliate in any way against an employee who assists, participates in, or supports this policy or anyone making a bona-fide complaint under the this policy or who participates or assists in any EEOC, OSHA or other internal or external investigative processes protected by law.

Section 2. Implementation of Equal Employment Opportunity Policy

All personnel responsible for recruitment and employment will continue to review regularly the implementation of this personnel policy and relevant practices to assure that equal employment opportunity based on reasonable, job-related requirements is being actively observed to the end that no employee or applicant for employment shall suffer discrimination because of age, race, religion, religious belief or non-belief, ethnicity, color, national origin, creed, sex, sexual orientation, gender identity, marital status, natural hair style, genetic information, pregnancy, familial status, disability, veteran or military status, or disabled veteran status. Notices with regard to equal employment matters shall be posted in conspicuous places on Town premises in places where notices are customarily posted.

Section 3. Recruitment, Selection and Appointment

Recruitment Sources. When position vacancies occur, Department Heads shall notify Human Resources concerning the number and classification of positions that are to be filled. Human Resources shall publicize these opportunities for employment, including applicable salary information and employment qualifications. It is the general practice that information concerning job openings and hiring practices shall be provided to recruitment sources, including organizations and other media available to ensure a diverse pool of applicants. In addition, notices of vacancies shall be posted on the Town website. Individuals shall be recruited from a geographic area as wide as necessary to ensure that well-qualified applicants are obtained for Town service. The local Department of Employment Security office may be notified of job

vacancies and may be used as a referral source. A vacancy may be filled using only internal recruitment to provide opportunities for qualified Town employees. In rare situations (because of emergency conditions, high turnover, lack of qualified applicants, etc. or where previous town experience is essential or exceptional qualifications of an internal candidate so indicate), the Town may hire or promote without advertising jobs, upon approval of the Town Manager or their designee.

Job Advertisements. Employment advertisements shall contain assurances of equal employment opportunity and shall comply with Federal and State statutes.

Application for Employment. All persons expressing interest in employment with the Town shall be given the opportunity to file an application for employment for positions which are vacant.

Application Reserve File. Applications shall be kept in an inactive reserve file for a period of two years, in accordance with the records retention schedule issued by the N.C Division of Archives and History.

Screening. The Human Resources Department shall oversee the process for screening applications for employment and selecting a pool of candidates for further consideration.

Selection. Hiring Supervisors shall make such investigations and conduct such examinations as necessary to assess accurately the knowledge, skills, and experience qualifications required for the position. All selection devices administered by the Town shall be valid measures of job performance.

Appointment. Before any commitment is made to an applicant, either internal or external, the Hiring Supervisor shall make recommendations to Human Resources including the position to be filled, the salary to be paid, and the reasons for selecting the candidate over other candidates.

Temporary/Seasonal Employee Appointments. Department Heads may recruit and hire temporary/seasonal employees without the approval of the Human Resources Director and Town Manager provided that the temporary/seasonal employee is not a relative of a regular employee as defined in Article V Section 10 and the wages for the temporary/seasonal employee are included in the department's budget. Department Heads are responsible for ensuring that the average workweek of a temporary/seasonal employee does not exceed 20 hours per week unless the temporary/seasonal assignment is less than 12 months in duration. The Human Resources Department will assist with recruitment efforts when necessary to fill on-going temporary/seasonal assignments.

Section 4. Probationary Period

All new employees or employees promoted to a regular position shall serve a probationary period. Employees shall serve a six-month probationary period, except that sworn police and fire personnel shall serve a twelve-month probationary period. During the probationary period,

supervisors shall monitor an employee's performance and communicate with the employee concerning performance progress. Before the end of the probationary period, the supervisor shall conduct a performance evaluation conference with the employee and discuss accomplishments, strengths, and needed improvements. A summary of this discussion shall be documented in the employee's personnel file. The supervisor shall recommend in writing whether the probationary period should be completed, extended, or the employee transferred, demoted, or dismissed. Probationary periods may be extended for a maximum of three additional months.

While an employee is on probationary status, he/she is not eligible to apply for other positions within the Town, except in matters of direct placement, or with the Town Manager's approval.

While serving on probationary status, all new full and part time employees shall receive all benefits provided in accordance with this Policy (any mandatory waiting periods will apply), but shall not be entitled to utilize the complaint resolution procedures established by this Policy.

Disciplinary action, including demotion and dismissal, may be taken at any time during the probationary period of a new hire without stating a reason and without following the steps outlined in this Policy. A promoted employee who does not successfully complete the probationary period may be transferred or demoted to a position in which the employee shows promise of success. If no such position is available, the employee shall be dismissed. Promoted employees retain all other rights and benefits such as the right to use of the complaint resolution process.

Section 5. Promotion

Promotion is the movement of an employee from one position to a vacant position in a class assigned to a higher salary range. It is the Town's policy to create career opportunities for its employees whenever possible. Therefore, when a current employee applying for a vacant position is best suited of all applicants, that applicant shall be appointed to that position. The Town will balance three goals in the employment process: 1) the benefits to employees and the organization of promotion from within; 2) providing equal employment opportunity and a diversified workforce to the community; and 3) obtaining the best possible employee who will provide the most productivity in that position.

The Town Manager has the authority to make a direct internal promotion, especially where previous town experience is essential (such as promotions to Police Sergeant), or exceptional qualifications of an internal candidate so indicate; however, in most cases, the Town will consider both external and internal candidates rather than automatically promote from within. Candidates for promotion shall be chosen on the basis of their qualifications and their work records. Internal candidates shall apply for promotions using the same application process as external candidates.

Section 6. Demotion

Demotion is the movement of an employee from one position to a position in a class assigned to a lower salary range. An employee whose work or conduct in the current position is unsatisfactory may be demoted provided that the employee shows promise of becoming a satisfactory employee in the lower position. Such demotion shall follow the disciplinary procedures outlined in this policy.

Disciplinary demotions are not subject to “save pay” or “save grade” adjustments. Reassignment to a lower grade or lower pay position is a part of the disciplinary action and therefore there is no intent to retain or protect the employee’s previous pay or grade.

Section 7. Transfer

Transfer is the movement of an employee from one position to a position in a class in the same salary range. If a vacancy occurs and an employee in another department is eligible for a transfer, the employee shall apply for the transfer using the usual application process.

A Department Head wishing to transfer an employee to a different department or classification shall make a recommendation to the Town Manager, or their designee, with the consent of the receiving Department Head. Any employee transferred without requesting the action may ask for a review of the action in accordance with the complaint resolution process outlined in this policy.

An employee who has successfully completed a probationary period may be transferred into the same classification without serving another probationary period.

ARTICLE V. CONDITIONS OF EMPLOYMENT

Section 1. Work Schedule

Department Heads shall establish work schedules that meet the operational needs of the department in the most cost effective manner possible. All schedules must be approved by the Town Manager, or their designee, and will be in accordance with the Fair Labor Standards Act.

Section 2. Meal Periods and Rest Breaks

The work schedule of fulltime employees should normally include a meal break of a minimum of 30 minutes to provide the employee the opportunity to rest and eat during the workday. Meal breaks for employees who do not work in public safety are unpaid and the employee is free to leave the work premises.

Section 3. Lactation Breaks

A nursing mother will be provided with reasonable paid breaks during the work day for the purpose of expressing breast milk for her child. If the employee does not have a private office, the employee shall be provided with a private space (not a bathroom) in close proximity to the work area, where she can express milk in privacy.

Section 4. Attendance

An employee is expected to report to his/her workstation at the required time. If the employee is going to be absent or tardy, the employee must notify the supervisor with as much notice as possible, in accordance with department notice procedures. If the supervisor is unavailable, the employee should contact their Department Head or Human Resources, if the Department Head is not available.

Employees who are delayed and who have not notified their supervisor of their expected tardiness or absence for that day may be charged leave without pay for the period of their absence. Repeated absences, tardiness, and/or unapproved leave can result in disciplinary action, including termination.

Section 5. Political Activity

Each employee has a civic responsibility to support good government by every available means and in every appropriate manner. Each employee may join or affiliate with civic organizations of a partisan or political nature, may attend political meetings, may advocate and support the principles or policies of civic or political organizations in accordance with the Constitution and laws of the State of North Carolina and in accordance with the Constitution and laws of the United States. However, no employee shall:

- a) Engage in any political or partisan activity while on duty;
- b) Use official authority or influence for the purpose of interfering with or affecting the result of a nomination or an election for office;
- c) Be required as a duty of employment or as condition for employment, promotion or tenure of office to contribute funds for political or partisan purposes;
- d) Coerce or compel contributions from another employee of the Town for political or partisan purposes;
- e) Use any supplies or equipment of the Town for political or partisan purposes; or
- f) Be a candidate for nomination or election to office for the Town of Apex;

Any violation of this section shall subject the employee to disciplinary action including dismissal.

Section 6. Secondary Employment

The work of the Town shall have precedence over other occupational interests of employees. All outside employment for salaries, wages, or commission and all self-employment must be reported in advance to the employee's supervisor, who in turn will report it to the Department Head. The Department Head will review such employment for possible conflict of interest and decide whether to approve the work.

Conflicting or unreported outside employment is grounds for disciplinary action up to and including dismissal.

Secondary employment is not permitted when it:

- Creates either directly or indirectly a conflict of interest with the Town, or
- Brings discredit to the Town or conflicts with the Town's goals, mission, or vision, or
- Impairs the employee's ability to perform all expected duties, and/or the ability to make decisions and carry out in an objective view the duties and responsibilities of the Town.

No regular, full-time employees are permitted to work in other departments within the Town.

Special exceptions to the rules above may be made, with the approval of the Town Manager, when deemed to be in the best interest of the Town.

Approval for secondary employment may be withdrawn at any time if it is determined that secondary employment has an adverse impact on primary employment. Secondary Employment arrangements should be reviewed annually for approval.

Section 7. Expectation of Ethical Conduct

Successful business operation and reputation of the Town of Apex is built upon the principles of fair dealing and ethical conduct of our employees. Our reputation for integrity and excellence requires careful observance of the spirit and letter of all applicable laws and regulations, as well as a scrupulous regard for the highest standards of conduct and personal integrity. Continued success of the Town of Apex is largely dependent upon the public's trust, which we are dedicated to preserving. Employees owe a duty to the Town of Apex, the public, and Council members to act in a way that will merit the continued trust and confidence.

The Town of Apex will comply with all applicable laws and regulations. All employees are to conduct Town business in a professional manner and in accordance with the letter, spirit, and intent of all relevant laws and to refrain from any illegal, dishonest, or unethical conduct. All Town employees are to be treated with dignity and respect. In general, the use of good judgment, based on high ethical principles, will guide employees with respect to acceptable conduct. If a situation arises where it is difficult to determine the proper course of action, the employee should seek advice and consultation by discussing the matter openly with his/her immediate supervisor and, if necessary, with the Human Resources Department. Compliance with this policy is the responsibility of every Town of Apex employee. Disregarding or failing to comply with this standard of business ethics and conduct could lead to disciplinary action, up to and including possible termination of employment.

Section 8. Conduct and Working Environment

Employees are expected to conduct themselves in an appropriate manner as judged by a reasonable person.

The Town encourages a congenial work environment of respect and professionalism. Decorum, collegiality, kindness, respect, and professional courtesy are ideals to be pursued amongst employees.

Disrespectful conduct or actions are prohibited. This prohibition includes but is not limited to intentional acts such as:

- Verbal abuse: slandering, ridiculing or maligning a person or his/her family; persistent name calling which is hurtful, insulting or humiliating; using a person as butt of jokes; abusive and offensive remarks
- Physical abuse: pushing; shoving; kicking; poking; tripping; assault, or threat of physical assault; damage to a person's work area or property
- Hostile Gestures: non-verbal threatening gestures
- Exclusion: socially or physically excluding or disregarding a person in work-related activities
- Persistent singling out of one person

- Shouting and/or yelling at an individual in public and/or in private
- Personal insults and use of offensive nicknames
- Deliberately interfering with mail and other communications
- Spreading rumors and gossip regarding individuals
- Refusing reasonable requests for leave in the absence of work-related reasons not to grant leave
- Using intimidation tactics and making threats
- Sabotaging another's work
- Stalking others
- Making malicious, false, and harmful statements about others or the Town
- Publicly disclosing another's private information (outside of public records law requirements)
- Fraud
- Falsification of records for personal profit

Any of the above actions, or conduct that is otherwise deemed as bullying or discriminatory, will not be tolerated and will be handled in accordance with Article IX. Unsatisfactory Job Performance and Detrimental Personal Conduct.

Section 9. Use of Town Time, Equipment, Supplies and Vehicles

Town supplies and equipment are to be used for the Town's business. During working hours, employee personal use must be restricted to occasional use that does not interfere with the conduct of Town business. Personal use should be limited to personal time (breaks, after hours) and personal use of the phone, internet and e-mail on Town time must be kept to a minimum. Supervisors are expected to monitor the extent of personal use of these assets during regular working hours. For more information regarding appropriate use of Town supplies and equipment, please refer to the Town's Information Technology Policy.

Employees are responsible for assuring the security of Town confidential material in their possession and similarly maintaining the security of Town-provided equipment.

Town employees are required to report time worked in the Town's time & attendance system. Time claimed as "work time" shall accurately report actual time and physical attendance. Failing to accurately report time worked will be deemed as waste, fraud, and abuse and will be subject to disciplinary action.

All employees who use Town vehicles are required to follow applicable motor vehicle and safety requirements. Violation of Town vehicle policies or misuse of Town vehicles also subjects the employee to disciplinary action, up to and including dismissal.

Section 10. Employment of Relatives

The Town prohibits the hiring and employment of immediate family members (as defined in Article VII, Section 12) or domestic partners (as defined herein) into any regular full or part-time position within the same work unit or department, or to any temporary/seasonal position in the same work unit or department, unless the temporary/seasonal position is either short-term in duration or only involves occasional and sporadic work. The Town also prohibits the hiring and employment of any person who is an immediate family member of individuals holding the following positions: Town Manager, Assistant Town Manager, Finance Director, Town Attorney, or any members of the Human Resources Department.

Otherwise, the Town will consider employing family members or related persons in the service of the Town, provided that such employment does not:

- 1) result in a relative supervising relatives;
- 2) result in a relative auditing the work of a relative;
- 3) create a conflict of interest with either relative and the Town; or
- 4) create the potential or perception of favoritism.

The Town also prohibits the hiring and employment of an immediate family member of the Mayor or a Town Council Member. An immediate family member of an elected official may remain employed if hired prior to the official's election or appointment to office.

For purposes of this Section, "domestic partners" shall mean two individuals who have reached the age of majority and live together in a relationship of indefinite duration, with an exclusive mutual commitment (i.e., are not married to anyone else, do not have another domestic partner, and are not related by blood more closely than would bar their lawful marriage pursuant to the laws of North Carolina) in which the partners share the necessities of life.

Section 11. Job Related Discrimination and Workplace Harassment

The Town is committed to maintaining a work environment free of workplace harassment for its employees, customers and citizens. Town of Apex employees are prohibited from engaging in workplace harassment, which is defined as offensive and unsolicited speech or conduct that denigrates or shows hostility or aversion toward a person or group of persons because of such person's or persons' age, race, religion, religious belief or non-belief, ethnicity, color, national origin, creed, sex, sexual orientation, gender identity, marital status, natural hair style, genetic information, pregnancy, familial status, disability, veteran or military status, or disabled veteran status.

The speech and conduct prohibited by this policy include, but are not limited to, any offensive and unsolicited speech or conduct based on age, race, religion, religious belief or non-belief, ethnicity, color, national origin, creed, sex, sexual orientation, gender identity, marital status, natural hair style, genetic information, pregnancy, familial status, disability, veteran or military status, or disabled veteran status (i) that has the purpose or effect of creating a hostile work environment (as defined below), or (ii) submission to which is made, either explicitly or implicitly, a term or condition of a person's (or group of persons') employment or is used as the basis for employment decisions affecting such person (or group of persons).

For purposes of this policy, workplace harassment shall be deemed to create a hostile work environment if the speech or conduct, taking into account all of the relevant circumstances, (i) is objectively severe enough or sufficiently pervasive enough to create a work environment that a reasonable person would find to be hostile or abusive, (ii) is perceived to be hostile or abusive by the complainant(s), and (iii) has the purpose or effect of substantially interfering with an employee's (or group of employees') work performance.

For purposes of this policy, workplace harassment because of a person's sex shall include, but not be limited to, unwelcome sexual advances, requests for sexual favors, and other speech or conduct of a sexual nature when submission to or rejection of such conduct is made either explicitly or implicitly a term or condition of a person's employment, or is used as the basis for employment decisions affecting such person.

Each employee is responsible for creating an atmosphere free of discrimination. Employees are responsible for respecting the rights of their coworkers.

If an employee experiences any job-related discrimination or harassment based on age, race, religion, religious belief or non-belief, ethnicity, color, national origin, creed, sex, sexual orientation, gender identity, marital status, natural hair style, genetic information, pregnancy, familial status, disability, veteran or military status, or disabled veteran status, or if an employee believes to have been treated in an unlawful, discriminatory manner or have been unlawfully harassed, the incident should be promptly reported to the supervisor. If the employee believes it would be inappropriate to discuss the matter with his/her supervisor, the incident should be reported directly to the Department Head or the Human Resources Department. Once made aware of the complaint, the Town is committed to commence an immediate, thorough investigation of the allegations. Complaints will be kept confidential to the maximum extent possible.

If, at the completion of the investigation, the Town determines that an employee is guilty of discriminatory or harassing behavior, appropriate disciplinary action will be taken against the offending employee.

The Town prohibits any form of retaliation against any employee for filing a bona fide complaint under this policy or for assisting in the complaint investigation. However, if, after investigating any complaint of unlawful discrimination, the Town determines that any employee intentionally provided false information regarding the complaint, disciplinary action

may be taken against the one who gave the false information.

Violations of this policy shall constitute detrimental personal conduct pursuant to Article IX, Section 4, of the Town's Personnel Policies, and shall subject violators to disciplinary action, up to and including dismissal.

Section 12. Acceptance or Granting of Gifts and Favors

No employee of the Town shall accept any gift, favor, or thing of value which could appear to influence such employee in the discharge of the employee's duties, or generate the appearance of impropriety. Acceptance of any item regardless of perceived value must be reported to the Department Head with the exception of token gifts and trinkets, acts of generosity with nominal value given to a group of employees in appreciation, and corporate discounts provided to all public safety or Town personnel regardless of position. No preferential treatment or improper favor, service or thing of value may be conveyed or granted in the discharge of duties.

Section 13. Performance Evaluation

Supervisors and/or Department Heads shall conduct Performance Evaluation conferences with each employee at least once a year. These performance evaluations shall be documented in writing and placed in the employee's personnel file.

Guidelines regarding when and how performance evaluations are to be conducted are maintained by the Human Resources Department.

Section 14. Safety

Safety is the responsibility of both the Town and employees. It is the policy of the Town to establish a safe work environment for employees. The Town shall establish a safety program including policies and procedures regarding safety practices and precautions and training in safety methods. Department Heads and supervisors are responsible for ensuring the safe work procedures of all employees and providing necessary safety training programs. Employees shall follow the safety policies and procedures and attend safety training programs as a condition of employment. Employees who violate such policies and procedures shall be subject to disciplinary action up to and including dismissal.

The violation of safety rules may be considered detrimental personal conduct and can result in disciplinary action including suspension, demotion or dismissal. Examples of safety-related detrimental personal conduct include but are not limited to:

- Workplace Violence
- Dangerous use of Vehicle or Equipment (i.e. racing, use as a weapon)
- Horseplay resulting in Injury or Property Damage
- Purposely and Repeatedly not using PPE

- Possession and/or use of Drugs/Alcohol at workplace
- Entering Confined Space without using proper procedures

Section 15. Substance Abuse Policy

The Town may establish policies and procedures related to employee substance abuse in order to ensure the safety and well-being of citizens and employees, and to comply with any state, federal, or other laws and regulations.

Section 16. Immigration Law Requirements

All employees are required to furnish proof of citizenship or other required documents indicating a legal right to work in the United States. Completed I-9 forms are maintained separately from the personnel file.

Section 17. Workers' Compensation and Return to Work

All employees of the Town are covered by the North Carolina Workers' Compensation Act and are required to report all injuries arising out of and in the course of employment to their immediate supervisors at the time of the injury in order that appropriate action may be taken at once.

Filing a Workers' Compensation Claim

Town of Apex Worker's Compensation claims are handled by Human Resources. All claims are managed in accordance with the NC Workers' Compensation statutes and the North Carolina Industrial Commission. Benefits are determined by law, as provided in General Statutes of NC, Chapter 97. The Human Resources Department will assist employees if unresolved problems arise. To qualify, an employee must immediately report any job-related injury to their supervisor or Department Head who will take actions necessary to attain appropriate help for the employee. Responsibility for claiming compensation under the Workers' Compensation Act falls upon the injured employee, and the employee must file such claims with the North Carolina Industrial Commission within two years from date of injury. Employees must report an on-the-job injury or illness to their supervisor within twenty-four (24) hours, regardless of how minor the injury. The supervisor will assist the employee in filing the claim. Additionally, injury reports must be filed as detailed in the Town of Apex Risk Management Manual.

Medical Treatment for Work-related Injuries

Under NC Workers' Compensation law, the Town of Apex has the right to direct medical care for employees who suffer work related injuries or illnesses. Town employees shall seek medical treatment for work related injuries from the Town's designated healthcare provider. Employees may not seek medical treatment for work related injuries from other healthcare providers unless emergency treatment is needed. In life-threatening emergencies, 911 should be called and the employee should be transported to the nearest hospital emergency room. If emergency treatment is necessary outside of the business hours of the Town's designated healthcare provider, the employee may go to a hospital emergency room.

After treatment from the health care provider, the employee must return the physician's work limitations or release form or other instructions from an emergency room physician to their supervisor. The injured employee will not be charged sick or vacation leave while receiving initial medical care. Employees are responsible for providing their supervisor with all related physician notes and any updates on their status.

Modified Duty Assignments

The Town encourages early return to work for employees who suffer work related injuries or illnesses. If the healthcare provider determines that the injured employee cannot return to their job without restrictions, a modified work assignment or reassignment to a different job will be considered. In all cases, managers and supervisors are expected to work with employees to identify modified duty opportunities, with the primary focus being the return of the employee to their regular job. If a suitable modified duty position cannot be found Human Resources should be contacted to assist in finding reasonable accommodations, including tasks within the department that may be different than the employee's regular job or reassignment to a different job. Employees who return to a modified duty assignment must perform the work within the restrictions indicated by the healthcare provider.

Employees must report to their next scheduled shift once the healthcare provider releases them to work. Failure to report to a modified duty assignment may result in disciplinary action. Employees are responsible for providing their supervisor with written notice of the healthcare provider's change in restrictions. The modified duty assignment will end when the employee reaches maximum medical improvement. If the employee reaches maximum medical improvement but cannot return to the original job, the Human Resources Department will consider all other options available under the Town's personnel policies.

Absence Due to Work-Related Injury

An employee unable to work due to a work related injury or illness may use accrued sick, vacation, or compensatory leave during the first seven calendar days of the work related disability, which by law are not eligible for Workers' Compensation pay. If the injury results in a disability requiring absence from work totaling 21 calendar days or more, the Workers' Compensation pay shall be retroactive beginning with the first day of absence. All leave time expended during the first seven days of the disability, in excess of the maximum allowed to

supplement the Workers' Compensation payment, may be reinstated to the employee if the employee makes arrangements with the Town of Apex Finance Department to make payment for the hours requested to be reinstated.

Under the Worker's Compensation Act no contributions are made by the employer into an employee's retirement fund during any period an employee receives Workers' Compensation pay.

If the work related disability qualifies, the employee will be placed in Family Medical Leave status in accordance with the Family Medical Leave Act. The town will pay the individual's premium for medical insurance, life insurance, and dental benefits. Premiums for dependent coverage are the employee's responsibility.

If total disability exists, employees may receive additional assistance through a Social Security disability and/or a disability retirement through the NCLGERS, provided the employee has reached maximum medical improvement and has received a permanent total disability rating from the approved healthcare provider. Human Resources can provide more information in these cases.

Return to Work

Employees released by their treating physician or therapist to return to full duty will be required to complete a Fitness for Duty certification. This form shall be completed by the employee and the employee's treating physician prior to the return to work release date.

Employees on Workers' Compensation leave status can expect to return to an equivalent position in the Town if they return to work within 52 weeks from the date of the Workers' Compensation disability absence. If the employee is medically unable to perform previous job duties, they will be placed in a suitable position according to their qualifications, availability of a position, and North Carolina Workers' Compensation Law.

After one year during which an employee is unable to perform full duties and/or a full schedule due to an on-the-job (or other) injury, the employee may be terminated after all options have been considered in accordance with federal and state laws.. Termination of employment at any point may also take place if medical information indicates that the employee is unlikely ever to be able to perform the full duties of the position. Upon termination, the Human Resources Department will assist the employee in obtaining whatever benefits are available through Workers' Compensation, and/or the Local Government Employees' Retirement System.

Section 18. Fitness for Duty

The Town is committed to providing a safe workplace for employees. In order to provide a safe work environment, employees must be able to perform their job duties in a safe, secure, productive, and effective manner for the duration of their work schedule. Employees who are

not fit for duty may present a safety hazard to themselves, their co-workers or the public.

Purpose

The purpose of this policy is to establish procedures and criteria by which the Town can ensure that employees are fit for duty. In addition, this policy will provide guidelines for determining light duty assignments regarding employees that are unable to perform their regular assigned duties as a result of a non-work related injury/illness/psychological condition.

Scope

This policy applies to all Town employees.

Definitions

Fit for duty - means the employee is able to perform their regular assigned duties in a safe, secure, productive, and effective manner.

Light Duty - is a temporary, modified work assignment, different from an employee's regular assignment that may be offered to employees that are unable to perform their regular assigned duties as a result of a non-work related injury/illness/psychological condition.

Roles & Responsibilities

A. Employee Responsibilities

- 1) Employees must come to work fit for duty, and be able to perform their job responsibilities in a safe, secure, productive, and effective manner during the entire time they are working.
- 2) Employees are responsible for notifying their supervisors when they are not fit for duty.
- 3) Employees must immediately notify their supervisors of any non-work-related illness/injury/condition that may affect their ability to perform their job duties and/or compromise their safety, the safety of their co-workers, or the public.
- 4) Employees must notify their supervisor of any medication they are taking (prescription or over-the-counter) that may affect their ability to perform their job duties.
- 5) Employees must keep their supervisor updated on any subsequent changes to the status of their injury/illness/psychological condition or use of medication.
- 6) While performing their light duty assignment, employees must comply with the temporary work restrictions and recommendations from their personal physician.
- 7) Employees are responsible for notifying their supervisor when they observe a coworker acting in a manner that indicates the coworker may be unfit for duty.
- 8) Employees must comply with all aspects of the Fitness for Duty Policy. Failure to comply may be grounds for disciplinary action up to and including termination.

B. Supervisor Responsibilities

- 1) Supervisors are responsible for observing the attendance, performance, and behavior of their employees.
- 2) Supervisors must maintain confidentiality of the employee's medical information and records.
- 3) Supervisors should contact Human Resources with any questions concerning the employee's work restrictions.
- 4) Supervisors are responsible for ensuring compliance with all aspects of the Fitness for Duty Policy. Failure to comply may be grounds for disciplinary action up to and including termination.

Light Duty Eligibility

In order for employees to be eligible for a light duty assignment, documentation must be provided from a licensed medical provider authorizing the employee to return to work in a light duty capacity. The medical documentation must clearly define the following information:

- a. Employee's work status
- b. Specific work restrictions
- c. Duration of restrictions
- d. Medication regimen
- e. Prognosis for recovery
- f. Physical therapy schedule (if applicable)

Documentation shall be submitted to the immediate supervisor and forwarded through the chain of command to the Department Head. The Department Head will be responsible for providing Human Resources with a copy of the documentation. The Department Head will consult with Human Resources on the feasibility of light duty within their department or within another Town department.

Medical Clearance

The employee's personal physician will make the initial medical determination whether to clear the employee back to work following a non-work related injury/illness/psychological condition, unless the conditions listed under "Fitness for Duty Examination Procedures" exist. If the conditions exist, the Town's authorized physician will make the medical determination by conducting a fitness for duty exam.

Fitness for Duty Examination Procedures

A fitness for duty medical examination will be required by the Town's authorized physician for a

non-work related injury/illness/psychological condition under the following conditions:

- 1) The employee's personal physician has cleared them to return to work but their supervisor or manager, based on direct observation, reasonably believes that the employee's injury/illness/psychological condition may interfere with their ability to perform their job duties safely, or could pose a direct threat to others.
- 2) The employee is taking medication (prescription or over-the-counter) that could interfere with their ability to perform their job duties safely, or could pose a direct threat to others.

Light Duty Criteria

The Town does not guarantee light duty assignments for employees that have a non-work related injury/illness/psychological condition. Light duty assignments will typically be scheduled during normal business hours, with the employee working their normal number of scheduled hours. Generally, overtime is not permitted. If overtime is being considered, Human Resources must be consulted and the Town Manager or their designee must approve. Accumulated leave may be used in the event that the employee is not able to work their normal work schedule.

Employees must meet the following criteria:

- 1) Employee must be capable of doing productive work for their assigned department or another Town department.
- 2) Light duty assignments shall not exceed 90 days. In certain circumstances this period may be extended based on the treating physician recommendations, the availability of qualifying light duty assignments, and the approval of the Town Manager or their designee.
- 3) Employee must attend regular follow-up medical appointments.

Light Duty Assignments

Guidelines for determining appropriate light duty assignments:

- 1) Light duty assignments must comply with the employee's temporary work restrictions issued by the licensed, treating physician.
- 2) Light duty assignments must involve tasks that are meaningful and valuable to the Town.
- 3) Light duty assignments will always have an ending date. This date may be extended as specified under "Light Duty Criteria" in this policy.

If a light duty assignment meeting the employee's work restrictions isn't available within the employee's department, the Department Head will contact Human Resources for assistance in securing a suitable assignment in another Town Department. The

Department Head, in consultation with Human Resources, will make the final determination regarding the light duty assignment. If a light duty assignment meeting the employee's work restrictions isn't available in another department, the employee must use accrued sick, vacation, or compensatory time in order to be paid for time away from work. In such cases, the Human Resources Department shall be notified so that FMLA eligibility can be assessed.

Section 19. Inclement Weather

The Town of Apex recognizes that severe weather conditions and other rare emergency circumstances may make it difficult to provide a full range of Town services to the citizens. This policy clarifies the designation of service critical personnel and provides direction on how to account for work hours when the Town's normal operating hours are modified.

Declaration of an Emergency

The Town Manager will determine when emergency conditions exist that warrant the alteration of the Town's normal business operating hours of 8:00 am – 5:00 pm.

When the Town Manager alters the Town's normal work hours (late opening, early closing, or closed for the day) this decision will be communicated as soon as possible through the Employee Notification Hotline: 919-249-3405, the Town's email system, and on the Town's intranet. Employees who are not deemed to be Service Critical do not have to report to work during the closing period and may qualify for administrative leave during this period.

Designation of Service Critical Personnel

The Town provides a range of essential services that require personnel to be physically present at work to respond to emergency conditions regardless of the weather conditions. Department Heads are responsible for designating employees as Service Critical Personnel in the event of inclement weather or other emergency conditions. Service Critical personnel are expected to report to work during emergency situations unless specifically directed not to report to work.

Employees should be clear on their designation as "Service Critical" in advance of an emergency event. Service Critical personnel are expected to follow departmental leave request policies, and use accrued leave time (sick, vacation, comp) to cover missed work time during the emergency event.

When severe weather is predicted, the Town may make special arrangements for Service Critical personnel in order to ensure their availability to work. These provisions may include allowing personnel to drive Town vehicles home, arranging for hotel rooms and meals, or setting up sleeping quarters on-site. When submitting time sheets to payroll after an

emergency event, "Service Critical" must be noted on the employee's timesheet to ensure proper processing.

Any overtime earned by a non-exempt employee during emergency situations will be calculated in accordance with the Fair Labor Standard Act.

Exempt employees who are required to work during a designated period of declared disaster or local emergency will receive pay at 1.5 hours of their calculated hourly rate (based on annual salary) for any hours worked over 40 in the week. This provision only applies to exempt employees who are at the Assistant Town Manager level and below.

Eligibility for Administrative Leave

When Town operations are closed for a full day, a fulltime employee whose job is not deemed to be service critical is eligible to receive administrative leave for the day if the employee was scheduled for work and planning to attend work during the closing period. Employees who are out on sick leave immediately before and immediately following an administrative leave period, are assumed to be sick, and must use sick leave to account for the absence during the period of administrative leave. Likewise, employees who are scheduled to be on vacation during the administrative leave period must use vacation leave unless they notify their supervisor that the vacation plans are canceled due to the emergency conditions and they report to work immediately following the administrative leave period. When the administrative leave period is granted for partial days, the following shall apply:

Delayed Opening – Unless the Town Manager sets a specific opening time, employees who work non-standard hours (i.e., 7:00–4:00 or 7:30–4:30) would apply the delay period to their normal work schedule. For example, if Town Hall is on a 2-hour delay, then employees who normally report at 7:30 am will report at 9:30 am unless other arrangements are made with their supervisor. Employees who are not scheduled to be at work during the delay period, do not receive any administrative leave for this period.

Early Closing – If the Town Manager sets a specific closing time for Town offices (i.e., 2:00 p.m.) employees receive administrative leave only from the time of closing. Employees who work non-standard hours are expected to work a normal schedule until the official closing time unless instructed otherwise.

Employees who are unable to report to work during periods of inclement weather when the Town offices are open must use compensatory or vacation leave to account for missed work hours. In the event an employee has exhausted all vacation and comp leave hours, sick leave may be used to account for the missed work time.

Compensation for Critical Service Personnel during Administrative Leave Periods

Non-exempt service critical personnel who work during a period of administrative leave will be granted compensatory leave time equal to the hours actually worked during the period of administrative leave, not to exceed 8 hours per day.

For example, when Town offices are closed all day, service critical personnel receive 8 hours of comp time even if they work a 12-hour shift. If Town offices close at 4 pm, and the service critical personnel would normally be off work at this time, then no additional comp time is granted. Shift employees who work a night shift on the days that Town offices are closed for a full day before the beginning of a night shift, will also receive 8 hours of compensatory leave time for that day. Employees not scheduled to be at work on a day Town offices are closed, do not receive compensatory leave time.

Exempt employees in service critical positions who work during periods when Town offices are closed may be provided with flexible work scheduling options as soon as possible when Town operations allow in order to recognize the work performed during the period of administrative leave.

Section 20. Appropriate Dress and Use of Town Logo

Employees shall represent the Town in a professional manner at all times and dress appropriately for conducting such business.

The same professional standards of behavior also apply when wearing the Town logo, seal, department logo, or “Town of Apex” marked clothing before or after work hours.

Department Heads shall determine the dress policy specific to their department requirements.

All employees are expected to be neat, clean and appropriately dressed according to the following guidelines:

- All clothes should be clean and of proper fit. If uniforms are required, they must be of the established color and style specified for the department.
- Hair must be secured so that it does not interfere with job performance or pose a safety threat.
- Any tattoo, body piercing, or related, that is visible and presents a safety hazard or may be determined to be offensive to members of the public (as determined by the respective Department Head) must be completely covered at all times.
- Athletic shoes may be worn in certain departments if approved by the Department Head, provided they are in good condition and do not pose a safety threat.
- Safety toed shoes and boots may be required in specific departments.

Departments have authority to use discretion to determine what constitutes appropriate dress. Supervisors shall advise employees of the appropriate dress or uniform for certain positions as well as items of clothing or shoes that are prohibited if they present a safety hazard, if they do not promote a professional image, or may be determined to be offensive to members of the public.

Section 21. Identification Badges & Access Control

Badge Issue and Use

- 1) Upon initial employment, identification and electronic access badges will be issued by the Human Resources Department to regular full-time and part-time employees, and temporary/seasonal employees if required by the position.
- 2) Vendors will be issued identification badges when work requires building access during hours the building is not normally open to the public, or upon specific request by the Department employing the vendor.

Badge Security and Control

1. Department Directors will designate the appropriate level of building access for each employee. Typically this access will include exterior door building access, and access to the doors in an employee's department or regular work area.
2. Employees must maintain control of their ID badges at all times. ID badges should not be left unsecure in a vehicle or other areas where they can be accessed by an unauthorized person. ID badges may not be "loaned" to any other person for any reason.
3. An employee who loses an ID badge must report this loss to the supervisor and HR Department immediately so the badge can be deactivated.
4. Replacement badges will be issued for free the first time a badge is lost or damaged. Employees will be charged a \$5.00 fee for subsequent replacement badges requested within a 1 year period. Replacement badges for name and department changes will be issued without a fee.
5. Identification badges must be relinquished upon separation from employment, and will be shredded by HR or the supervisor and immediately deactivated. ID badges will be deactivated during the period of time an employee is on an extended leave of absence

ARTICLE VI. EMPLOYEE BENEFITS

Section 1. Eligibility

All full-time and part-time employees of the Town are eligible for employee benefits as provided for in this policy. These benefits are subject to change at the Town's discretion. Temporary/seasonal employees are eligible only for workers' compensation.

Section 2. Group Health and Hospitalization Insurance

The Town provides group health and hospitalization insurance programs for full-time and part-time employees.

Employees who are scheduled to work 20 hours or more per week on a continuous year-round basis may, if they so desire, purchase available group health through the Town for themselves or for themselves and qualified dependents. A pro-rated amount of the cost of coverage paid for a full-time employee shall be paid by the Town with the remainder of the cost being paid by the employee. This pro-rated amount shall be based on regularly scheduled hours.

Information concerning cost and benefits shall be available to all employees from the Human Resources Office.

Section 3. Retiree Health Insurance

Employees hired prior to July 1, 2020

An employee who meets the conditions set forth under the provision of the North Carolina Local Government Employee's Retirement System (NCLGERS) may elect to retire and receive all benefits earned under the retirement plan. An employee who retires directly from the Town with 15 years of Town service may elect to continue on the Town's group health insurance plan if requested within 30 days of the retirement date. The retiree may continue dependent coverage (and pay the cost of this coverage) if enrolled in dependent coverage at the time of retirement. The Town will subsidize the cost of the health insurance premiums for the retiree as follows:

- 15* years of service: 50% subsidy
- 20* years of service: 75% subsidy
- 25* years of service: 100% subsidy

When a retiree reaches age 65, the retiree enrolls in Medicare Part A and B and pays the cost. The Town provides Medicare supplement insurance for the retiree and subsidizes the cost of the Medicare supplement (as shown above) not to exceed the Town's monthly premium contribution toward employee health insurance coverage. (**Unused sick leave counted by the NCLGRS as creditable service time will count in determining total years of Town service.*)

Employees who were hired prior to July 1, 2020 and separate from Town service will forfeit this benefit unless re-hired with the Town into a benefits eligible position within 2 years of the separation date, at which point previous service years will count towards overall service with the Town for the purpose of this benefit.

Employees who separate from service and are re-employed 2 or more years later will be considered a new hire and will not be eligible for the retiree health insurance benefit.

Employees hired on or after July 1, 2020

Employees hired on or after July 1, 2020 are not eligible for retiree health insurance.

Section 4. Group Life Insurance

The Town may elect to provide group life insurance for each employee subject to the stipulations of the insurance contract. Employees may elect to purchase additional coverage and/or to insure other family members under this plan at their expense subject to the stipulations of the insurance contract.

Section 5. Other Optional Group Insurance Plans

The Town may make other group insurance plans available to employees upon authorization of the Town Manager or Town Council.

Section 6. Retirement

Town employees who work in a position requiring more than 1,000 hours annually shall join the North Carolina Local Government Employees' Retirement System when eligible as a condition of employment. Participation begins on the first day of employment for all new hires. Guidelines for participating in the NC LGERS can be found in the LGERS Employee Handbook or in Human Resources,

Section 7. Supplemental Retirement Benefits

The Town contributes to a 401(k) retirement plan for each employee participating in the North

Carolina Local Government Retirement System. Each law enforcement officer shall receive 401(k) benefits as prescribed by North Carolina State Law. General employees also receive a contribution, as established by the Town Council.

Section 8. Social Security

The Town, to the extent of its lawful authority and power, extends Social Security benefits for its eligible employees and eligible groups and classes of such employees.

Section 9. Unemployment Compensation

Town employees are covered by unemployment insurance. Town employees who are terminated due to a reduction in force or released from Town service may apply for benefits through the local Employment Security Commission office, where a determination of eligibility will be made.

Section 10. Tuition Assistance Program

It is the policy of the Town of Apex to provide educational assistance to employees who desire to further their education through a degree program in a career field that would benefit the Town and increase their ability and knowledge to pursue promotional opportunities. The amount of educational assistance provided per employee will be determined annually based on the approved budget and maintained in the Human Resources Department. Employees are expected to pursue coursework outside regular work hours, on their own time.

Employees interested in pursuing a degree from an accredited university or college shall submit an Educational Assistance Application form annually for Town approval. Priority will be given to employees in a degree program for which approval has been given in the prior budget year (assuming the employee continues to meet all policy requirements). Town of Apex will reimburse the costs of registration, fees, tuition, student and lab fees, upon completion of the course and certification by the institution that final grades meet the standards of the Town of a "C" or better up to the maximum allowed for the fiscal year. For classes that are considered "Pass/Fail," a "Pass" for the course will be considered as satisfactory completion. The first and/or last day of the course must be within the fiscal year for which reimbursement is requested. Employees receiving additional reimbursements for coursework from sources outside the Town may not receive total reimbursements in excess of 100 percent of the total tuition cost. Requests for tuition assistance shall be submitted to the Human Resources Office prior to course registration and are subject to review and approval by Human Resources.

All full-time regular employees who have successfully completed the Town's probationary period are eligible to receive this benefit. Eligible employees must be employed continuously for the entire academic session in order to qualify for reimbursement. Employees are expected

to continue Town employment for one year from the date of the education reimbursement. Employees separating from Town employment prior to one year from reimbursement must repay the Town the total amount of the reimbursement(s) received for the year calculated by counting backwards one year from the last day of work. Tuition reimbursement monies owed to the Town may be deducted from any compensation received upon the employee's separation from employment.

Human Resources will notify employees of the application period for participation in the Educational Assistance Program and will provide the forms for both application and reimbursement.

Section 11. Longevity Pay

A program of longevity pay may be provided to recognize and reward the total years of service as a permanent Town employee. The annual payment is made the first week in December to those full-time employees who are employed by the Town as of November 30, and who have completed the required number of years of service as of November 30 of the year the payment is made and who are employed by the Town on the date the payment is made. Longevity pay shall be made in a lump sum that does not build into base pay. Payments may be made in the following amounts:

2 through 4 years	\$100
5 through 9 years	\$300
10 through 14 years	\$500
15 through 19 years	\$600
20 plus years	\$700

Section 12. Employee Assistance Program

The Town provides an Employee Assistance Program (EAP) to help employees resolve a wide range of personal problems or to help improve their job performance. This confidential counseling service is available to employees and their family members. Employees may choose to go to the EAP on their own, or they may be encouraged to use the EAP by their supervisor when their job performance is unsatisfactory. Employees participating in the EAP are required to meet existing job performance standards. The employee's use of the EAP does not replace the use of established procedures for managing unsatisfactory job performance.

The Town will not have access to EAP records without written permission from the employee. All individual rights to confidentiality will be assured in the same manner as any other health records.. With approval of the supervisor, employees may use earned sick or vacation leave for a scheduled EAP appointment.

Section 13. Law Enforcement Officers' Special Separation Allowance

A law enforcement officer who retires under a full service retirement may be entitled to a Special Separation Allowance as provided under G.S. 143-166.42. This allowance will terminate at death or on the last day of the month when the officer attains 62 years of age, or upon the first day of re-employment as a benefits eligible employee in any capacity for a local government in North Carolina.

Section 14. Credit Union

Membership in the Local Government Federal Credit Union is open to all Town employees and their family members for various loan services, checking, and saving accounts.

Section 15. Section 125 Benefits

The Town offers pre-tax deductions for benefits premiums, dependent care, flexible medical spending accounts, and other voluntary benefits. Specific information on these plans is available from the Human Resources Office.

ARTICLE VII. HOLIDAYS AND LEAVES OF ABSENCE

Section 1. Policy

The policy of the Town is to provide vacation, sick leave, holiday leave and other leaves of absence, as described below, to all full-time and part-time employees, and to provide proportionately equivalent amounts to employees having average work weeks of different lengths.

Employees must exhaust all accrued paid leave and/or comp-time before going on an unpaid status, except in circumstances where an employee is receiving disability payments or is on a military leave of absence. Employees must use paid leave to cover their regularly scheduled work hours. Once an employee has exhausted all paid leave, they will cease to earn accruals until they are back actively at work.

Section 2. Holidays

The policy of the Town is to recognize the following Holidays as paid holidays for Town employees:

- New Year's Day
- Martin Luther King Jr. Day
- Good Friday
- Memorial Day
- Juneteenth
- Independence Day
- Labor Day
- Veteran's Day
- Thanksgiving (2 days)
- Christmas (3 days)

The Human Resources Director shall prepare a schedule of holidays at the beginning of December for the following calendar year. Departments providing 24-hour operation may adopt a varying holiday schedule that designates the legal holiday as the designated holiday when a legal holiday observance falls on a Saturday or Sunday. Any special holiday schedule shall be approved in advance by the Town Manager or their designee.

Section 3. Holidays: Effect on Other Types of Leave

Regular holidays that occur during a vacation, sick or other paid leave period of any employee shall not be considered as vacation, sick, or other leave.

Section 4. Holidays: Compensation When Work is Required

Employees required to perform work on regularly scheduled holidays may be granted compensatory time off or paid at their hourly rate for hours actually worked in addition to any holiday pay to which they are entitled. Compensatory time shall be granted whenever feasible.

All shift personnel will receive holiday pay for every holiday the Town observes, regardless of whether they work the holiday or not. Shift personnel who work on a holiday will receive time and a half for all hours worked on the holiday, in addition to the holiday pay for that day.

Non-shift employees classified as exempt under the Fair Labor Standards Act are not eligible for holiday premium pay.

Section 5. Floating Holiday

Regular employees who have completed the new hire probationary period will receive one (1) paid floating holiday per fiscal year that may be used for personal reasons such as: religious observances, parent-teacher conferences or to supplement vacation, sick and holiday leave. The floating holiday will be provided at the beginning of each fiscal year and may be used at any time during the year, but will not carry over from one fiscal year to another (unused floating holiday hours will be lost). The floating holiday hours will be based on work schedule, as listed below:

General, 40-hour employees – 8 hours
Police Patrol – 12 hours
Fire Shift – 17.25 hours
Part-time – pro-rated based on hours worked

Section 6. Vacation Leave

Vacation leave shall be used for personal time off, and may be used for sick time when sick leave accrual is depleted.

Section 7. Vacation Leave: Accrual Rate

Each full-time employee of the Town shall earn vacation at the following schedule. Leave earning is pro-rated for full-time and part-time employees working more or less than 40 hours per week.

<u>Years of Service</u>	<u>Hours Accrued Per Year</u>
Less than 2	80

2 through 4	96
5 through 9	120
10 through 14	144
15 through 19	168
20 plus	192

The accrual rate for part-time employees is prorated by the average number of hours in the workweek. An employee must be at work or on paid leave status to accrue vacation leave. Short-term disability and workers compensation leave are not considered paid leave. The accrual rate for an employee on any type of unpaid leave will be prorated based on the actual hours paid in the pay period.

Vacation leave may not be used prior to accruing it. Only vacation leave hours that display in an employee's vacation leave bank (HR Portal) are eligible to be used on a timesheet. Use of "pending" leave (leave that will accrue in the current pay period, but has not yet been earned) is not allowed.

Vacation leave accrual rates are based on years of service with the Town of Apex and cannot be transferred from other municipalities.

Section 8. Vacation Leave: Maximum Accumulation

Vacation leave may be accumulated without any applicable maximum until December 31 of each year. Effective the last payroll in the calendar year, any employee with more than this maximum of accumulated leave shall have the excess accumulation removed so that days equal to only thirty (30) days are carried forward to January 1 of the next calendar year. Any vacation time in excess of 30 days will be converted to sick leave.

Employees are cautioned not to retain excess accumulated vacation leave until late in the year. Because of the necessity to keep all functions in operation, large numbers of employees cannot be granted vacation leave at any one time. If an employee has excess leave accumulation during the latter part of the year and is unable to take such leave because of staffing demands, the employee shall receive no special consideration either in having vacation leave scheduled or in receiving any exception to the maximum accumulation.

Section 9. Vacation Leave: Manner of Taking

Employees shall be granted the use of earned vacation leave upon request in advance at those times designated by the Department Head which will least obstruct normal operations of the Town. Department Heads are responsible for insuring that approved vacation leave does not hinder the effectiveness of service delivery.

Section 10. Vacation Leave: Payment upon Separation

An employee who has successfully completed six months of the probationary period will normally be paid for accumulated vacation leave upon separation not to exceed thirty (30) days, provided notice is given to the supervisor at least two weeks in advance of the effective date of resignation.

Any employee failing to give the notice required by this section shall forfeit payment for accumulated leave. The notice requirement may be waived by the Town Manager or their designee when deemed to be in the best interest of the Town. Employees who are involuntarily separated shall receive payment for accumulated vacation subject to the thirty day maximum.

Section 11. Vacation Leave: Payment upon Death

The estate of an employee who dies while employed by the Town shall be entitled to payment of all the accumulated vacation leave credited to the employee's account not to exceed the maximums established in Section 9 of this Article.

Section 12. Sick Leave

Sick leave may be granted to probationary and regular employees absent from work for any of the following reasons: sickness, bodily injury, required medical/physical or dental examinations or treatment, EAP visits, childbirth during the documented period of disability (generally 6 weeks), for the first 6 weeks following the adoption of a child, or exposure to a contagious disease when continuing work might jeopardize the health of others.

Sick leave may be used when an employee must care for a member of his or her immediate family who is ill but may not be used to care for healthy children when the regular caregiver is sick. Sick leave beyond 10 days will only be approved for a family member's serious health condition as defined by the FMLA and with appropriate FMLA medical documentation.

Sick leave may also be used to supplement Workers' Compensation Disability Leave both during the waiting period before Workers' compensation benefits begin, and afterward to supplement the remaining one third of salary, except that employee may not exceed the-net salary amount after all current payroll deductions (as of the date of the injury) are made.

"Immediate family" shall be defined to include spouses, children, parents, siblings, grandparents, grandchildren (regardless of whether such family members are related by blood, adoption or marriage) and guardians.

Notification of the desire to take sick leave shall be submitted to the employee's supervisor prior to the leave or not later than thirty minutes after the beginning of the scheduled work day.

Sick leave is not paid out upon separation of employment.

Section 13. Sick Leave: Accrual Rate and Accumulation

Sick leave shall accrue at a rate of 8 hours per month of service or 96 hours per year. Sick leave for full-time and part-time employees working other than the basic work schedule during any pay period shall be pro-rated as described in this Article. Sick leave will be cumulative for an indefinite period of time and may be converted upon retirement for service credit consistent with the provisions of the North Carolina Local Government Employees' Retirement System.

Sick leave may not be used prior to accruing it. Only sick leave hours that display in an employee's sick leave bank (HR Portal) are eligible to be used on a timesheet. Use of "pending" leave (leave that will accrue in the current pay period but has not yet been earned) is not allowed.

All sick leave accumulated by an employee shall end and terminate without compensation when the employee resigns or is separated from the Town, except as stated for employees retiring or terminated due to reduction in force.

Rehired employees who return to work for the Town within one year of separation may have their sick leave balance reinstated if they have not already transferred their balance to another government agency. Employees who have been separated from the Town for more than one year will not be allowed to reinstate their former sick leave balance. Special considerations may be made if the employee separated for military service or support (contract service).

Section 14. Sick Leave Transfer from Other Organizations

An employee who has credible service in the State or Local Employee's Retirement System may transfer his or her sick leave balance from the organization(s) in which the retirement service was gained, as long as the employee has not been separated from the organization for longer than 12 months. This sick leave balance is to be used as described above in section 12.

Section 15. Sick Leave: Medical Certification

The employee's supervisor or Department Head may require a physician's certificate stating the nature of the employee's or family member's illness and the employee's capacity to resume duties, for each occasion on which an employee uses sick leave or whenever the supervisor observes a "pattern of absenteeism." The employee may be required to submit to such medical examination or inquiry as the Department Head deems desirable. The Department Head shall be responsible for the application of this provision to the end that:

- 1) Employees shall not be on duty when they might endanger their health or the health of other employees; and

- 2) There will be no abuse of leave privileges.

Claiming sick leave under false pretense to obtain a day off with pay shall subject the employee to disciplinary action up to and including dismissal.

Section 16. Additional Sick Leave

In addition to regularly accrued sick leave, at the beginning of the 15th year of active service, employees holding a full or part-time regular position will have an Additional Sick Leave account established and accrue ten (10) days per month for the next 12 consecutive months. Beginning at the 25th year, employees will accrue an additional ten (10) days of Additional Sick Leave per month for the next 12 consecutive months.

Additional Sick Leave may be used for the same purposes as the Town's traditional sick leave policy. Additional Sick Leave is not eligible for payout but may be used towards years of service requirements for retirement and retiree health insurance purposes. Leave will be prorated based on the Town's sick leave earning rates for employees who do not work a 40 hour per week schedule.

Section 17. Calculation for Pro-rated Leave

Holiday, annual, and sick leave earned by full-time and part-time employees with fewer or more hours than the basic work week shall be determined by the following formula:

- 1) The number of hours worked by such employees shall be divided by the number of hours in the basic work week (usually 40 hours).
- 2) The proportion obtained in step 1 shall be multiplied by the number of hours of leave earned annually by employees working the basic work week.
- 3) The number of hours in step 2 divided by 12 shall be the number of hours of leave earned monthly by the employees concerned.

Section 18. Unpaid Leave (Leave without Pay)

Any use of Leave without Pay (LWOP) must be approved by the Department Director. Prior to the use of Leave without Pay, employees must have exhausted all applicable paid leave, except in circumstances where an employee is receiving disability payments or is on a military leave.

Section 19. Family and Medical Leave

The Family Medical Leave Act (FMLA) policy is followed in accordance with federal regulations (29 U.S.C. § 2619). Employees who have at least 12 months of service and have worked at least 1,250 hours in the last consecutive 12 months are eligible. Employees who have questions concerning eligibility should contact the Human Resources Department.

FMLA provides for up to 12 weeks of unpaid leave under the following circumstances:

- a) For the birth of a child and to bond with the newborn child
- b) For the placement of a child with the employee for adoption or foster care, and to bond with that child
- c) To care for an immediate family member with a serious health condition.
“Immediate family member” shall be defined as spouses, children (regardless of age), parents, siblings, grandparents, grandchildren (regardless of whether such family members are related by blood, adoption or marriage) and guardians.
- d) The employee's own serious health condition makes the employee unable to perform the functions of his or her job
- e) For qualifying exigency arising out of the fact that the spouse, child, or parent of the employee is on active duty or called to active duty status in the National Guard or Reserves during the deployment of the member with the Armed Forces to a foreign country under a Federal call or order to active duty in support of a contingency operation, or Regular Armed Forces during deployment to a foreign country..

The FMLA also provides for up to 26 weeks of unpaid leave for eligible employees to care for a covered service member during a single 12-month period.

Depending on circumstances, it may be permissible to use FMLA leave intermittently. The Town reserves the right to consider individual circumstances and needs in conjunction with business demands and federal/state requirements.

Certification and Eligibility Requirements:

- 1) Employees may request FMLA leave by submitting a FMLA Employee Request Form to their Supervisor or Human Resources. Employees must provide 30 days advance notice of the need to take FMLA leave when the need is foreseeable. When 30 days’ notice is not possible, the employee must provide notice as soon as practicable and generally must comply with the Town’s normal call-in procedures.
- 2) The Town may require medical certification to assess FMLA eligibility, as well as updates at reasonable intervals for continued certification. If there is reason to doubt the validity of the medical certification, the Town may require the employee to get a second opinion. If the second opinion differs from the original certification provided, the Town may require the employee to

get a third opinion, at which time the doctor will be jointly selected by the employee and the Town. The third opinion will be final and binding on both parties. The burden of the cost of the second and third opinions will be at the expense of the Town.

- 3) If the Town requires medical certification for leave the employee must provide sufficient information to determine if the leave may qualify for FMLA protection and the anticipated timing and duration of the leave. Employees also must inform the Town if the requested leave is for a reason for which FMLA leave was previously taken or certified. Failure to provide adequate information within fifteen calendar days may result in delayed or denied FMLA leave/protection until proper certification can be obtained.
- 4) The Town reserves the right to waive certification and can place the employee on leave upon learning of the employee's circumstances, even if the employee has not yet requested FMLA leave or the request is pending the completion of the FMLA certification forms.
- 5) Generally, FMLA approved leave will begin on the first day of absence, when the leave is foreseeable. In the event of an unplanned leave, individual needs/circumstances, in accordance with federal regulations, will be reviewed to determine the appropriate start date of FMLA leave.
- 6) An eligible employee is entitled to up to twelve or twenty-six workweeks of leave, depending on circumstances – as identified above, on a rolling 12- month period measured backward from the date of any FMLA leave usage. If the employee returns to work before the twelve or twenty-six weeks is depleted and is able to physically perform his/her duties, the employee will be reinstated to the original, or equivalent position, with equivalent pay, benefits and other employment terms. If the twelve or twenty-six weeks of this leave are exhausted and the employee has not returned to work, the Town will determine if the employee will be reinstated.
- 7) Employees will be required to deplete their earned compensatory time and vacation leave during FMLA before being granted unpaid leave. If the approved FMLA is for circumstances for which sick leave usage is permissible per Town policy, then sick leave must also be depleted before being granted unpaid leave.
- 8) All benefits will continue to accrue during a period of paid leave.
- 9) When an employee is on leave under FMLA, the Town will continue the employee's health benefits during the leave period at the same level and under the same conditions as if the employee had continued to work. If an employee chooses not to return to work for reasons other than a continued serious health condition, the Town will require the reimbursement of the amount paid for the employee's health insurance premium during the FMLA leave period. Other insurance and payroll deductions are the responsibility of the employee and the employee must make those payments for continued coverage of that benefit.
- 10) Employees who are out of work under the provisions of FMLA are prohibited from engaging in any secondary employment during what would be their normal scheduled workday. Employees on leave as a result of their own serious health condition are NEVER approved for secondary employment. Employees who work secondary employment while on FMLA during what would have been normal work hours are considered to have voluntarily terminated their employment with the Town. Police employees may work extra-duty assignments while on FMLA with prior approval from the Chief of Police, in consultation with HR. Each request will be reviewed on a case by case basis.
- 11) Short-term disability, workers' compensation and approved medical leave of absence will run concurrently with FMLA leave.

- 12) An employee who is approved for FMLA for a personal illness or injury will not be allowed to return to work without a completed Fit for Duty Form, unless the employee was out to care for a family member or for birth of a child (Police sworn personnel who have given birth to a child must still complete the Fit for Duty form). An employee who does not return to work within three working days after their FMLA expires will be considered to have voluntarily terminated their employment with the Town.

It is the responsibility of the immediate supervisor to begin the process of placing the employee on leave. If a supervisor observes that an employee is out sick more than three consecutive days, the supervisor is to notify the Human Resources Department. If a supervisor is told by an employee that the employee will need to be out for an extended period of time for reasons other than a normal vacation, the supervisor is to notify Human Resources and instruct the employee to do the same.

Section 20. Military Leave

Military leave is provided for employees who are members of an Armed Forces Reserve organization or National Guard, or any other duty that falls within the “uniformed services” as defined and covered under the Uniformed Service Employment Reemployment Rights Act (USERRA). Military service is defined as any performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority and includes active duty, active duty for training, initial active duty, inactive duty training (such as drills), and funeral honors duty performed by National Guard and reserve members, as well as the period for which an employee is absent from a position of employment for the purpose of an examination to determine the fitness of the person to perform any such duty. Employees who are eligible for military leave have all job rights specified by the Uniformed Service Employment and Reemployment Act.

Employees on Military Leave may choose to take their leave on a paid or unpaid status. An employee on military leave will continue to accrue vacation and sick leave, regardless of whether or not paid leave was used.

Differential Pay

Military differential pay is partial compensation for the difference between the base pay salary that the employee earned while on military leave and the salary that would have been earned during the same period as a Town employee. Differential pay is not available for employees using paid leave or switching shifts to cover absences. Employees may switch shifts with other employees to attend drill, if approved by their supervisor/manager.

Employees will be granted two calendar weeks of military differential pay, per year. The effect will be to maintain the employee's salary at the normal level during the period of leave.

In addition to the 2 weeks above, when employees are called to active duty for state or national emergency, the Town will provide military differential pay during the first 180 days of active duty.

The employee must provide a Leave and Earnings Statement (LES) to payroll as soon as it is available to verify military pay. The Town will make normal deductions and/or contributions based on this difference in pay for taxes, FICA and other applicable benefits.

Job Benefits: Health premiums for employees who are performing services in the uniformed services for less than 31 days will remain in effect. Employees who are performing services in the uniformed services for 31 or more days may choose from the following two options:

- Option One: The employee and their dependents may elect to continue health coverage and /or dental benefits through the Town of Apex's group policy at full cost to the employee for a period of up to 24 months. See Human Resources for more details.
- Option Two: The employee may elect to cancel health and/or dental coverage through the Town of Apex, as coverage is provided to all military personnel and their families. Employee's health coverage will be reinstated with no waiting period when the employee returns to active employment with the Town.

While taking military leave the employee's leave credits and other benefits shall continue to accrue as if the employee physically remained with the Town during this period. The Town's contributions to the NC 401(k) retirement will continue and be based on the employee's regular salary, regardless of whether or not paid leave is being used. Life and Disability insurance benefits will be handled in accordance with vendor policies.

Reinstatement Following Military Service

An employee returning from military service shall be reinstated with full benefits provided the employee:

- 1) Applies for reinstatement within the applicable timeframe established under USERRA; and Is able to perform the duties of the former position or similar position; or
- 2) Is unable to perform the duties of the former position or a similar position due to disability sustained as a result of the military service, but is able to perform the duties of another position in the service of the Town. In this case the employee shall be employed in such other position as will provide the nearest approximation of the seniority, status, and pay which the employee otherwise would have been provided, if available.

Section 21. Personal Leave of Absence

The Town Manager or their designee may grant a personal leave of absence for unique or extraordinary reasons that may not apply to other types of leave. The leave shall be used for reasons of personal disability, sickness or disability of immediate family members, time with a newborn or adopted child, continuation of education, special work that will permit the Town to benefit by the experience gained or the work performed, or for other reasons deemed justifiable by the Town Manager or their designee. The Town Manager, or their designee, will consider the nature of the position, the impact on the Town, and the employee's tenure when reviewing a request for personal leave. The maximum amount of time that can be granted for a personal leave is six weeks in any 12-month period (calculated by using the rolling method). Vacation requests that exceed 31 calendar days will be considered a personal leave of absence.

Personal Leave will not be granted to allow an employee time off to seek employment elsewhere or to work for another employer. Employees who begin employment elsewhere while personal leave are considered to have voluntarily terminated their employment.

Job Benefits: Benefits will be handled in accordance with State & Federal laws and vendor policies. For more information, contact Human Resources.

Return to Work: The employee is obligated to return to duty within or at the end of the time determined appropriate by the Town Manager or their designee. Upon returning to duty after being on personal leave, the employee shall be entitled to return to the same position held at the time leave was granted or to one of like classification and pay. If the employee decides not to return to work, the supervisor shall be notified immediately. Failure to report at the expiration of personal leave shall be considered a voluntary resignation.

Section 22. Civil Leave

A Town employee called for jury duty or as a court witness for the federal or state governments, or a subdivision thereof, shall receive leave with pay for such duty during the required absence without charge to accumulated leave. The employee may keep fees and travel allowances received for jury or witness duty in addition to regular compensation; except, that employees must turn over to the Town any witness fees or travel allowance awarded by that court for court appearances in connection with official duties. While on civil leave, benefits and leave shall accrue as though on regular duty.

Section 23. Educational Leave with Pay

A leave of absence at full or partial pay during regular working hours may be granted to an employee to take one course which will better equip the employee to perform assigned duties upon the recommendation of the Department Head, and with the approval of the Town Manager or their designee.

Educational leave at full or partial pay for a period not to exceed twelve calendar months may be granted to an employee to take one or more courses that will better equip the employee to perform assigned duties upon the recommendation of the Department Head and the Town Manager or their designee and with the approval of the Town Council. An employee granted such extended educational leave with pay shall agree to return to the service of the Town upon completion of training and remain in the employ of the Town for a period of twice the educational leave received, or the employee shall reimburse the Town for all compensation received while on educational leave.

An employee on educational leave with full pay shall continue to earn leave credits and other benefits to which Town employees are entitled. An employee on educational leave with partial pay shall earn proportional leave credits.

Section 24. Shared Leave

An employee may donate vacation leave to another employee who meets the criteria to participate in the Town's shared leave program. An employee is eligible to receive shared leave when the employee:

- has been a full-time employee of the Town of Apex for one year*;
- has a serious medical condition or has an immediate family member with a serious health condition, as qualified under FMLA, that requires the employee to miss 20 consecutive workdays, or experience excessive intermittent absences due to the same or another serious health condition;
- has exhausted all sick, vacation and compensatory leave time;
- produces medical documentation to support the need for leave beyond the available accumulated leave;
- applies for, or is nominated by a co-worker to receive shared leave.

** This requirement may be waived by the Town Manager or their designee if the full-time employee can provide medical documentation to support the need for leave in advance of meeting the one-year requirement. In most cases, this will be for very serious health conditions or medical procedures of an emergent nature.*

Employees out of work on workers' compensation leave or employees receiving short-term disability benefits are not eligible for shared leave.

All applications or nominations for shared leave should be made to the Human Resources Department who will administer the shared leave policy. Leave may be made available for use on a current basis and is not retroactive beyond the current pay period. All leave donations are strictly voluntary and are kept confidential. Leave donations must be a minimum of 4 hours and are credited to the sick leave account of the shared leave recipient. Any unused donated leave shall be returned to the donor(s) on a pro-rata basis and credited to the leave account from which it was donated.

It is the responsibility of the employee requesting leave to monitor their leave usage and notify Human Resources/Payroll of the amount of leave they need for each pay period. Once the donations have run out, the employee may request for HR to send another announcement requesting donations; however, HR announcements for shared leave requests will be made no more than every 4 weeks. Requests for shared leave will be active for a period of 3 months from the date the leave is requested, assuming the leave is still needed for the same condition. After 3 months, the shared leave request is considered void and a new request must be made, documenting the reasons for need of continued shared leave.

Section 25. Bereavement Leave

Employees will be granted up to 3 days (24 hours) of paid bereavement leave as needed in the event of the death of an immediate family member as defined in Section 11 of this article. Sick leave, as approved by the Department Head, may be used for any additional time of needed for this purpose.

Section 26. Paid Parental Leave

Employees who have completed one year of service with the Town of Apex and who qualify for Family Medical Leave are eligible for Paid Parental Leave. Paid parental leave is in addition to an employee's accrued vacation or sick leave. Qualifying events for parental leave include the following:

- Birth of a child of the employee;
- The legal placement of a child with the employee for adoption, foster care or guardianship; or
- The placement of a child with the employee for whom the employee permanently assumes and discharges parental responsibilities (in loco parentis).

An employee may receive paid parental leave for one qualifying event within a rolling twelve month period. The amount of paid parental leave for any one person shall not exceed eight weeks in a twelve month period.

If both parents are employed by the Town and have one qualifying event, each parent is eligible for the eight weeks of paid parental leave. Each parent can use their allocated eight weeks of paid parental leave, either consecutively or intermittently.

Paid parental leave will run concurrently with FMLA and may be used consecutively or intermittently in one week increments. Employees shall provide advance notice to their supervisor of paid parental leave dates. The total amount of paid parental leave shall not exceed 320 hours for employees who work a 40-hour week schedule and is pro-rated for employees who work more or less than 40 hours per week.

An employee out of work and receiving paid parental leave may not work a secondary job during the same hours an employee would normally be at work, or work any off duty assignments during the parental leave period.

All Town-provided benefits will continue to be paid by the Town during the time the employee is out of work on Parental Leave. Sick and vacation leave will continue to accrue while the employee is in a paid parental leave status.

An employee who wishes to use parental leave shall follow the Town's procedures for requesting FMLA and request paid parental leave at the same time. FMLA leave and paid parental leave are approved through the HR Department, and no individual supervisor may deny an employee's request for FMLA or paid parental leave. An employee may be required to submit supporting documentation to satisfy eligibility requirements for paid parental leave and FMLA.

An employee must return to work after the duration of any approved parental/FMLA leave. An employee who does not remain actively employed by the Town for a minimum of 6 months after returning from paid parental leave will be required to reimburse the Town for one-half the paid parental leave received. If an employee returns to work after parental leave, and is actively employed for greater than 6 months but less than 12 months, the employee will be required to reimburse the Town for one-quarter the paid parental leave received. The value of the paid parental leave received will be deducted from the employee's final paycheck, including any annual leave or compensatory time paid out in compliance with the Fair Labor Standards Act. The Town Manager or their designee may waive the payback provision if medical complications, a special needs birth, or other documented family hardship impacts the employee's ability to return to work.

Section 27. Paid Caregiver Leave

Employees who have completed one year of service with the Town of Apex and who qualify for Family Medical Leave are eligible for up to three (3) weeks of Paid Caregiver Leave. Paid

Caregiver leave is in addition to an employee's accrued vacation or sick leave. Qualifying events for Caregiver leave include the following:

- To care for an immediate family member with a serious health condition. "Immediate family member" shall be defined as spouses, children (regardless of age), parents, siblings, grandparents, grandchildren (regardless of whether such family members are related by blood, adoption or marriage) and guardians. "Serious health conditions" include conditions covered under the Family Medical Leave Act. Family Medical Leave certification documenting the need to provide care will be required.

An employee may receive paid Caregiver leave for all qualifying events within a rolling twelve month period. The amount of paid Caregiver leave for any one person shall not exceed three weeks in a twelve month period.

Paid Caregiver leave will run concurrently with FMLA and may be used consecutively or intermittently in one week increments. Employees shall provide advance notice to their supervisor of paid Caregiver leave dates. The total amount of paid Caregiver leave shall not exceed 120 hours for employees who work a 40-hour week schedule and is pro-rated for employees who work more or less than 40 hours per week. An employee out of work and receiving paid Caregiver leave may not work a secondary job during the same hours an employee would normally be at work, or work any off duty assignments during the Caregiver leave period.

All Town-provided benefits will continue to be paid by the Town during the time the employee is out of work on Caregiver Leave. Sick and vacation leave will continue to accrue while the employee is in a paid Caregiver leave status.

An employee who wishes to use Caregiver leave shall follow the Town's procedures for requesting FMLA and request paid Caregiver leave at the same time. FMLA leave and paid Caregiver leave are approved through the HR Department, and no individual supervisor may deny an employee's request for FMLA or paid Caregiver leave. An employee may be required to submit supporting documentation to satisfy eligibility requirements for paid Caregiver leave and FMLA.

An employee must return to work after the duration of any approved Caregiver/FMLA leave. An employee who does not remain actively employed by the Town for a minimum of 6 months after returning from paid Caregiver leave will be required to reimburse the Town for one-half the paid Caregiver leave received. If an employee returns to work after Caregiver leave, and is actively employed for greater than 6 months but less than 12 months, the employee will be required to reimburse the Town for one-quarter the paid Caregiver leave received. The value of the paid Caregiver leave received will be deducted from the employee's final paycheck,

including any annual leave or compensatory time paid out in compliance with the Fair Labor Standards Act.

Section 28. Volunteer/Community Involvement Leave

Regular employees who have completed the new hire probationary period will receive eight (8) hours per fiscal year to be used to volunteer for service in the schools or in community programs. Employees in part-time, benefited positions will receive prorated hours based on their annual schedule. This leave will reset each year on July 1 and cannot be carried over into the new fiscal year (unused leave will be forfeited) or paid out upon separation.

ARTICLE VIII. SEPARATION AND REINSTATEMENT

Section 1. Types of Separations

All separations of employees from positions in the service of the Town shall be designated as one of the following types and shall be accomplished in the manner indicated: Resignation, reduction in force, disability, voluntary retirement, dismissal, or death.

Section 2. Resignation

An employee may resign by submitting the reasons for resignation and the effective date in writing to the immediate supervisor as far in advance as possible. In all instances, the minimum notice requirement is two weeks. The effective date of a resignation shall be the last day worked. Vacation leave and compensatory time cannot be used during the two-week notice period. Sick leave will only be approved during the final two weeks of a notice with a physician's certification or comparable documentation. Failure to provide minimum notice shall result in forfeit of payment for accumulated vacation unless the notice is waived upon recommendation of the Department Head and approval by the Town Manager or their designee.

Three consecutive days of absence without contacting the immediate supervisor or Department Head may be considered to be a voluntary resignation.

Section 3. Reduction in Force

In the event that a reduction in force becomes necessary due to economic circumstances, program elimination, or privatization of existing programs the Town will attempt to accomplish a reduction in force without layoffs if at all possible, and if not possible, aid the transition of employees into other employment outside the organization.

Procedures

Determinations of reductions: The determination of positions to be eliminated or employees subjected to layoff will be based (in priority order) on (1) the need for the employee's services; (2) the quality of the employee's past performance; and (3) seniority. The individual(s) selected for layoff may or may not be the incumbent of the position(s) to be eliminated. Based on the above criteria, the Department Head will develop a rationale for the proposed reductions and changes in positions and personnel, and present it to the Human Resources Director and Town Manager or their designee. All reductions in force require the approval of the Town Manager.

Layoff Avoidance: Prior to a layoff, the Town will take the following steps to assist employees who are targeted to lose their current position to locate other employment within the

organization.

1. The Town will attempt to locate alternate Town employment for affected employees whose past performance has met performance requirements. Employees may be required to accept a transfer to another Town position for which they meet the basic qualifications. Employees not occupying affected positions may be re-assigned to another position at the same salary grade in order to create a better match of experience and skills with existing Town positions and to prevent a layoff from occurring within the Town. Such movement will be the prerogative of the Department Head or Town Manager. Pay decisions regarding transfers will be in accordance with the Town's pay policies.
2. If the reason for potential reduction is driven by economic reasons, management may offer employees in full-time positions the option of reducing their work schedule to less than 40 hours a week (but no less than 20 hours). Benefits would be pro-rated in accordance with Town policy. The reduced schedule must be agreed to for a minimum of one year and may be renewed with the mutual consent of the employee and Department Head on an annual basis.

Transition Assistance

Negotiated Employment. In any privatization effort, the Town will negotiate to the fullest extent possible, for the continued employment of all who are involved in a Town function with the new private contractor.

Outplacement Services. The Town will provide standard outplacement services either internally or through a contracted party. The services will include (1) career counseling, (2) resume application preparation, (3) allowances for reasonable time off for interviews and employment follow-up as approved by the employee's supervisor, (4) reasonable office support and telephone access as approved by the employee's supervisor to use for the job search.

Retirement. Employees whose positions have been designated for elimination may be eligible for a full or reduced retirement through the North Carolina Local Government Employees' Retirement System. As allowed under G.S. 128-27(a2) The Town Council may approve a discontinued service retirement allowance for employees who are at least 55 years of age and have 20 years of creditable service, or a reduced discontinued service allowance for employees who are 50-54 years of age and have 20 years of creditable service. Employees granted a discontinued service retirement are not eligible for severance pay.

Severance Pay. Employees whose positions are being eliminated under a reduction in force will be eligible for seniority-based severance pay as outlined below if all of the following conditions are met as of their last day of employment with the Town:

1. The employee has not elected one of the above-referenced retirement options;
2. The employee has not refused alternate full time employment with the Town; and
3. The employee has not refused reasonable employment offers with a contractor (in the event of negotiated privatization). A reasonable employment offer shall be defined as one in which the employment offer does not result in a permanent reduction in the rate of pay of more than 15%.
4. The employee executes and returns the Town's standard waiver and release form.

Severance pay is based on total years of service with the Town of Apex. Severance pay is the equivalent of two weeks base pay for employees with less than one year of service, with an additional week of pay granted for each additional full year of Town service. Severance pay will be paid out on a bi-weekly basis and is not subject to employee or employer retirement contributions, and as a result, will not be included in computing the average final compensation for retirement purposes. Any period covered by severance pay will not be counted as an active employment period for the purposes of earning retirement service credit or for qualifying for employer-paid insurance coverage.

Benefits

Employees who receive severance pay will be eligible for continuation of insurance coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985 as amended (COBRA), at the employee's expense. Employees who retire with full, early or discontinued service retirement may be eligible for retiree health benefits under Article VIII Section 5 of the Apex Personnel Policies. No other benefits will apply after termination of employment.

Notice Requirements

Employees who are laid off due to a reduction in force will be given as much notice as possible and at least two weeks' notice of anticipated layoff. If this is not possible, employees will receive two weeks compensation in addition to the severance pay noted above.

Reinstatement

An employee in good standing who is separated because of a reduction in force will be given the first opportunity to be reinstated in the same or similar position within one year of separation. All sick leave will be reinstated as long as the employee has remained an active member of the North Carolina Local Government Retirement System, and other seniority-based benefits will be calculated based on total Town service.

Section 4. Disability

An employee who cannot perform the required duties with reasonable accommodation because of a physical or mental impairment may be separated for disability. Action may be initiated by the employee or the Town. In cases initiated by the employee, such action must be accompanied by medical evidence acceptable by Human Resources. The Town may require an examination, at the Town's expense, performed by a physician of the Town's choice.

Section 5. Voluntary Retirement

An employee who meets the conditions set forth under the provision of the North Carolina Local Government Employee's Retirement System (NCLGERS) may elect to retire and receive all benefits earned under the retirement plan.

Section 6. Death

Separation shall be effective as of the date of death. All compensation due shall be paid to the estate of the employee.

Section 7. Dismissal

An employee may be dismissed in accordance with the provisions and procedures of Article IX.

Section 8. Reinstatement

An employee who is separated because of reduction in force may be reinstated within one year of the date of separation, upon recommendation of the Department Head, and upon approval of the Town Manager or their designee. An employee who is reinstated in this manner shall be re-credited with his or her previously accrued sick leave.

Section 9. Rehiring

An employee who resigns while in good standing may be rehired as a new employee, subject to all of the provisions of rules and regulations of this Policy. An employee in good standing who is separated due to a reduction in force shall be given the first opportunity to be rehired in the same or a similar position.

ARTICLE IX. UNSATISFACTORY JOB PERFORMANCE AND DETRIMENTAL PERSONAL CONDUCT

Section 1. Coverage

Article IX applies to all Town employees. While the Town will generally follow a progressive disciplinary process, employees may be separated from service at any time if the employee's job performance or conduct fails to meet the expectations of the supervisor and Department Head or if funding for the position is no longer available.

Section 2. Employee Legal Representation

The Town prohibits the participation or presence of an attorney or any form of legal representation in any informal or formal employer/employee meetings or conferences.

Section 3. Disciplinary Actions

When an employee fails to meet the job responsibilities of his or her position, the supervisor is responsible for correcting the failure and initiating disciplinary action when appropriate. Disciplinary action, when imposed, is for the purpose of improving employee and Town performance. Disciplinary action may be based on unsatisfactory job performance or detrimental personal conduct when the employee is not meeting the job performance requirements or personal conduct standards set for the position. The type of disciplinary action taken depends on the facts and circumstances of the situation, but may include a written warning, final written warning, suspension, demotion or dismissal.

Section 4. Unsatisfactory Job Performance Defined

Disciplinary Action may be taken for unsatisfactory job performance. Unsatisfactory job performance includes any aspect of the employee's job that is not performed as required to meet the standards set by the supervisor. Examples of unsatisfactory job performance include, but are not limited to, the following:

- 1) Demonstrated inefficiency, negligence, incompetence, or lack of prudent judgment in the performance of duties.
- 2) Careless, negligent or improper use of Town property or equipment.
- 3) Physical or mental inability to perform duties after reasonable accommodation.
- 4) Discourteous treatment of the public or other employees.
- 5) Disruption of work environment – displaying unproductive behaviors such as promoting rumors, bad-mouthing others and other demeaning behaviors distracting from a positive working environment.
- 6) Excessive absences, late reporting, absence without approved leave, or repeated improper use of leave privileges.
- 7) Failure to meet work standards established in work plan.

- 8) Failure to follow established departmental or Town policies and procedures.
- 9) Failure to carry out supervisor's assignments or instructions.
- 10) Failure to maintain credentials or license required for position.

Section 5. Detrimental Personal Conduct Defined

Detrimental personal conduct includes behavior, whether on-duty or off-duty, intentional or unintentional, of such a serious detrimental nature that the functioning of the Town may be or has been impaired; the safety of persons or property may be or have been threatened; the laws of any government may be or have been violated or public confidence in Town government is likely to be undermined. Examples of detrimental personal conduct include, but are not limited to, the following:

- 1) Fraud, theft or dishonesty
- 2) Conviction of a felony or the entry of a plea of *nolo contendere* thereto.
- 3) Falsification of records for personal profit, to grant special privileges, or to obtain employment.
- 4) Misusing or directing the misuse of Town work time, funds, equipment or property.
- 5) Careless, negligent, reckless, willful or wanton damage to or destruction of Town property.
- 6) Careless, negligent, reckless, willful or wanton acts that endanger the lives or property of others.
- 7) Possession of unauthorized firearms or other lethal weapons on the job.
- 8) Communication of a threat or engaging in threatening behavior;
- 9) Brutality in the performance of duties.
- 10) Any violation of the Town's Drug and Alcohol Policy.
- 11) Engaging in incompatible employment or serving a conflicting interest.
- 12) Request or acceptance of gifts in exchange for favors or influence.
- 13) Engaging in political activity prohibited by the Town's Personnel Policies.
- 14) Engaging in acts during or outside duty hours that negatively affect the image of the Town and which interfere with the working relationship between the employee and co-workers or between the employee and the public that employee serves.
- 15) Harassment of an employee or the public with threatening, obscene or derogatory language or gestures.
- 16) Stated refusal to perform assigned duties (insubordination) or flagrant violation of work rules and regulations.
- 17) Flagrant behavior or repeated rude or uncivil behavior directed toward citizens or co-workers.
- 18) Workplace Violence or workplace harassment.

Section 6. Disciplinary Action Process for Unsatisfactory Job Performance

An employee whose job performance is unsatisfactory or grossly inefficient will normally receive progressive warnings before disciplinary action resulting in suspension, demotion or dismissal is taken by the Department Head or the Town Manager; however, the Town reserves the right to administer any disciplinary action, up to and including dismissal, at any time under employment at-will. When appropriate, progressive warnings should include the following steps:

1. When an employee's job performance is unsatisfactory, or when incidents or inappropriate actions warrant, the supervisor should meet with the employee as soon as possible in one or more counseling sessions to discuss specific performance problems. A brief summary of these counseling sessions should be noted in the employee's file by the supervisor.
2. An employee whose job performance remains unsatisfactory over a period of time normally would receive at least one written warning in addition to a final written warning from the supervisor before suspension, demotion or dismissal are initiated. The first written warning would include the dates of discussions with the employee, the performance deficiencies discussed, the corrective actions recommended, and the time frames set for improvement. A copy of each written warning should be submitted to Human Resources for placement in the employee's personnel file.
3. If the employee's performance continues to be unsatisfactory after one or more written warnings, then the supervisor should give the employee a final written warning serving notice that corrected performance must take place immediately in order to avoid disciplinary suspension, demotion or dismissal. A copy of the final written warning should be submitted to Human Resources for placement in the employee's personnel file.
4. In the event that the employee's performance fails to improve after the final written warning, or if the employee's performance deficiency is the result of one incident severe enough that it negatively impacts on the image of the Town or compromises the safety of persons or property, or creates significant financial liability for the Town, then the supervisor may recommend disciplinary demotion, suspension or dismissal by following the process outlined in Section 7 of this policy.

Section 7. Disciplinary Action for Detrimental Personal Conduct

With the approval of the Town Manager, an employee may be placed on disciplinary suspension, demoted or dismissed without prior warning due to personal conduct detrimental to town service in order to avoid undue disruption of work, to protect the safety of persons or property, or for other serious reasons. When an employee is suspended or dismissed immediately, the employee may be told to leave town property at once and either to report to a supervisor at a specific time or to remain away until further notice.

Section 8. Notification of disciplinary action

Supervisors are encouraged to meet with employees to inform them of proposed disciplinary actions for suspensions, demotions, and dismissals. The intent of the meeting is to notify the employee of the proposed disciplinary action and provide an opportunity for the employee to provide further information, if any, for the supervisor to consider in making a final decision. While this meeting is encouraged, it does not prevent the Town from taking disciplinary action, up to and including dismissal, without prior notice, when necessary.

Section 9. Disciplinary actions relating to special job requirements

An employee may be placed on disciplinary suspension, demoted or dismissed for failing to obtain or maintain a required license, certificate, registration or similar document, or for failing to maintain a satisfactory driving record when driving town equipment or vehicles is a job requirement.

Section 10. Non-Disciplinary Suspension

The Department Head may suspend an employee with pay for the following reasons. Any suspension without pay requires approval of the Human Resources Director.

1. To investigate the circumstances surrounding any alleged violation of any Federal, State or Town laws, statutes, ordinances, rules, regulations or policies.
2. To investigate any alleged act or omission in the scope and course of employment which might constitute a criminal offense.
3. To investigate when an employee is charged with a criminal offense or becomes a party to a civil action or other non-criminal proceeding not arising out of the scope or course of employment to determine if the circumstances of the case cast substantial doubt on the employee's ability to satisfactorily perform their normal duties, or result in a lack of public confidence in the delivery of Town services if the employee were to remain employed.

Following an investigation of an employee's actions which involve possible criminal charges or civil actions, the Department Head may take disciplinary action even if criminal or civil proceedings are pending. After conclusion of the criminal or civil proceedings, the Department Head may review the initial disciplinary decision to determine if additional disciplinary action is necessary.

If an employee is placed on an unpaid non-disciplinary suspension and is reinstated following the suspension, the employee shall not lose any compensation or benefits to which the employee would have been entitled had the suspension not occurred. All health, dental and life insurance benefits are maintained during the period of non-disciplinary suspension.

Section 11. Disciplinary Suspension and Deductions

Deductions from pay of exempt employees may be made for unpaid disciplinary suspensions imposed in good faith for infractions of workplace conduct rules and/or workplace safety violations, in accordance with Federal and State regulations.

ARTICLE X. COMPLAINT RESOLUTION PROCESS

Section 1. Purpose

The Town recognizes that there are times when the need arises for employees to express concerns or complaints in a formal manner. The following procedures will ensure that employees receive a fair and unbiased review of workplace concerns.

The timelines that are listed below (both for the employee and supervisor/Town Manager) are intended to provide a quick and prompt response to concerns/complaints; however, these timelines may be modified, if needed, upon mutual agreement of the employee and supervisor/Town Manager. Any agreed upon changes to the timeline should be documented in writing by both parties.

Section 2. Procedures

Step 1: Informal discussion with supervisor

Employee concerns should first be discussed with the employee's immediate supervisor. Many concerns can be resolved informally when an employee and supervisor take time to review the concern and discuss options to address the issue.

Step 2: Written complaint to supervisor

If the employee is not satisfied with the results of the informal discussion in Step 1, the employee may submit a written complaint within fifteen calendar days of the event or within fifteen calendar days of learning of the event to his or her appropriate supervisor (the person who took the action which created the concern - could be immediate supervisor, division head, Department Head, etc.) to include:

- The nature of the complaint.
- Detailed information including evidence of the issue, witnesses, related policies, etc.
- The remedy or outcome desired.

The supervisor will have ten calendar days to respond to the employee in writing.

If the employee complaint is regarding illegal harassment, discrimination or retaliation, the employee should submit the written complaint directly to Human Resources.

Step 3: Written complaint to next level supervisor

If the employee is not satisfied with the response from the supervisor, the employee may submit a written complaint to next level supervisor (Division Head, Department Head, Town

Manager, etc.) for review within ten calendar days after received of the response from Step 2. A copy should also be sent to Human Resources. The request for review should include:

- An explanation of the complaint and details of all previous efforts to resolve the issue.
- A copy of the written complaint submitted to the immediate supervisor.
- A copy of the immediate supervisor's written response to the employee's complaint.
- Detailed information regarding the employee's dissatisfaction with the immediate supervisor's response.

The next level supervisor will have ten calendar days to respond to the employee in writing.

Step 4: Written complaint to the Town Manager

If the employee is not satisfied with the response in Step 3, the employee may submit a written complaint to the Town Manager for review. A copy should also be sent to Human Resources. The request for review should include:

- An explanation of the complaint and details of all previous efforts to resolve the issue.
- A copy of the written complaint submitted to all previous supervisors.
- A copy of the previous supervisors' written responses to the employee's complaint.
- Detailed information regarding the employee's dissatisfaction with the previous supervisor's response.

The Town Manager will consult with the employee's immediate supervisor, Human Resources and any other relevant parties to evaluate the complaint and provide a written response to the employee within ten calendar days after receipt of the written concern. The outcome of the review by the Town Manager will be final unless new evidence or other circumstances warrant additional review of the complaint. The Town Manager would notify the Town Council of any impending legal action.

Section 3. Recordkeeping

Human resources will maintain records of the complaint resolution process confidentially and securely.

ARTICLE XI. RECORDS AND REPORTS

Section 1. Public Information

In compliance with GS 160A-168(b), the following information with respect to each Town employee is a matter of public record: name; age; date of original employment or appointment to the service; current position title; current salary; date and amount of each increase or decrease in salary; date and type of each promotion, demotion, transfer, suspension, separation, or other change in position classification; date and general description of the reasons for each promotion; date and type of each dismissal, suspension or demotion for disciplinary reasons. If the disciplinary action was a dismissal, a copy of the written notice of the final decision setting forth the specific acts or omissions that are the basis of the dismissal; and the office to which the employee is currently assigned. Any person may have access to this information for the purpose of inspection, examination, and copying, during regular business hours, subject only to such rules and regulations for the safekeeping of public records as the Town may adopt.

Section 2. Access to Confidential Records

All information contained in a Town employee's personnel file, other than the information mentioned above is confidential and shall be open to inspection only in the following instances:

1. The employee or his/her duly authorized agent may examine all portions of his/her personnel file except letters of reference solicited prior to employment, and information concerning a medical disability, mental or physical, that a prudent physician would not divulge to the patient.
2. A licensed physician designated in writing by the employee may examine the employee's medical record.
3. A Town employee having supervisory authority over the employee may examine all material in the employee's personnel file.
4. By order of a court of competent jurisdiction, any person may examine all material in the employee's personnel file.
5. An official of an agency of the State or Federal Government, or any political subdivision of the State, may inspect any portion of a personnel file when such inspection is deemed by the Town Manager to be necessary and essential to the pursuit of a proper function of the inspecting agency, but no information shall be divulged for the purpose of assisting in a criminal prosecution of the employee, or for the purpose of assisting in an investigation of the employee's tax liability. However, the official having custody of the personnel records may release the name, address, and telephone number from a personnel file for the purpose of assisting in a criminal investigation.
6. An employee may sign a written release to be placed in his/her personnel file that permits the record custodian to provide, either in person, by telephone, or by mail, information specified in the release to prospective employers, educational institutions, or other persons specified in the release.

7. The Town Manager, with the concurrence of the Town Council, may inform any person of the employment, non-employment, promotion, demotion, suspension or other disciplinary action, reinstatement, transfer, or termination of a Town employee, and the reasons for that action. Before releasing that information, the Town Manager shall determine in writing that the release is essential to maintaining the level and quality of Town services. The written determination shall be retained in the Town Manager's office, is a record for public inspection, and shall become a part of the employee's personnel file.

Section 3. Personnel Actions

The Human Resources Director, with the approval of the Town Manager, will prescribe necessary forms and reports for all personnel actions and will retain records necessary for the proper administration of the personnel system. The official personnel files are those which are maintained in the Human Resources Department. These files shall contain documents such as employment applications and related materials, records of personnel actions, documentation of employee warnings, disciplinary actions, performance evaluations, retirement and insurance records, letters of recommendation, and other personnel-related documents.

Section 4. Records of Former Employees

The provisions for access to records apply to former employees as they apply to present employees.

Section 5. Remedies of Employees Objecting to Material in File

An employee who objects to material in his/her file may place a statement in the file relating to the material considered to be inaccurate or misleading. The employee may seek removal of such material in accordance with established complaint resolution procedures.

Section 6. Penalties for Permitting Access to Confidential Records

Section 160A-168 of the General Statutes provides that any public official or employee who knowingly and willfully permits any person to have access to any confidential information contained in an employee personnel file, except as expressly authorized by the designated custodian, is guilty of a misdemeanor and upon conviction shall be fined in an amount consistent with the General Statutes.

Section 7. Examining and/or Copying Confidential Material without Authorization

Section 160A-168 of the General Statutes of North Carolina provides that any person, not specifically authorized to have access to a personnel file designated as confidential, who shall knowingly and willfully examine in its official filing place, remove or copy any portion of a confidential personnel file shall be guilty of a misdemeanor and upon conviction shall be fined consistent with the General Statutes.

Section 8. Destruction of Records Regulated

No public official may destroy, sell, loan, or otherwise dispose of any public record, except in accordance with GS 121.5, without the consent of the State Department of Cultural Resources. Whoever unlawfully removes a public record from the office where it is usually kept, or whoever alters, defaces, mutilates or destroys it will be guilty of a misdemeanor and upon conviction will be fined in an amount provided in Policy 132.3 of the General Statutes.

PART XII. IMPLEMENTATION OF POLICIES

Section 1. Conflicting Policies Repealed

All policies, ordinances, or resolutions that conflict with the provisions of these policies are hereby repealed.

Section 2. Separability

If any provision of these policies or any rule, regulation, or order there under of the application of such provision to any person or circumstances is held invalid, the remainder of these policies and the application of such remaining provisions of these policies of such rules, regulations, or orders to persons or circumstances other than those held invalid will not be affected thereby.

Section 3. Amendments

The Town Council has the authority to amend, revise, or repeal all or any portion of this policy as it sees fit.

Section 4. Effective Date

These policies shall become effective on August 6, 2019.

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for consideration by the Apex Town Council

Item Type: CONSENT AGENDA

Meeting Date: January 9, 2024

Item Details

Presenter(s): Antwan Morrison, Director

Department(s): Finance

Requested Motion

Motion to approve an Ordinance authorizing the creation of the petty cash and cash change drawer funds, as well as establishing operating procedures.

Approval Recommended?

Yes

Item Details

The purpose of petty cash is to provide sufficient cash to cover minor expenditures. The intent is to simplify the reimbursement of staff for small expenditures that do not exceed \$100. The purpose of cash change funds is to provide change to citizens and customers who are paying cash for taxes and/or services. This ordinance is necessary for the Town to legally use petty cash and cash change funds.

The ordinance authorizes the creation of the petty cash and the cash change funds along with establishing operating procedures for both.

Attachments

- CN9-A1: Ordinance - Authorizing Creation of and Establishing Procedures for the Petty Cash and Cash Change Funds
- CN9-A2: Operating Procedures - Ordinance - Authorizing Creation of and Establishing Procedures for the Petty Cash and Cash Change Funds



ORDINANCE NO. 2023 _____

**Ordinance Authorizing Creation of
And Establishing Procedures for the
Petty Cash and Cash Change Funds**

WHEREAS, it is the desire of the Town Council that all public funds of the Town of Apex, North Carolina (hereafter the "Town") be maintained in a secure, efficient and effective manner;

WHEREAS, it is the responsibility of the Finance Officer, who is appointed to supervise the receipt, custody and disbursement of all public funds of the Town;

WHEREAS, the payment of a bill, invoice, or other claim by cash is authorized by G.S. 159-28(d)(4);

WHEREAS, the Finance Officer has prepared and presented to the Town Council detailed Operating Procedures establishing the limits, internal controls, and procedures for the payment of bills, invoices, and other claims under \$100.00 by cash from an imprest fund to be known as the "Petty Cash Fund"; and

WHEREAS, the Finance Officer has prepared and presented to the Town Council detailed Operating Procedures establishing the limits, internal controls, and procedures for providing change from an imprest fund to be known as the "Cash Change Fund" to citizens and customers paying in cash for taxes and services.

NOW, THEREFORE, BE IT ORDAINED, by the Town Council of the Town of Apex, North Carolina that:

Section 1. The imprest fund to be known as the "Petty Cash Fund" is hereby established in an amount not to exceed \$2,000.00 and the Finance Officer is hereby designated as the initial "Official Custodian" of the Petty Cash Fund. The Finance Officer shall be and is hereby authorized and directed to name a replacement "Official Custodian" when necessary.

Section 2. The imprest fund to be known as the "Cash Change Fund" is hereby established in an amount not to exceed \$5,000.00 and the Finance Officer is hereby designated as the initial "Official Custodian" of the Cash Change Fund. The Finance Officer shall be and is hereby authorized and directed to name a replacement "Official Custodian" when necessary.

Section 3. The "Petty Cash Fund and Cash Change Fund Operating Procedures" (the "Operating Procedures") established by the Finance Officer, a copy of which is attached to this Ordinance, is hereby approved. The Finance Officer shall be and is hereby authorized to revise the Operating Procedures from time to time and provide a copy as revised to the designated Official Custodians of the Petty Cash Fund and Cash Change Fund and to the Town Council at its next meeting.

Section 4. It shall be in the Operating Procedure of the Town that no payments may be made from the Petty Cash Fund unless in compliance with all procurement laws and policies; that all payments made from the Petty Cash Fund be supported by proper documentation and receipts as required by the Operating Procedures established by the Finance Officer; that no

loans or advances be made to employees or Town Council members from the Petty Cash Fund or the Cash Change Fund; and that no amount that may be categorized as employee compensation or as travel advances may be paid in cash. Payment through the Accounts Payable system is always preferable to payment using the Petty Cash Fund.

Section 5. The Finance Officer or a Deputy Finance Officer shall review each reconciliation and reimbursement of the Petty Cash Fund and shall approve the supporting journal entries. The Petty Cash Fund shall be reconciled no less frequently than monthly.

Section 6. Any shortage in the Petty Cash Fund shall be reported to the Finance Officer. Any shortage in the Cash Change Fund exceeding \$15.00 shall be reported to the Finance Officer.

Section 7. This ordinance shall take effect immediately upon its passage.

ADOPTED this _____ day of _____, 2024.

Jacques K. Gilbert
Mayor

ATTEST:

Allen L. Coleman
Town Clerk

(SEAL)

APPROVED AS TO FORM:

Laurie Hohe
Town Attorney

Town of Apex, North Carolina

Petty Cash Fund and Cash Change Fund

Operating Procedures

The Town Council by Ordinance, dated January 9, 2024, authorized the Petty Cash Fund and certain Cash Change Funds and established procedures related to the use of those funds.

This statement is subject to and consistent with the Town Council established procedures. It provides guidance relating to purchasing items and receiving reimbursement for such purchases from the Petty Cash Fund and direction relating to the use of Cash Change Funds for providing change to citizens and customers paying for taxes and services. This procedure describes the authorized use of and restrictions on use of the Petty Cash Fund and any Cash Change Funds.

Cash Change Funds

Cash Change Funds are authorized only for the purpose of providing change to citizens and customers when they are paying for taxes or services and specifically are not authorized for use by the Town to reimburse employees for small dollar purchases or for personal check cashing and loans to employees.

The Cash Change Funds must be counted and balanced daily.

Petty Cash Fund

All money in the Petty Cash Fund must always be kept separate from all other cash receipts and from all Cash Change Funds. **The Official Custodian can designate Petty Cash Fund custodians within the departments of the Town.** The Petty Cash Fund must be in the control of the custodian who is responsible for the cash. Only the custodian should be allowed access to the fund. The cash must be safeguarded and kept in the custodian's locked drawer, file cabinet, or other secure area.

Allowable Transactions

Allowable transactions from the Petty Cash Fund are those reimbursing employees for small dollar purchases for which the goods were received at the time of purchase. No single Petty Cash Fund transaction should exceed \$100.00. Reimbursement exceeding \$100.00 must be made through the Town's Accounts Payable system.

The following transactions are **not allowed** to be processed from the Petty Cash Fund:

- Items covered by Town purchasing contracts and procedures;
- Personal check cashing and loans;
- Entertainment;
- Travel reimbursements (meals, lodging, taxi, airfare);
- Per diem and fees and other service payments, gifts, awards, prizes which must be made through Accounts Payable to facilitate Form W-2 or Form 1099 reporting of taxable income;
- Memberships;

Town of Apex, North Carolina

Petty Cash Fund and Cash Change Fund

Operating Procedures

- Food, beverages, catering; and
- Any items that are unallowable through the Town's Operating Procedure are also not allowed to be purchased using the Petty Cash Fund.

It is the duty of the custodian to verify that each disbursement is appropriate and is an allowable expense. Request for the custodian to disburse amounts from the Petty Cash Fund must proceed according to the following guidelines. All requests for reimbursement must include original receipts; copies are not adequate. Receipts must include complete documentation including the vendor name, date of purchase, item purchased, business purpose, and total amount requested. Receipts should be signed by the individual reimbursed to indicate receipt of the reimbursement.

Reconciling, Replenishing, and Managing the Petty Cash Fund

The Petty Cash Fund is to be reconciled and reimbursed monthly (unless established for seasonal usage only). The expenditures logged are totaled and the cash on hand is also recorded. **The total expenditures and cash on hand should always equal the total authorized Petty Cash Fund amount.** If there is an overage or shortage, the overage or shortage amount must be properly recorded. Any shortage should be included in the amount replenished and reported to the Finance Officer. Any overage should be deposited in the Town's General Fund bank account and may not be used to increase the size of the Petty Cash Fund. Frequent overages or shortages indicate that the Petty Cash Fund is not properly managed and should be investigated by the Finance Officer.

The Finance Officer or a Deputy Finance Officer should review and sign the Petty Cash Reimbursement Request. After reviewing all expenditures and account coding, a Payment Request is then approved with the payee as the named Petty Cash Fund custodian with "Petty Cash Reimbursement" as the description. A separate account should be used for payments to the custodian so that the payments may not be identified as payments that may be reportable of Form 1099 or included as compensation. The Payment Request is sent to Accounts Payable for processing a check.

If the Petty Cash Fund requires replenishing more frequently than monthly, the Finance Officer should review the activity to determine if there are payments that should have been made through Accounts Payable. The Finance Officer should also review transactions to identify opportunities to consolidate purchases to achieve cost savings or to discover other possible operating efficiencies. If the fund is reimbursed less frequently than quarterly, the Finance Officer should consider the need for the fund or reducing the size of the fund. Repeated violations of petty cash procedures can result in termination of the fund.

Approved: **January 9, 2024**

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for consideration by the Apex Town Council

Item Type: CONSENT AGENDA

Meeting Date: January 9, 2024

Item Details

Presenter(s): Antwan Morrison, Director

Department(s): Finance

Requested Motion

Motion to amend resolution designating the Deputy Finance Officer position with the authority of the Finance Officer for the purposes of complying with the Local Government Budget and Fiscal Control Act.

Approval Recommended?

Yes

Item Details

North Carolina General Statute 159-25 outlines the duties of the finance officer of a local government. North Carolina General Statute 159-28(a) requires the finance officer or deputy finance officer to sign all purchase orders, contracts, or agreements, which include the preaudit certificate to verify sufficient funds exist to meet the obligation. Having designated Deputy Finance Officers will ensure the smooth running of the business of the Town in the absence of the Finance Officer.

Attachments

- CN10-A1: Resolution - Amendment to Designated Deputy Finance Officers





TOWN OF APEX TOWN COUNCIL

Resolution Designating Deputy Finance Officers for the Town of Apex, North Carolina

WHEREAS, North Carolina General Statutes §159-24 specifics and directs that each local government shall appoint a Finance Officer to hold office and carry out the duties as prescribed by law; and,

WHEREAS, North Carolina General Statutes §156-25 outlines the specific duties of the Finance Officer of a local government; and,

WHEREAS, North Carolina General Statutes §159-28(a) requires the Finance Officer or Deputy Finance Officer to sign all purchase orders, contracts, or agreements which includes a certificate stating that the instrument has been pre-audited to verify sufficient funds exist to meet the obligation; and,

WHEREAS, There will be occasions when the Finance Officer is unable to be present in order to approve certain actions or sign pre-audit certificates thus creating a need to designate Deputy Finance Officers; and,

WHEREAS, On May 9, 2023, the Apex Town Council adopted a resolution designating the following existing positions as Deputy Finance Officers to comply with the Local Government Budget and Fiscal Control Act: Accounting and Finance Manager, and the Purchasing Manager; and,

WHEREAS, the Town has created a new Assistant Finance Director position to assist in the overall administration and leadership of the Town's Finance Department.

NOW, THEREFORE, BE IT RESOLVED, that we, the Town Council of the Town of Apex do hereby designate and appoint the following positions as Deputy Finance Officers for the purposes of complying with the Local Government Budget and Fiscal Control Act for the Town of Apex: Assistant Finance Director, Purchasing and Contracts Manager, and Accounting and Financial Reporting Manager; and,

BE IT FURTHER RESOLVED, that the Deputy Finance Officers are hereby designated as authorized signers on behalf of the Town and have authority to sign and pre-audit financial documents such as purchase orders, contracts, or agreements which a certificate stating that the instrument has been pre-audited to verify sufficient funds exist to meet the obligation; and,

BE IT FURTHER RESOLVED, that this resolution shall supersede any previously adopted resolutions related to the designation of Deputy Finance Officers for the Town of Apex.

ADOPTED, the 9th day of January 2024.

Jacques K. Gilbert
Mayor

Attest:

Allen Coleman, CMC, NCCCC
Town Clerk

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for consideration by the Apex Town Council

Item Type: CONSENT AGENDA

Meeting Date: January 9, 2024

Item Details

Presenter(s): Liz Loftin, Senior Planner

Department(s): Planning

Requested Motion

Motion to approve the Statement of the Town Council and Ordinance for Rezoning Case No. 23CZ16 Friendship Station Section 3 PUD Amendment, Charm City Developers, LLC, petitioner, for the property located at 0 Humie Olive Road (PIN 0721306888).

Approval Recommended?

The Planning Department recommends approval.

Item Details

Rezoning Case No. 23CZ16 was approved at the November 28, 2023 Town Council meeting.

Attachments

- CN11-A1: Statement of the Town Council - Rezoning Case No. 23CZ16 - Friendship Station Sec 3 PUD Amendment - Statement and Ordinance
- CN11-A2: Attachment A - Legal Description - Rezoning Case No. 23CZ16 - Friendship Station Sec 3 PUD Amendment - Statement and Ordinance
- CN11-A3: Attachment B - PUD Amendment Letter - Rezoning Case No. 23CZ16 - Friendship Station Sec 3 PUD Amendment - Statement and Ordinance



**STATEMENT OF TOWN COUNCIL AND ORDINANCE AMENDING THE OFFICIAL ZONING DISTRICT MAP OF THE TOWN OF APEX TO CHANGE THE ZONING OF APPROXIMATELY 5.60 ACRES LOCATED AT 0 HUMIE OLIVE ROAD FROM PLANNED UNIT DEVELOPMENT-CONDITIONAL ZONING (PUD-CZ #18CZ02) TO PLANNED UNIT DEVELOPMENT-CONDITIONAL ZONING (PUD-CZ)
#23CZ16**

WHEREAS, Charm City Developers, LLC, owner/applicant (the “Applicant”), submitted a completed application for a conditional zoning on the 1st day of August 2023 (the “Application”). The proposed conditional zoning is designated #23CZ16;

WHEREAS, the Planning Director for the Town of Apex, Dianne Khin, caused proper notice to be given (by publication and posting) of a public hearing on #23CZ16 before the Planning Board on the 13th day of November 2023;

WHEREAS, the Apex Planning Board held a public hearing on the 13th day of November 2023, gathered facts, received public comments and formulated a recommendation regarding the application for conditional zoning #23CZ16. A motion was made by the Apex Planning Board to recommend approval; the motion passed unanimously for the application for #23CZ16;

WHEREAS, pursuant to N.C.G.S. §160D-601 and Sec. 2.2.11.E of the Unified Development Ordinance, the Planning Director caused proper notice to be given (by publication and posting), of a public hearing on #23CZ16 before the Apex Town Council on the 28th day of November 2023;

WHEREAS, the Apex Town Council held a public hearing on the 28th day of November 2023. Amanda Bunce, Current Planning Manager, presented the Planning Board's recommendation at the public hearing;

WHEREAS, all persons who desired to present information relevant to the application for #23CZ16 were allowed to present evidence at the public hearing before the Apex Town Council. No one who wanted to speak was turned away;

WHEREAS, the Apex Town Council finds that the approval of the rezoning is consistent with the 2045 Land Use Plan and other adopted plans in that: The 2045 Land Use Map designates this area as Mixed Use: High Density Residential/Office Employment/Commercial Services & Medium Density Residential. This designation on the 2045 Land Use Map includes the zoning district Planned Unit Development-Conditional Zoning (PUD-CZ) and the Apex Town Council has further considered that the rezoning to Planned Unit Development-Conditional Zoning (PUD-CZ) will allow development to accommodate the growth in population, economy, and infrastructure consistent with that contemplated by the 2045 Land Use Map;

WHEREAS, the Apex Town Council finds that the approval of the rezoning is reasonable and in the public interest in that: The rezoning will provide additional flexibility for architectural design that will maintain compatibility with adjacent developments and a condition was added to address concerns from neighbors that will prevent construction traffic from using Butterfinger Lane (a private road) and the public streets within the newly constructed residential sections of Friendship Station to the south; and

WHEREAS, the Apex Town Council by a vote of 4 to 0 approved Application #23CZ16 rezoning the subject tract located at 0 Humie Olive Road from Planned Unit Development-Conditional Zoning (PUD-CZ #18CZ02) to Planned Unit Development-Conditional Zoning (PUD-CZ).

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF APEX

Section 1: The lands that are the subject of the Ordinance are those certain lands described in Attachment “A” – Legal Description which is incorporated herein by reference, and said lands are hereafter referred to as the “Rezoned Lands.”

Section 2: The Town of Apex Unified Development Ordinance, including the Town of Apex North Carolina Official Zoning District Map which is a part of said Ordinance, is hereby amended by changing the zoning classification of the “Rezoned Lands” from Planned Unit Development-Conditional Zoning (PUD-CZ

Ordinance Amending the Official Zoning District Map #23CZ16

#18CZ02) to Planned Unit Development-Conditional Zoning (PUD-CZ) District, subject to the conditions stated herein.

Section 3: The Planning Director is hereby authorized and directed to cause the said Official Zoning District Map for the Town of Apex, North Carolina, to be physically revised and amended to reflect the zoning changes ordained by this Ordinance.

Section 4: The "Rezoned Lands" are subject to the conditions in Attachment "B" Friendship Station PUD which are imposed as part of this rezoning.

Section 5: The "Rezoned Lands" shall be perpetually bound to the conditions imposed including the uses authorized, unless subsequently changed or amended as provided for in the Unified Development Ordinance. Site plans for any development to be made pursuant to this amendment to the Official Zoning District Map shall be submitted for site plan approval as provided for in the Unified Development Ordinance.

Section 6: This Ordinance shall be in full force and effect from and after its adoption.

Motion by Council Member _____

Seconded by Council Member _____

With ____ Council Member(s) voting "aye."

With ____ Council Member(s) voting "no."

This the ____ day of _____ 2024.

TOWN OF APEX

Mayor

ATTEST:

Allen Coleman, CMC, NCCCC
Town Clerk

APPROVED AS TO FORM:

Town Attorney

Smith & Smith Surveyors, P.A.
P.O. Box 457
Apex, N.C. 27502
(919) 362-7111
Firm License No. C-0155

Lying and being in Town Of Apex, Buckhorn Township, Wake County, North Carolina and described more fully as follows to wit:

BEGINNING at the westernmost corner for Mary Evans (D.B. 7703, PG. 60) an existing iron pipe with pointers, also being a common corner for TRACT 3 & TRACT 1A (B.M. 2020, PG. 1428); thence with TRACT 1A, a new property line South 00° 58' 42" West, 153.72 feet to an iron pipe set; thence with TRACT 1A, a new property line North 88° 43' 21" West, 93.92 feet to an iron pipe set; thence North 00° 53' 35" West, 493.06 feet to an existing iron pipe; thence North 00° 58' 34" East, 255.71 feet to an existing magnetic nail in Humie Olive Road (NCSR 1142); thence North 55° 45' 08" East, 3.24 feet to an existing magnetic nail in Humie Olive Road; thence North 57° 39' 40" East, 76.55 feet to an existing magnetic nail in Humie Olive Road; thence North 59° 10' 23" East, 52.24 feet to an existing railroad spike in Humie Olive Road; thence South 02° 26' 36" West, 15.75 feet to an existing magnetic nail in Humie Olive Road; thence North 66° 48' 27" East, 170.31 feet to an existing iron pipe in Humie Olive Road; thence North 76° 09' 44" East, 176.80 feet to an existing iron pipe in Humie Olive Road; thence South 00° 45' 35" East, 367.22 feet to an existing iron pipe in Butterfinger Lane (30' Private Road); thence a curve to the left South 39° 27' 02" West, 64.96 feet (chord), 50.00 feet (radius) to an existing iron pipe; thence South 41° 30' 50" West, 457.89 feet to the BEGINNING, containing 5.864 total acres (255,446 SQ. FT.) more or less.

The above-described area is recorded in:
D.B. 18016, PG. 1075
B.M. 2020, PG. 1428 (TRACT 3)
PIN 0721-30-6888

This description prepared for the sole purpose to rezone a property and for no other use.

PRELIMINARY



221 N. SALEM ST, SUITE 001
PO BOX 1062
APEX, NC. 27502
Office: 919-387-1174
Fax: 919-387-3375
www.jonescnossen.com

October 26, 2023

Liz Loftin – Town of Apex Senior Planner
Town of Apex Planning Department
P.O. Box 250
Apex, North Carolina 27502

RE: PUD Amendment Letter
Friendship Station PUD – Section 3
Pin No: 0721-30-6888

This letter is submitted to the Town of Apex for the purpose of amending Conditional Zoning #18CZ02 Friendship Station, A Planned Unit Development, by the following:

1. The appended colored elevations for condominiums, which are an allowable use within Section 3 of Friendship Station PUD, are proposed to be added to the list of condominium-style products provided in the original conditional zoning for Section 3.
2. The following zoning condition is proposed to be added to the PUD:
 - *During development of PIN #0721-30-6888 in Section 3, construction vehicles shall only be permitted to access the site from Humie Olive Road.*

No changes to project size, land use, or density are being requested as part of this PUD Amendment. The purpose of this Amendment is solely to add the appended elevations and one zoning condition to the PUD.

If you have any questions, please feel free to contact our office at any time.

Regards,

Patrick L. Kiernan, P.E.
Jones & Cnossen Engineering, PLLC

2332 PUD Amendment Letter

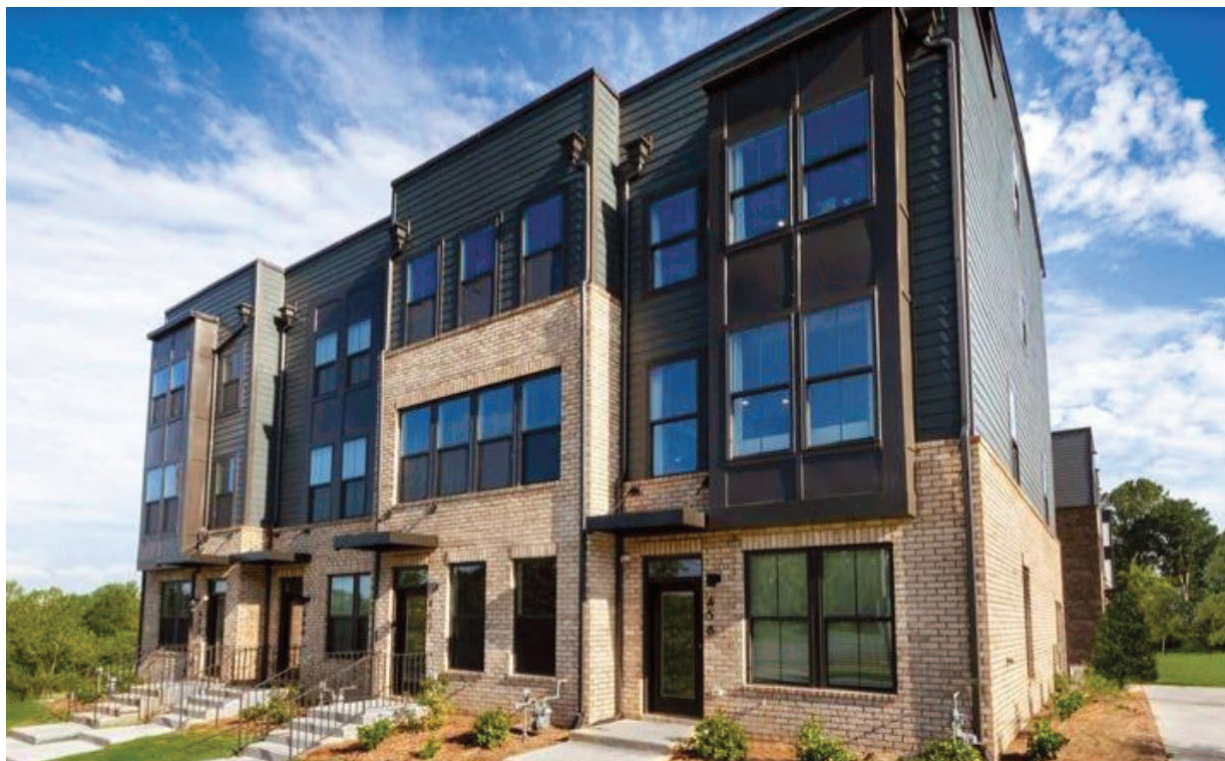
POSSIBLE CONDOMINIUM ELEVATIONS - SECTION 3



3 -
S
T
O
R
Y



POSSIBLE CONDOMINIUM ELEVATIONS - SECTION 3





| Agenda Item | cover sheet

for consideration by the Apex Town Council

Item Type: CONSENT AGENDA

Meeting Date: January 9, 2024

Item Details

Presenter(s): Russell Dalton, P.E., Traffic Engineering Manager

Department(s): Transportation & Infrastructure Development

Requested Motion

Motion to approve North Carolina Department of Transportation (NCDOT) Certification of Municipal Declaration to Enact Speed Limits and Request for Concurrence for a 45-mph speed limit on Olive Chapel Rd between New Hill Olive Chapel Road and Apex Peakway, and revert the speed limit to 35-mph on Olive Chapel Road between Apex Peakway and NC 55 as its within municipal limits.

Approval Recommended?

Yes

Item Details

NCDOT proposes to repeal the current 45 mph speed limit ordinance on Olive Chapel Road from New Hill Olive Chapel Rd to NC 55 and enact a new 45 mph speed limit ordinance, from New Hill Olive Chapel Rd to Apex Peakway, removing the section east of Apex Peakway from the 45-mph speed limit ordinance so it can revert to a statutory 35 mph within municipal limits. Olive Chapel Rd west of Apex Peakway will remain 45 mph after the ordinance is enacted.

The speed limit reduction east of Apex Peakway is being proposed in conjunction with a reduction in travel lanes and addition of bike lanes along that section of Olive Chapel Road as part of the NCDOT resurfacing contract in 2024. Apex Engineering and Planning staff coordinated with NCDOT, prepared plans and provided traffic data including three (3) speed studies along the corridor. The data for the section east of Apex Peakway showed an average speed of 36.7 mph and an 85th-percentile speed of 41 mph for the current 45 mph posting. The lower posted speed in combination with the new pavement marking plan is anticipated to further reduce average and 85th-percentile speeds to increase driver compliance. Speed data further west showed significantly higher average and 85th-percentile speeds, and NCDOT did not recommend a speed limit reduction west of the Peakway at this time based primarily on concerns with potential for increased driver non-compliance.

Attachments

- CN12-A1: Certification of Municipal Declaration to Enact Speed Limits and Request for Concurrence, Concurring State Ordinance Number 1084794 and corresponding map - Speed Limit Concurrence - North Carolina Department of Transportation (NCDOT) - Olive Chapel Road between New Hill Olive Chapel Road and Apex Peakway, 45mph
- CN12-A2: Olive Chapel Rd speed study results (3 locations) - Speed Limit Concurrence - North Carolina Department of Transportation (NCDOT) - Olive Chapel Road between New Hill Olive Chapel Road and Apex Peakway, 45mph



**Certification of Municipal Declaration
To Enact Speed Limits and Request for Concurrence**

Concurring State Ordinance Number: 1084794

Division: 5 **County:** WAKE

Municipality APEX

Type: Municipal Speed Zones

Road: SR 1160

Car: 45 MPH

Truck: 45 MPH

Description: On SR 1160 (Olive Chapel Rd) between SR 1141 (New Hill Olive Chapel Rd) and Apex Peakway.

Municipal Certification

I, _____, Clerk of _____, do hereby certify that the municipal governing body, pursuant to the authority granted by G.S. 20-141(f), determined upon the basis of an engineering and traffic investigation and duly declared, on the _____ day of _____, 20____, the speed limits as set forth above on the designated portion of the State Highway System, which shall become effective when the Department of Transportation has passed a concurring ordinance and signs are erected giving notice of the authorized speed limit.

The said municipal declaration is recorded as follows:

Minute Book: _____ Page: _____ Ordinance Number: _____

In witness whereof, I have hereunto set my
hand and the municipal seal this _____ day
of _____, 20_____.

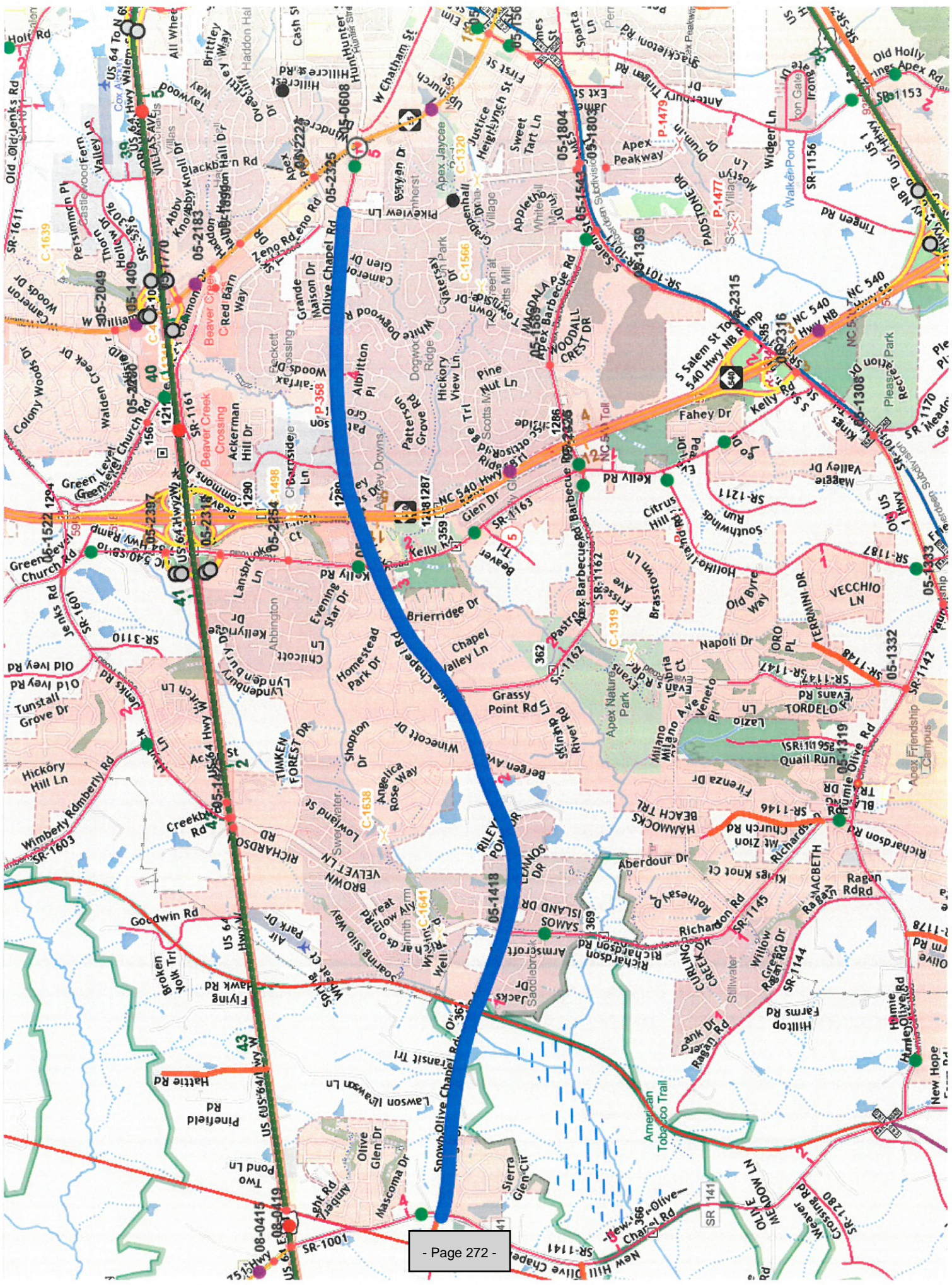
(signature)

(municipal seal)

Department of Transportation Approval

Division: _____ Title: _____ Date: _____

Region: _____ Title: _____ Date: _____





Transportation and Infrastructure Development

Traffic Calming Study Date: 5/22/2023 – 5/26/2023

Study by: Sajid Hassan

Location: Olive Chapel Rd (SR 1160) – East of Apex Peakway



STATISTICS

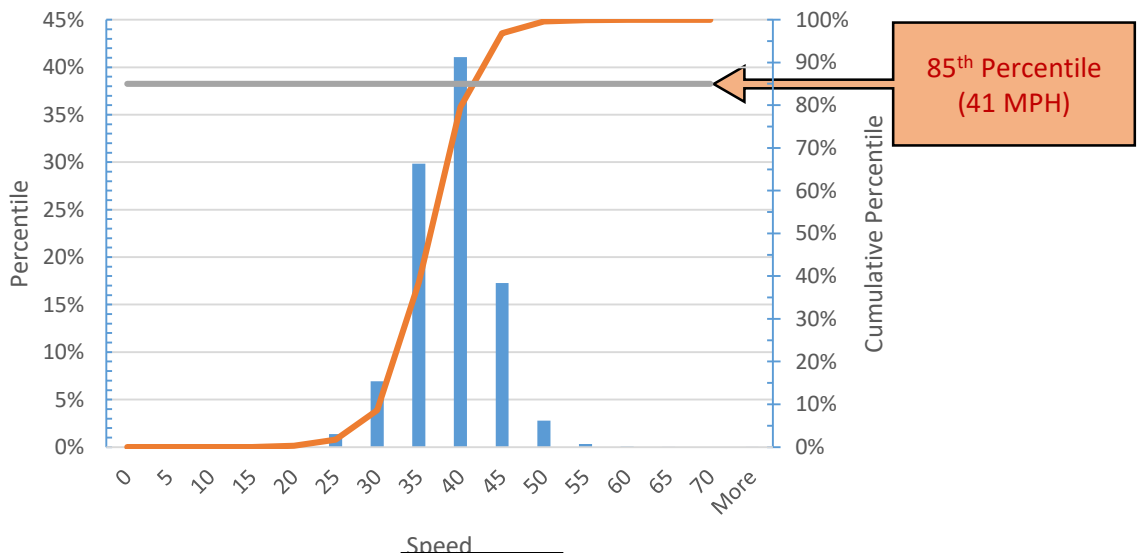
Total Vehicle Count = 37,016 vpd
Average Daily Traffic = 8,897 vpd
Posted Speed limit = 45 mph
Average Speeds = 36.7 mph
85th %tile Speed = 41 mph
% Speeders (>50mph) = 0.4%
% Heavy vehicle speeders = 0.01%

★ Traffic counter location

○ Zone of detection

RESULTS OF STUDY

Speed Distribution

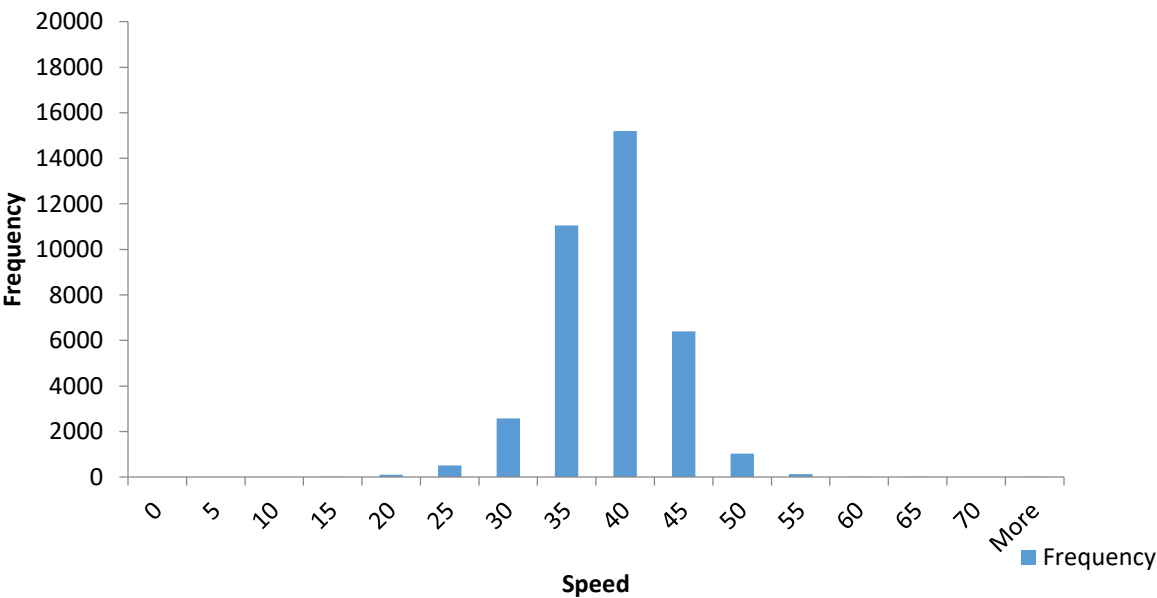




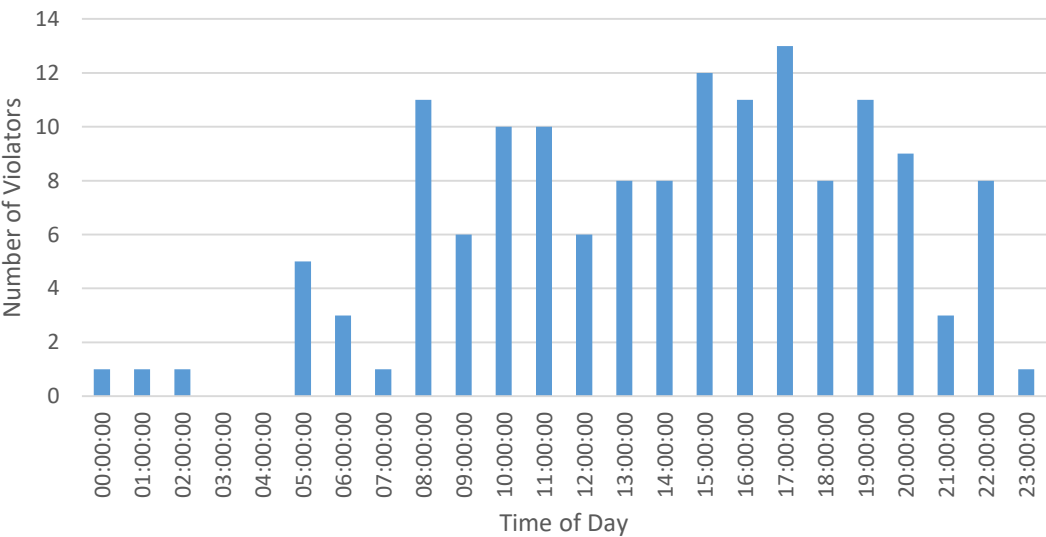
Traffic Calming Study
Date: 5/22/2023 – 5/26/2023

Study by: Sajid Hassan
Location: Olive Chapel Rd (SR 1160) – East of Apex Peakway

Speed Data



Time of Day Violations (>50 mph)



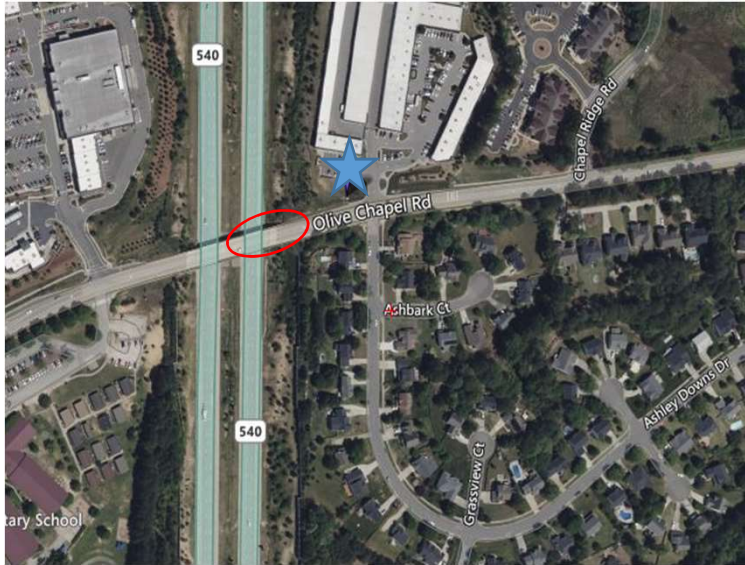


Transportation and Infrastructure Development

Traffic Calming Study Date: 4/26/2023 – 5/3/2023

Study by: Sajid Hassan

Location: Olive Chapel Rd (SR 1160) – At NC 540 Bridge (west of Ashley Downs Dr)



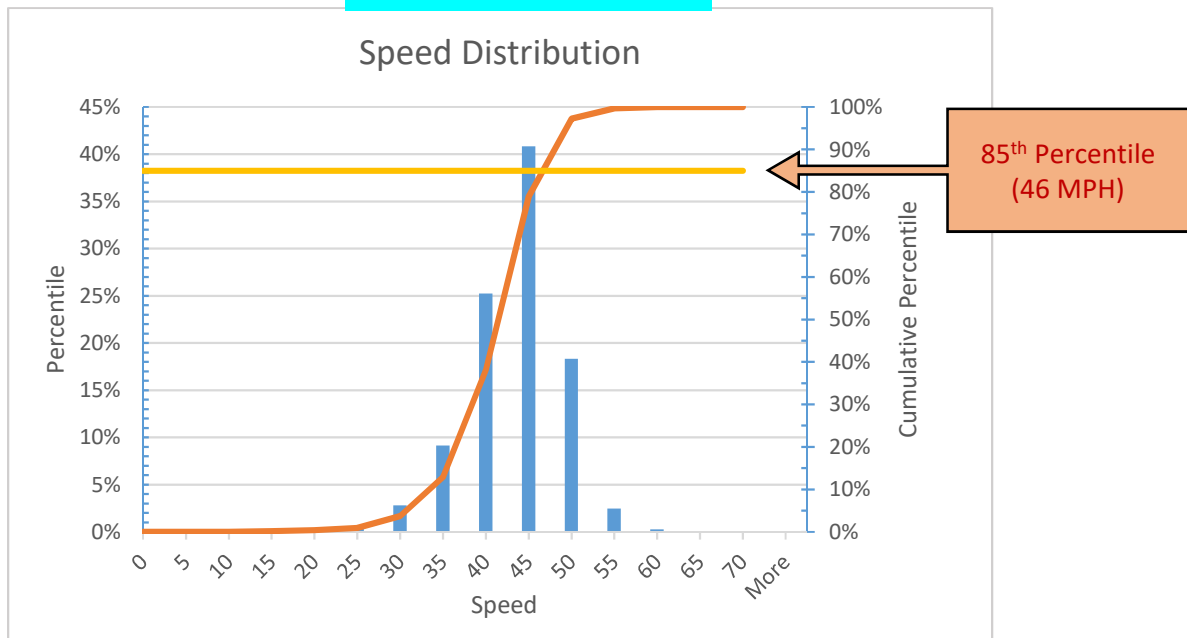
STATISTICS

Total Vehicle Count = 70,053 vpd
Average Daily Traffic = 10,854 vpd
Posted Speed limit = 45 mph
Average Speeds = 41.4 mph
85th %tile Speed = 46 mph
% Speeders (>50mph) = 3%
% Heavy vehicle speeders = 1.1%

★ Traffic counter location

○ Zone of detection

RESULTS OF STUDY



TOWN OF APEX

The Peak of Good Living

PO Box 250 Apex, NC 27502 | (919) 349-3400 | www.apexnc.org

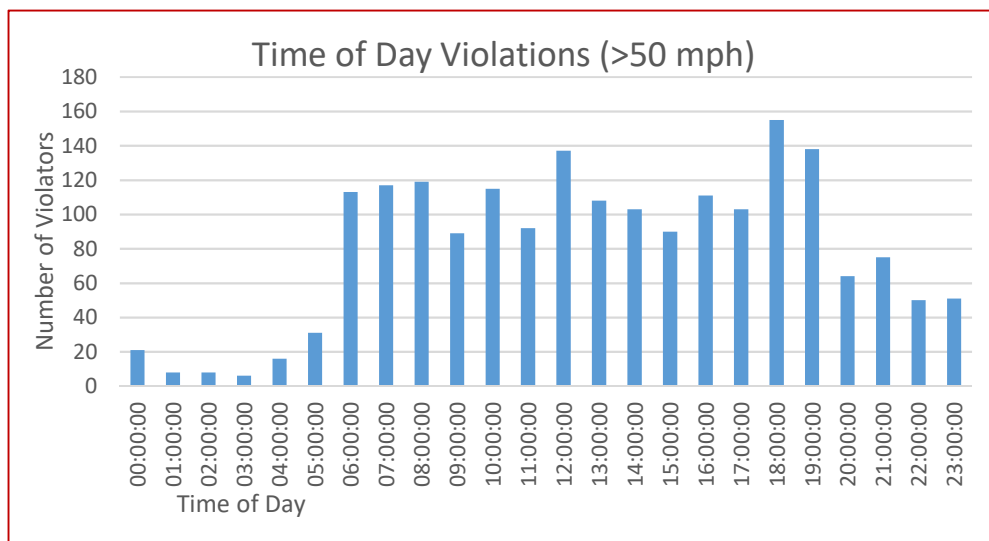
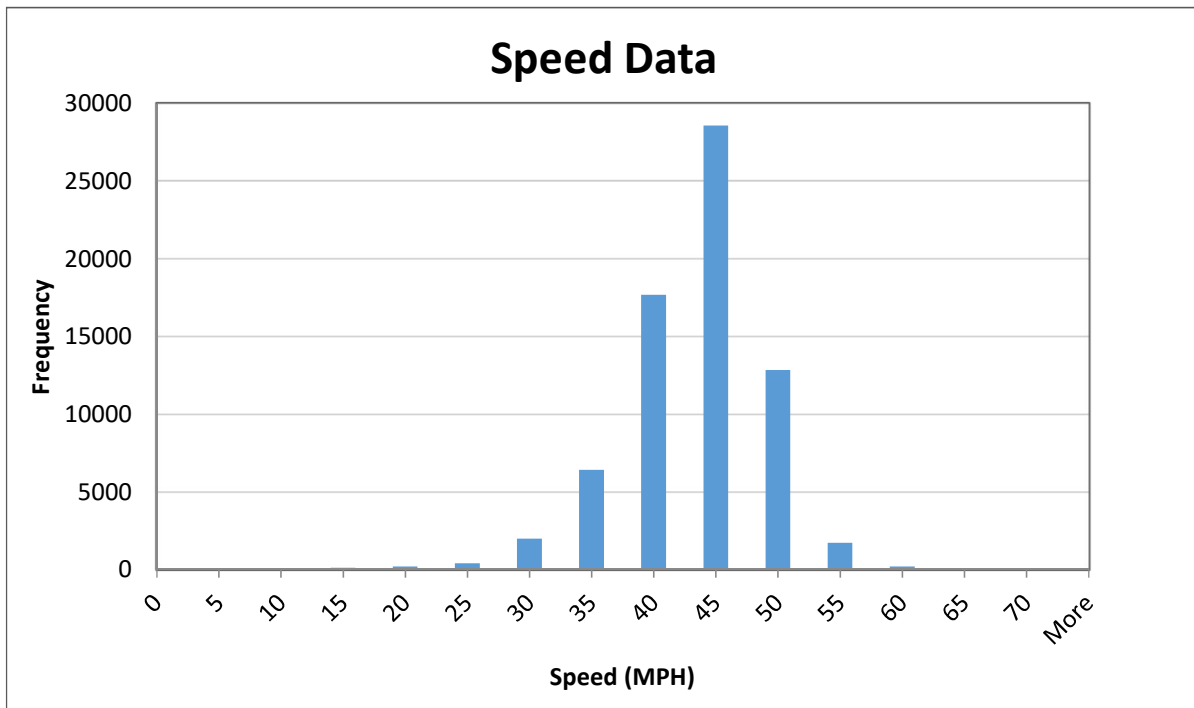


Transportation and Infrastructure Development

Traffic Calming Study Date: 4/26/2023 – 5/3/2023

Study by: Sajid Hassan

Location: Olive Chapel Rd (SR 1160) – At NC 540 Bridge (west of Ashley Downs Dr)



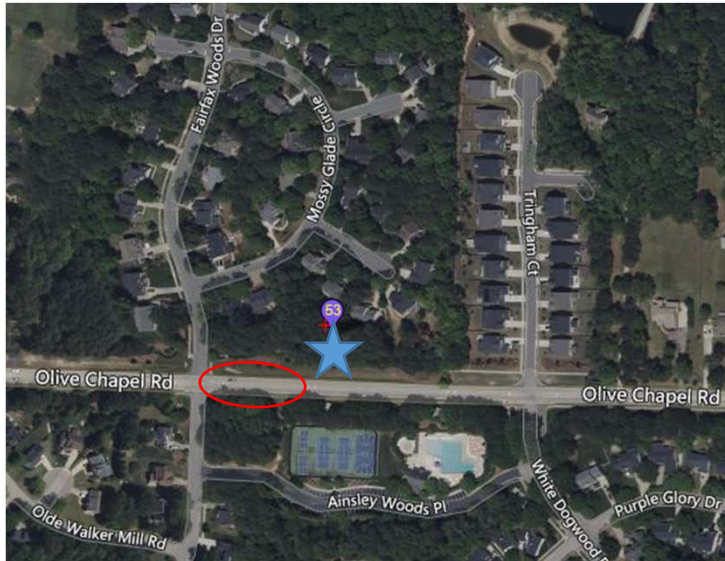


Transportation and Infrastructure Development

Traffic Calming Study Date: 4/26/2023 – 5/3/2023

Study by: Sajid Hassan

Location: Olive Chapel Rd (SR 1160) – Between White Dogwood and Fairfax Woods



★ Traffic counter location

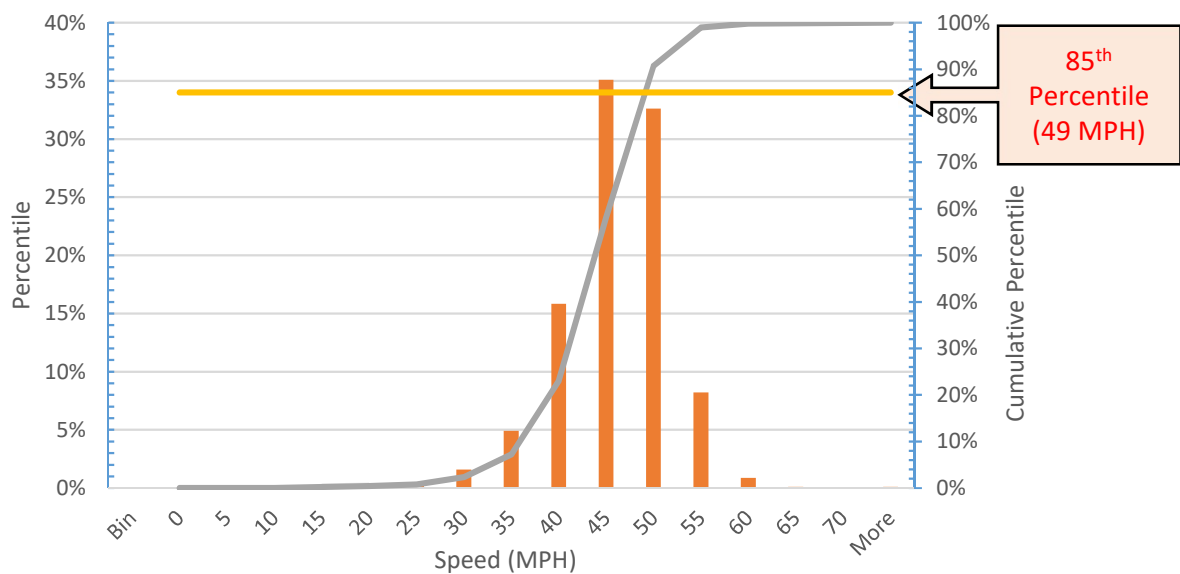
○ Zone of detection

STATISTICS

Total Vehicle Count = 70,468 vpd
Average Daily Traffic = 10,849 vpd
Posted Speed limit = 45 mph
Average Speeds = 43.9 mph
85th %tile Speed = 49 mph
% Speeders (>50mph) = 9%
% Heavy vehicle speeders = 1.8%

RESULTS OF STUDY

Speed Distribution



TOWN OF APEX

The Peak of Good Living

PO Box 250 Apex, NC 27502 | (919) 349-3400 | www.apexnc.org

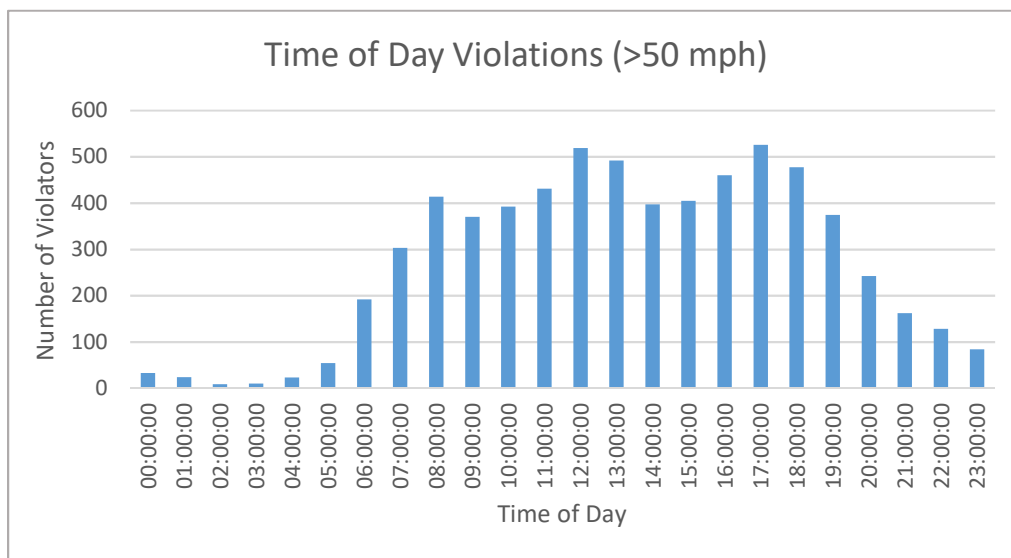
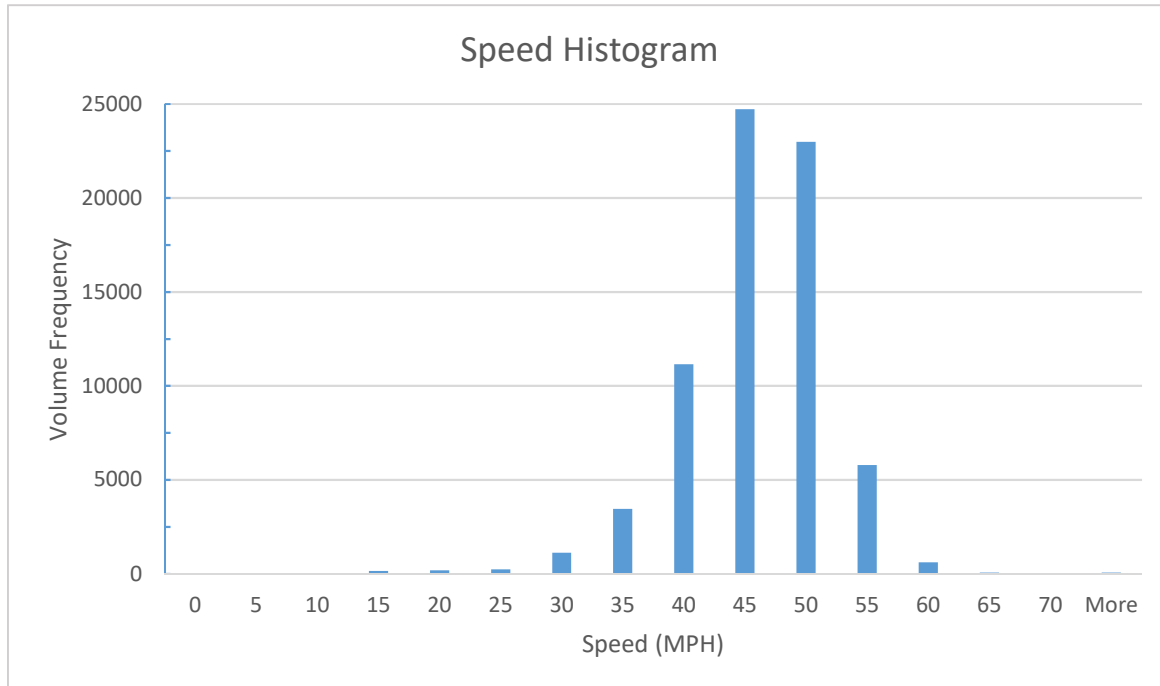


Transportation and Infrastructure Development

Traffic Calming Study Date: 4/26/2023 – 5/3/2023

Study by: Sajid Hassan

Location: Olive Chapel Rd (SR 1160) – Between White Dogwood and Fairfax Woods



| Agenda Item | cover sheet

for consideration by the Apex Town Council

Item Type: CONSENT AGENDA

Meeting Date: January 9, 2024

Item Details

Presenter(s): Allen Coleman, Town Clerk

Department(s): Town Clerk's Office

Requested Motion

Motion to approve Apex Tax Reports dated December 11, 2023.

Approval Recommended?

Yes

Item Details

The Wake County Board of Commissioners, in regular session on January 2, 2024, approved and accepted the enclosed tax report for the Town of Apex, dated December 11, 2023 for the period of November 1, 2023 through November 30, 2023.

Attachments

- CN13-A1: Tax Report for November 2023





Board of Commissioners

P.O. Box 550 • Raleigh, NC 27602

TEL 919 856 6180
FAX 919 856 5699

SHINICA THOMAS, CHAIR
SUSAN EVANS, VICE-CHAIR
VICKIE ADAMSON
MATT CALABRIA
DON MIAL
CHERYL STALLINGS
TARA WATERS

January 3, 2024

Mr. Allen Coleman
Town Clerk
Town of Apex
Post Office Box 250
Apex, North Carolina 27502

Dear Mr. Coleman:

The Wake County Board of Commissioners, in regular session on January 2, 2024, approved and accepted the enclosed tax report for the Town of Apex.

The attached adopted actions are submitted for your review; no local board action is required.

Sincerely,

A handwritten signature in black ink, appearing to read "Yvonne Gilyard", written over a horizontal line.

Yvonne Gilyard
Clerk to the Board
Wake County Board of Commissioners

Enclosure(s)



Wake County Tax Administration

Rebate Details

11/01/2023 - 11/30/2023

APEX

DATE

12/11/2023

TIME

10:52:24 AM

PAGE

1

REBATE NUMBER	PROPERTY	CITY TAG	LATE LIST	BILLED INTEREST	TOTAL REBATED	PROCESS DATE	ACCOUNT NUMBER	TAX YEAR	BILLING FOR	OWNER
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BUSINESS ACCOUNTS

864564	137.50	0.00	13.75	0.00	151.25	11/21/2023	0006986901	2023	2023	000000	ON CENTER LIFE LLC
863338	0.00	0.00	135.55	0.00	135.55	11/08/2023	0006141015	2023	2023	000000	AVALON PEAKS APTS
862924	0.00	0.00	23.31	0.00	23.31	11/06/2023	0006877116	2023	2023	000000	FEDEX OFFICE & PRINT SERVICES INC
862909	0.00	0.00	24.71	0.00	24.71	11/06/2023	0006820115	2023	2023	000000	MATTRESS FIRM INC
864292	137.50	0.00	13.75	0.00	151.25	11/17/2023	0006990818	2023	2023	000000	CONTENT RESULTS LLC
862470	4.32	0.00	0.43	0.00	4.75	11/02/2023	0006443613	2023	2023	000000	NARDIN, EILEEN B
865162	2,488.55	0.00	248.85	0.00	2,737.40	11/29/2023	0006903473	2023	2023	000000	BEE SAFE CREEKSIDE LLC
865312	140.36	0.00	0.00	0.00	140.36	11/30/2023	0006477227	2023	2023	000000	PTS LAND SURVEYING PLLC
865034	1,694.41	0.00	169.44	0.00	1,863.85	11/29/2023	0006967383	2023	2023	000000	REYKHA CARE AND EDUCATION LLC
862970	137.50	0.00	13.75	0.00	151.25	11/06/2023	0006991510	2023	2023	000000	AFL ENTERPRISE SERVICES INC
862975	0.00	0.00	16.14	0.00	16.14	11/06/2023	0006991626	2023	2023	000000	LEVOLOR INC
862988	0.00	0.00	0.27	0.00	0.27	11/06/2023	0006707784	2023	2023	006000	ADVANTAGE SALES & MARKETING LLC
863129	0.00	0.00	216.77	0.00	216.77	11/07/2023	0006884329	2023	2023	000000	ALDI (NC) LLC #66153
863137	0.00	0.00	3.00	0.00	3.00	11/07/2023	0006150517	2023	2023	006000	DISH NETWORK LLC
863335	0.00	0.00	58.65	0.00	58.65	11/08/2023	0006824312	2023	2023	000000	MATTRESS FIRM INC
862944	0.00	0.00	2.51	0.00	2.51	11/06/2023	0006967762	2023	2023	006000	AMAZON.COM SERVICES INC

SUBTOTALS FOR BUSINESS ACCOUNTS	4,740.14	0.00	940.88	0.00	5,681.02	16	Properties Rebated
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INDIVIDUAL
PROPERTY ACCOUNTS

864563	6.99	0.00	0.70	0.00	7.69	11/21/2023	0006743004	2023	2023	000000	ANDERSON, MICHAEL EDWARD
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Wake County Tax Administration

Rebate Details

11/01/2023 - 11/30/2023

APEX

PAGE

TIME

10:52:36 AM

2

DATE

12/11/2023

OWNER

BILLING

TAX YEAR

ACCOUNT

PROCESS

REBATED

DATE

INTEREST

LATE LIST

CITY TAG

PROPERTY

REBATE NUMBER

INDIVIDUAL

PROPERTY ACCOUNTS

864562	7.24	0.00	0.72	7.96	11/21/2023	0006743004	2022	2022	000000	ANDERSON, MICHAEL EDWARD
864561	7.65	0.00	0.76	8.41	11/21/2023	0006743004	2021	2021	000000	ANDERSON, MICHAEL EDWARD
864037	2.64	0.00	0.26	2.90	11/15/2023	0006896450	2023	2023	000000	LOMBARDI, STEVEN JOSEPH
863775	1.76	0.00	0.17	1.93	11/14/2023	0006811774	2023	2023	000000	CARTER, LAWRENCE TYREE
863773	4.40	0.00	0.44	4.84	11/14/2023	0006986565	2023	2023	000000	TERMINIELLO, JOSEPH KENNETH
862900	6.16	0.00	0.62	6.78	11/06/2023	0006923663	2023	2023	000000	LEWIS, DANIEL DARWIN
862770	7.80	0.00	0.78	8.58	11/03/2023	0005887431	2021	2021	000000	MCKOY, OTHA
862768	6.33	0.00	0.63	6.96	11/03/2023	0005887431	2020	2020	000050	MCKOY, OTHA
863491	3.85	0.00	0.39	4.24	11/13/2023	0006926183	2023	2023	000000	WOODS, TIMOTHY PATRICK
865309	7.78	0.00	0.78	8.56	11/30/2023	0006741684	2023	2023	000000	MUTCH LANDSCAPING INC
865180	16.21	0.00	1.62	17.83	11/30/2023	0006552130	2023	2023	000000	BROUER, ROBERT LEE

Properties Rebated

12

86.68

0.00

7.87

0.00

78.81

SUBTOTALS FOR INDIVIDUAL PROPERTY ACCOUNTS

INDIVIDUAL REAL

ESTATE ACCOUNTS

862466	433.66	0.00	0.00	433.66	11/07/2023	0000367123	2023	2023	000000	STEPHENSON, JULIAN C JR
862457	159.51	0.00	0.00	159.51	11/07/2023	0000427315	2023	2023	000000	KAPPEL, KRISTY
864871	506.25	0.00	0.00	506.25	11/27/2023	0000011244	2023	2023	000000	CANNADY, BRENDA

Properties Rebated

3

1,099.42

0.00

0.00

0.00

1,099.42

SUBTOTALS FOR INDIVIDUAL REAL ESTATE ACCOUNTS



Wake County Tax Administration

Rebate Details

11/01/2023 - 11/30/2023

APEX

DATE

12/11/2023

TIME

10:52:36 AM

PAGE

3

REBATE NUMBER	PROPERTY	CITY TAG	LATE LIST	BILLED INTEREST	TOTAL REBATED	PROCESS DATE	ACCOUNT NUMBER	TAX YEAR	BILLING YEAR	OWNER
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WILDLIFE BOAT
ACCOUNTS

865313	49.70	0.00	4.97	0.00	54.67	11/30/2023	0004213086	2023	000000	NGUYEN, MINH XUAN
865033	17.09	0.00	1.71	0.00	18.80	11/29/2023	0004192621	2023	000000	JNAH, ERIC

SUBTOTALS FOR WILDLIFE BOAT ACCOUNTS	66.79	0.00	6.68	0.00	73.47		2	Properties Rebated		
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TOTAL REBATED FOR APEX	5,985.16	0.00	955.43	0.00	6,940.59		33	Properties Rebated for City		
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| Agenda Item | cover sheet

for consideration by the Apex Town Council

Item Type: PRESENTATION

Meeting Date: January 9, 2024

Item Details

Presenter(s): Antwan Morrison, Director

Department(s): Finance

Requested Motion

Receive as information the Fiscal Year Ended June 30, 2023 financial audit report from the external auditors.

Approval Recommended?

Yes

Item Details

Cherry Bekaert, the Town of Apex's external auditor, will present the audited financial report and management letter for the fiscal year from July 1, 2022 through June 30, 2023.

During the meeting, the auditors will share all relevant information, including but not limited to the expressed audit opinion, concerns, recommendations, as well as the financial performance of the town for the fiscal year of 2022-2023.

According to North Carolina General Statute § 159-34, each local government and public authority shall have its accounts audited as soon as possible after the close of each fiscal year by a certified public accountant or by an accountant certified by the Commission as qualified to audit local government accounts.

It is the auditor's responsibility to express opinions on these financial statements based on the audit. The Government Auditing Standards require that they plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatements. The audit shall evaluate the performance of a unit of local government with regard to compliance with applicable federal and State agency regulations.

Attachments

- Fiscal Year 2023 Audit PowerPoint Overview **(to be provided at the meeting)**





"The Peak of Good Living"

TOWN OF APEX NORTH CAROLINA

Proclamation

Honoring the Legacy of Dr. Martin Luther King, Jr. 2024

from the Office of the Mayor

WHEREAS, The Town of Apex recognizes the indelible impact of Dr. Martin Luther King, Jr., a champion of civil rights, justice, and equality; and,

WHEREAS, Through collaborative efforts with Community Partners, the Town of Apex is honored to announce the 4th Annual Dr. Martin Luther King, Jr. Commemoration Weekend, scheduled for January 12th-15th; and,

WHEREAS, This commemorative weekend seeks to honor Dr. King's legacy and inspire the community to reflect on the enduring values of resilience, unity, and perseverance through this year's theme of a "Legacy of Resilience"; and,

WHEREAS, The commemorative events throughout the weekend will include a Black Authors Exhibit, Student Presentations, a March, and many other events and opportunities for reflection, education, and community engagement, which are designed around the principles championed by Dr. King; and,

WHEREAS, The Town of Apex is committed to fostering an environment that values diversity, promotes inclusion, and inspires the community to continue the work of realizing Dr. King's dream.

NOW, THEREFORE, I, Jacques K. Gilbert, Mayor of Apex, North Carolina, do hereby proclaim January 12th through January 15th, 2024, Dr. Martin Luther King, Jr. Commemoration Weekend, and further proclaim Monday, January 15th, 2024, Dr. Martin Luther King, Jr. Day in the Town of Apex. I encourage all residents to join the celebrations and events throughout the weekend commemorating Dr. King and his incredible legacy.

I hereby set my hand and have caused the Seal of the Town of Apex, North Carolina, to be affixed this the 9th day of January 2024

Jacques Gilbert, Mayor



"The Peak of Good Living"

TOWN OF APEX
NORTH CAROLINA

Proclamation

Human Trafficking Prevention Month 2024

from the Office of the Mayor

WHEREAS, Human trafficking is the recruitment, harboring, transportation, provision, or obtaining of a person through the use of force, fraud, or coercion, for the purpose of forced labor or sexual servitude; and,

WHEREAS, Human trafficking is an international crisis that impacts people across the United States, including in North Carolina; and,

WHEREAS, According to the Bureau of Justice Statistics, the number of persons prosecuted for human trafficking more than doubled from 2011 to 2021; and,

WHEREAS, While human trafficking has been documented to affect individuals of all genders and socioeconomic statuses, women, girls, and economically disadvantaged individuals are more likely to be trafficked, and,

WHEREAS, The Town of Apex stands resolute in its commitment to supporting the organizations and programs that help fill critical gaps in the prevention of human trafficking and the supporting of its survivors.

NOW, THEREFORE, I, Jacques K. Gilbert, Mayor of Apex, North Carolina, do hereby proclaim the Month of January 2024, Human Trafficking Prevention Month in the Town of Apex, and encourage all residents to support measures that seek to eliminate the blight of human trafficking from our society.

I hereby set my hand and have caused the Seal of the Town of Apex, North Carolina, to be affixed this the 9th day of January 2024

Jacques Gilbert, Mayor

| Agenda Item | cover sheet

for consideration by the Apex Town Council

Item Type: PUBLIC HEARING

Meeting Date: January 9, 2024

Item Details

Presenter(s): Amanda Grogan, Director

Department(s): Budget & Performance Management

Requested Motion

Public Hearing to receive citizen input regarding the formulation of the Fiscal Year 2024-2025 Annual Operating Budget - First Public Hearing.

Approval Recommended?

Yes

Item Details

It has been the custom of the Apex Town Council to hold a Public Hearing in advance of the preparation of the proposed Annual Budget so that comments and suggestions of citizens can be considered while the budget document is formulated. This Pre-Budget Hearing has been advertised on the Town's website, social media, and posted in the lobby at Town Hall.

A budget prioritization tool for citizen input has been developed and will be available on the Town's website. The tool consists of a short survey that classifies focus areas under the Town's 5 strategic goals (High Performing Government, A Welcoming Community, Environmental Leadership, Economic Vitality and Responsible Development)) allows the public to rank components of each in order of importance to them. The results will be provided to Town Council at their annual retreat.

Any written comments received by USPS or through the advertised special email address, annual.budget@apexnc.org, will be forwarded to Town Council.

Attachments

- PH1-A1 - Notice of Public Hearing - Fiscal Year 2024-2025 Annual Operating Budget - First Public Hearing





"The Peak of Good Living"

OFFICE OF THE TOWN CLERK

TOWN OF APEX NORTH CAROLINA

Media Contact:

Allen Coleman, Town Clerk to the Apex Town Council

FOR IMMEDIATE RELEASE

PUBLIC NOTICE – PUBLIC HEARING

APEX, N.C. (December 29, 2023) – The Apex Town Council provides notice of a Public Hearing during its regularly scheduled Town Council Meeting on **Tuesday, January 9, 2024** at **6:00 PM** to receive input on the town's annual operating budget for fiscal year 2024-2025. This meeting will be held at the Apex Town Hall located at 73 Hunter Street in Apex, North Carolina.

Residents may submit written comments to the Town Council with attention marked to the Town Clerk Allen Coleman; P.O. Box 250; Apex, NC 27502 or by email at annual.budget@apexnc.org. Please use subject line "FY24-25 Budget - Public Comment" and include your first and last name, your address, and your phone number in your written statements. Written comments will be accepted until 3:00 PM on Tuesday, January 9, 2024.

Members of the public can access and view the meeting on the Town's YouTube Channel <https://www.youtube.com/c/TownofApexGov> or attend in-person.

Anyone needing special accommodations to attend this meeting and/or if this information is needed in an alternative format, please contact the Town Clerk's Office. The Town Clerk is located at 73 Hunter Street in Apex Town Hall on the 2nd Floor, (email) allen.coleman@apexnc.org or (phone) 919-249-1260. We request at least 48 hours' notice prior to the meeting to make the appropriate arrangements.

For more information, please contact the Town Clerk's Office at 919-249-1260.

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| Agenda Item | cover sheet

for consideration by the Apex Town Council

Item Type: PUBLIC HEARING

Meeting Date: January 9, 2024

Item Details

Presenter(s): Amanda Bunce, Current Planning Manager

Department(s): Planning

Requested Motion

Public Hearing and possible motion regarding various amendments to the Unified Development Ordinance (UDO).

Approval Recommended?

The Planning Department recommends approval.

The Planning Board heard these amendments at their December 11, 2023 meeting and unanimously recommended approval.

Item Details

Requested by Planning Staff:

1. Amendments to Sec. 12.2 *Terms Defined* in order to expand the boundaries of the Downtown Festival District.
2. Amendments to Sec. 7.5.4.E *Public Access Requirements* in order to remove standards related to the required number of points of access for new residential developments in order to generally rely on Appendix D of the North Carolina International Fire Code.
3. Amendments to Sec. 6.1.11 *Uses Permitted Within the Riparian Buffer* in order to clarify that screened porches are allowed to encroach into a riparian buffer in the same manner as sheds and gazebos based on interpretation from the North Carolina Department of Environmental Quality.

Attachments

- PH2-A1: Staff Report - Unified Development Ordinance Amendments - January 2024
- PH2-A2: Planning Board Report to Town Council - Unified Development Ordinance Amendments - January 2024
- PH2-A3: Public Notice - Unified Development Ordinance Amendments - January 2024
- PH2-A4: Ordinance - Unified Development Ordinance Amendments - January 2024



STAFF REPORT

Amendments to the Unified Development Ordinance

January 9, 2024 Town Council Meeting



Requested by Planning Staff:

1. Amendments to Sec. 12.2 *Terms Defined* in order to expand the boundaries of the Downtown Festival District.

Background: In May 2022, the Downtown Festival District was created in order to allow more flexibility in the number of promotional events allowed in the downtown area and to set a reduced setback for outdoor operations of certain retail, restaurant and alcohol related uses and outdoor areas associated with promotional events than that required outside of the district.

12.2 Terms Defined

...

Downtown Festival District

The purpose and intent of the Downtown Festival District is to celebrate the Salem Street corridor and vicinity and encourage a diversity of activities and programming by allowing more outdoor entertainment options on public and private properties than in other areas of Town while being cognizant of the surrounding residential neighborhoods. Legal description of boundaries: Beginning at an iron pipe being the southwest property corner of the Town of Apex Police Department and being the northwest corner of the Kenneth E. and Cheryl H. Koch, Jr. property; thence along the western property line of the Town of Apex Police Department N 29°37'50" E 91.05' to a point; thence continuing along said property line N 30°23'22" E 13.01' to a point; thence along the same property line N 40°38'29" E 142.69' to a point on the northern right-of-way of Saunders Street; thence along the Saunders Street northern right-of-way S 64°28'48" E 19.44' to a point; thence S 64°15'35" E 89.31' to a point on the aforementioned right-of-way; thence leaving the northern right-of-way of Saunders Street the following three (3) calls: N 18°01'23" E 184.23', N 65°08'53" W 31.82', and N 02°37'34" W 87.12' to a point on the southern boundary of the Brittany Trace neighborhood; then along the southern boundary of Brittany Trace, also being the rear property line for Lots 38 through 47, the following three (3) calls: S 89°48'07" E 14.82', N 89°06'04" E 194.87', and S 88°48'57" E 398.32' to a point; thence N 89°04'55" E 16.80' to a point; thence S 88°02'04" E 272.91' to a point on the western right-of-way of North Salem Street; thence along the North Salem Street western right-of-way the following six (6) calls: N 14°58'41" E 62.09', N 18°22'46" E 40.83', N 18°51'26" E 493.54', N 17°19'26" E 95.95', N 12°19'09" E 53.97', and N 14°51'47" E 151.61' to a point in the centerline of Hunter Street; thence with the Hunter Street centerline S 75°57'32" E 104.78' to a point in the centerline of the mainline track for CSX Transportation; thence along the CSX Transportation mainline track centerline N 02°16'41" E 1282.52' to a point; thence leaving the centerline of the mainline track for CSX Transportation and following the northern property line of the Town of Apex Hunter Street Park property S 87°43'03" E 580.19' to a point in the centerline of Ambergate Station; thence with the Ambergate Station centerline the following five (5) calls: S 02°43'42" W 159.30', S 02°06'51" W 103.90', S 03°09'44" W 15.57', S 05°10'12" W 20.26', and S 07°23'46" W 1.63' to a point; thence leaving the centerline of Ambergate Station S 87°56'20" E 157.12' to a point on the western right-of-way of CSX Transportation; thence along the CSX Transportation western right-of-way S 26°14'00" W 1091.25' to a point on the northern right-of-way of Hunter Street; thence along the Hunter Street northern right-of-way S 76°01'18" E 103.87' and S 75°58'18" E 78.32' to a point also being the western right-of-way of Metro Station; thence leaving the northern right-of-way of Hunter Street and following the Metro Station western right-of-way the next three (3) calls: N 26°17'55" E 139.57', N 29°35'10"

E 20.07', and N 36°09'34" E 20.07' to a point; thence leaving the western right-of-way of Metro Station and following the centerline of Massapequa Station S 63°41'13" E 394.10' to a point; thence leaving the Massapequa Station centerline S 26°15'45" W 14.12' to a point on the eastern right-of-way of Grand Central Station; thence leaving the Grand Central Station eastern right-of-way and following the northern property line of Lot 105 (56 Hunter Street) Villages of Apex South Village – Phase 1A S 63°44'15" E 97.58' to a corner; thence crossing the Villages of Apex South Common Area and following a property line of Lot 1 Villages of Apex South N 75°06'49" E 272.40' to a point; thence continuing with the edge of said property S 79°37'44" E 169.41' to a corner; thence crossing Lot 1 S 57°13'29" E 172.79' to a point in the centerline of Laura Duncan Road (N.C.S.R. 1308); thence along the Laura Duncan Road centerline the following seven (7) calls: S 30°28'38" W 15.53', S 36°13'57" W 28.13', S 36°18'01" W 50.25', S 38°00'41" W 69.01', S 40°05'16" W 110.45', S 39°37'43" W 106.22', and S 42°26'17" W 78.36' to the intersection of Laura Duncan Road and Hunter Street; thence leaving the intersection and continuing along the North Mason Street centerline the following twelve (12) calls: S 41°38'01" W 54.75', S 40°12'33" W 85.20', S 41°26'40" W 75.54', S 39°39'03" W 66.30', S 39°31'22" W 29.69', S 35°22'20" W 29.09', S 33°41'24" W 20.46', S 31°48'32" W 25.12', S 27°58'46" W 17.85', S 28°10'00" W 27.49', S 25°34'30" W 29.63', and S 25°01'01" W 26.26' to a point; thence leaving the centerline of North Mason Street and continuing along the northern property line of Town of Apex, also being the southern limit of an abandoned railroad easement, the following three (3) calls: S 57°30'04" E 71.43', S 51°04'36" E 36.87', and S 45°31'56" E 40.38' to a point; thence crossing the aforementioned Town of Apex property S 20°27'19" W 222.17' to its southern property line; thence along the southern property line of Town of Apex N 69°32'41" W 120.00' to a point on the eastern right-of-way of North Mason Street; thence N 22°06'06" E 34.22' to a point on the North Mason Street eastern right-of-way; thence crossing the right-of-way of North Mason Street and continuing along the southern property line of Town of Apex Town Campus N 66°08'18" W 199.31' to a corner; thence along a common line between Town of Apex and Larry Mack Jordan N 22°28'32" E 162.69' and N 77°35'02" W 96.38' to a corner; thence crossing a portion of Larry Mack Jordan, Town of Apex Town Campus, and North Hughes Street, also being collinear with the southern property line of the former Tunstall Life Estate, N 64°48'43" W 716.19' to a point in the centerline of the mainline track for CSX Transportation; thence along the CSX Transportation mainline track centerline S 26°12'58" W 2880.48' 1478.49' to the southern right-of-way of East Chatham Street; thence following the East Chatham Street right-of-way, also being the property line of Apex United Methodist Church, S 64°17'14" E 441.18' to the western right-of-way of South Hughes Street; thence S 25°56'18" W 422.48' along said right-of-way to the northern right-of-way of Olive Street; thence along the northern right-of-way of Olive Street N 63°57'19" W 177.20' to a point on the northern right-of-way and being the vehicle entrance for Apex United Methodist Church; thence crossing Olive Street and following the common line between Apex United Methodist Church and the property of Jon Douglas and Margaret Anne Allen S 25°57'20" W 175.73'; thence along the southern property line of Jon Douglas and Margaret Anne Allen S 64°30'43" E 177.80' to the western right-of-way of South Hughes Street; thence along the South Hughes Street right-of-way S 25°53'38" W 225.36' to the northern right-of-way of East Moore Street; thence following the East Moore Street right-of-way N 64°23'04" W 446.69' to a point in the centerline of the mainline track for CSX Transportation; thence along the CSX Transportation mainline track centerline across East Williams Street (NC Highway 55) and continuing with a clockwise curve for approximately 2074' to the eastern right-of-way of Tingen Road (N.C.S.R. 1153); thence leaving the centerline of the mainline track and following the eastern right-of-way of Tingen Road the following three (3) calls: N 01°33'18" E 229.62', N 00°35'34" W 74.00', and N 00°01'57" W 202.14' to a point; thence leaving the Tingen Road eastern right-of-way and crossing South Salem Street (N.C.S.R. 1011) N 60°23'59" W 67.78' to a point on the western right-of-way; thence following the western South Salem Street right-of-way, also being the property line of Walter J. McClamb (Albright Funeral Home), S 29°36'02" W 42.24'; thence continuing along the western South Salem Street right-of-way and across Justice Heights Street the following three (3) calls: S 30°11'02" W 98.31', S

32°41'15" W 42.11', and S 29°27'41" W 81.33' to the southeast corner of St. Mary's African Methodist Episcopal (A.M.E.) Church; the along the southern property line of St. Mary's A.M.E. Church N 62°22'04" W 139.32'; thence along the western property line of said church and continuing across Justice Heights Street to a point in the northern right-of-way N 23°57'20" E 116.56'; thence with the Justice Heights Street right-of-way N 67°18'07" W 117.88' to the southwest corner of Walter J. McClamb; thence leaving said right-of-way, following the western property line of Walter J. McClamb and crossing West Street N 28°07'02" E 334.67'; thence along the northern West Street right-of-way to the eastern right-of-way for First Street, also being the southwest corner of Town of Apex (West Street Park) N 60°49'18" W 57.97'; thence along the eastern First Street right-of-way N 29°33'54" E 413.62' to the northwest corner of Town of Apex; thence leaving said right-of-way S 64°02'10" E 105.35' to a point in the common line of Town of Apex and Kyler L. Zadell; thence crossing Kyler L. Zadell N 29°16'02" E 49.73' to a point on the northern property line; thence along the northern property line of Kyler L. Zadell S 63°55'11" E 45.52' to a corner with KC2 Holdings, LLC; thence S 65°13'20" E 50.56' to a corner of KC2 Holdings, LLC; thence N 32°29'05" E 144.34' along the western property line of KC2 Holdings, LLC to the southern right-of-way for Harwood Street; thence across Harwood Street N 27°42'28" E 36.66' to a property corner for Sauls Investment Properties, LLC; thence along the Harwood Street northern right-of-way the following four (4) calls: N 64°00'51" W 58.43', N 64°01'22" W 48.92', N 63°54'08" W 77.36', and a curve to the right having a radius of 21.41' feet and a chord bearing and distance of N 21°34'11" W 28.85' to a point in the eastern right-of-way of First Street; thence along said right-of-way N 29°27'20" E 21.97' to the southern right-of-way of West Williams Street; thence along the southern West Williams Street right-of-way S 64°26'19" E 100.86' and S 66°54'43" E 45.16' to a property corner of Sauls Investment Properties, LLC; thence crossing West Williams Street N 25°38'03" E 100.09' to the northern right-of-way and being a common corner of A.T. Seymour Heirs and K2 Holdings, LLC; to a point on the eastern right-of-way of East Williams Street (NC Highway 55); thence with the NC Highway 55 eastern right-of-way N 66°53'40" W 628.99' to a point on the eastern right-of-way of West Williams Street, also being the southeast corner of A.T. Seymour Heirs; thence along the eastern property line of A.T. Seymour Heirs the following three (3) calls: N 26°16'51" E 166.66', S 64°40'27" E 3.99', and N 27°36'14" E 109.53' to a point on the southern property line of Thomas E. Seymour; thence along the property lines of Thomas E. Seymour the following three (3) calls: N 64°44'27" W 209.92', N 29°11'13" E 116.32', and S 63°52'04" E 170.02' to the southeast corner of Eric D. and Patricia Pollock Creta; thence along the eastern property line of Eric D. and Patricia Pollock Creta N 26°07'32" E 184.96' to a point on the southern right-of-way of West Moore Street; thence along the West Moore Street southern right-of-way S 63°57'53" E 10.10' to a point; thence leaving the southern right-of-way of West Moore Street and following the eastern right-of-way of Hudson Avenue N 28°53'12" E 130.24' to a point; thence leaving the Hudson Avenue eastern right-of-way S 61°06'48" E 109.23' to a point; thence N 28°09'08" E 80.92' to a point; thence N 60°52'34" W 33.18' to a point; thence N 30°30'46" E 85.93' to a point; thence N 62°41'01" W 76.03' to a point; thence N 28°25'56" E 128.57' to a point being on the eastern right-of-way of Hudson Avenue and the southern right-of-way of Holleman Street; thence crossing Hudson Avenue N 56°56'16" W 20.07' to the northeast corner of William J. Evans, Jr.; thence along the Holleman Street southern right-of-way, also being the northern property line of William J. Evans, Jr., N 60°00'00" W 192.72' to the northeast corner of Carey C. Jones Memorial Park; thence leaving the southern right-of-way of Holleman Road and following the eastern edge of Carey C. Jones Memorial Park the following six (6) calls: S 29°51'00" W 150.00', N 60°03'08" W 5.20', S 26°14'24" W 99.23', N 63°24'21" W 11.54', N 65°03'26" W 89.86', and S 29°57'39" W 162.25' to a point on the northern right-of-way of West Moore Street; thence with the West Moore Street northern right-of-way N 71°38'54" W 546.63' to a point on the eastern right-of-way of Upchurch Street; thence along the Upchurch Street eastern right-of-way N 30°10'39" E 558.38' to a point on the northern right-of-way of Holleman Street; thence along the Holleman Street northern right-of-way S 61°48'47" E 284.70' and S 59°01'13" E 289.14' to a corner of Apex Baptist Church; thence leaving the northern right-of-way of Holleman Street and following

along the western edge of Apex Baptist Church the next four (4) calls: N 28°31'39" E 174.53', S 65°08'57" E 67.87', S 65°34'53" E 64.94', and N 29°20'38" E 256.34' to a point on the northern right-of-way of West Chatham Street; thence along the West Chatham Street northern right-of-way S 64°49'33" E 156.08' to a point; thence leaving the northern right-of-way of West Chatham Street N 27°15'51" E 159.33' to a point on the southern property line of the Town of Apex Police Department; thence along the southern property line of the Town of Apex Police Department the following four (4) calls: N 64°05'39" W 289.37', N 64°18'46" W 80.73', N 64°41'58" W 94.64', and N 64°14'26" W 103.74' to the point and place of beginning.

2. **Amendments to Sec. 7.5.4.E *Public Access Requirements* in order to remove standards related to the required number of points of access for new residential developments in order to generally rely on Appendix D of the North Carolina International Fire Code.**

Background: In September 2023, State law changed to no longer allow local governments to require access roads in excess of the Fire Code of the North Carolina Residential Code for One- and Two-Family Dwellings. Planning staff met with Fire Department and Transportation & Infrastructure Development staff to review the standards in the UDO for all residential developments and agreed that it is appropriate to rely on the Fire Code for multifamily developments as well.

7.5.4 Required Improvements, Streets

...

E) Public Access Requirements

All residential development or any portion thereof shall meet and may exceed the minimum public access requirements established by Appendix D of the North Carolina International Fire Code. ~~(either by itself or in combination with another existing development through which it accesses the public street system) propose no more than 50 single-family units, 100 multi-family units, or 50 units of single-family and multi-family combined unless it is served by at least two (2) points of access to the public street system. When more than one (1) point is required, one (1) of those two (2) points must be a full-movement intersection and both points of access must be constructed to Town of Apex standards. A stub street allowing for future connectivity but not being extended to the public street system in conjunction with the proposed development cannot be considered a point of access. The points of access serving the development shall be separated by a minimum distance of 500 feet. The spacing between points of access is subject to approval by the North Carolina Department of Transportation if the access is proposed along a state-maintained roadway. Any residential development exceeding 300 residential units shall provide at least three (3) points of access to the public street system. Construction of a Major Collector or Thoroughfare on the Advance Apex: The 2045 Transportation Plan can provide opportunities for additional points of access when the existing roadway frontage cannot provide those opportunities. For multi-family development, at least one (1) point of access shall be full-movement.~~ See also Sec. 7.2.1.A.2 *Points of ingress/egress.*

...

3. Amendments to Sec. 6.1.11.G *Uses Permitted Within the Riparian Buffer* in order to clarify that screened porches are allowed to encroach into a riparian buffer in the same manner as sheds and gazebos based on interpretation from the North Carolina Department of Environmental Quality.

Table 6.1.11.G.1

Use	Exempt*	Allowable*	Allowable with Mitigation*
...			
Recreational and accessory structures in Zones 2 and 3:			
<ul style="list-style-type: none"> • Sheds and gazebos, and screened porches in Zones 2 and 3, except along perennial waters in Neuse River Basin where high-density development option is utilized <ul style="list-style-type: none"> o Total footprint less than or equal to 150 square feet per lot o Total footprint greater than 150 square feet per lot • Slatted uncovered decks and associated steps, provided the use meets the requirements of Sec. 6.1.11.E and F of this Ordinance: <ul style="list-style-type: none"> o Deck at least eight (8) feet in height in Zone 2 and no vegetation removed from Zone 1 o Deck less than eight (8) feet in height in Zone 2 or vegetation removed from Zone 1 o Deck in Zone 3 		X	X
		X	X
		X	
...			

PLANNING STAFF RECOMMENDATION:

Planning staff recommends approval of the proposed amendments.

PLANNING BOARD RECOMMENDATION:

The Planning Board heard these amendments at their December 11, 2023 meeting and unanimously recommended approval.

PLANNING BOARD REPORT TO TOWN COUNCIL
Unified Development Ordinance Amendments

Planning Board Meeting Date: December 11, 2023



Report Requirements:

Per NCGS §160D-604, all proposed amendments to the zoning ordinance or zoning map shall be submitted to the Planning Board for review and comment. If no written report is received from the Planning Board within 30 days of referral of the amendment to the Planning Board, the Town Council may act on the amendment without the Planning Board report. The Town Council is not bound by the recommendations, if any, of the Planning Board.

Planning Board Recommendation:

Motion: To recommend approval as presented.

Introduced by Planning Board member: Sarah Soh

Seconded by Planning Board member: Daniel Khodaparast

- ☒ Approval of the proposed UDO amendment(s)
☐ Approval of the proposed UDO amendment(s) with the following conditions:

☐ Denial of the proposed UDO amendment(s)

With 7 Planning Board Member(s) voting "aye"

With 0 Planning Board Member(s) voting "no"

Reasons for dissenting votes:

This report reflects the recommendation of the Planning Board, this the 11th day of December 2023.

Attest:


Regina Skinner, Planning Board Chair

Dianne Khin

Digitally signed by Dianne Khin
Date: 2023.12.11 16:42:37
-05'00'

Dianne Khin, Planning Director



TOWN OF APEX

POST OFFICE BOX 250
APEX, NORTH CAROLINA 27502
PHONE 919-249-3426

PUBLIC NOTIFICATION OF PUBLIC HEARING AMENDMENTS TO THE UNIFIED DEVELOPMENT ORDINANCE (UDO)

Pursuant to the provisions of North Carolina General Statutes §160D-601 and to the Town of Apex Unified Development Ordinance (UDO) Sec. 2.2.11, notice is hereby given of a public hearing before the Town Council of the Town of Apex for the purpose of soliciting comments relative to the following amendment(s) to the Unified Development Ordinance that are applicable Town-wide:

Requested by Planning Staff:

1. Amendments to Sec. 12.2 *Terms Defined* in order to expand the boundaries of the Downtown Festival District.
2. Amendments to Sec. 7.5.4.E *Public Access Requirements* in order to remove standards related to the required number of points of access for new residential developments in order to generally rely on Appendix D of the North Carolina International Fire Code.
3. Amendments to Sec. 6.1.11 *Uses Permitted Within the Riparian Buffer* in order to clarify that screened porches are allowed to encroach into a riparian buffer in the same manner as sheds and gazebos based on interpretation from the North Carolina Department of Environmental Quality.

Public Hearing Location: Apex Town Hall
Council Chamber, 2nd Floor
73 Hunter Street, Apex, North Carolina

Town Council Public Hearing Date and Time: January 9, 2024 6:00 PM

You may attend the meeting in person or view the meeting through the Town's YouTube livestream at: <https://www.youtube.com/c/townofapexgov>.

If you are unable to attend, you may provide a written statement by email to public.hearing@apexnc.org, or submit it to the Office of the Town Clerk (73 Hunter Street or USPS mail - P.O. Box 250, Apex, NC 27502), at least two business days prior to the Town Council vote. You must provide your name and address for the record. The written statements will be delivered to the Town Council members prior to their vote. Please include the Public Hearing name in the subject line.

The UDO can be accessed online at: <http://www.apexnc.org/233>.

Dianne F. Khin, AICP
Planning Director

Published Dates: December 18, 2023-January 9, 2024



TOWN OF APEX
POST OFFICE BOX 250
APEX, NORTH CAROLINA 27502
TEL. 919-249-3426

NOTIFICACIÓN PÚBLICA DE AUDIENCIAS PÚBLICAS

Modificación de la Ordenanza de Desarrollo Unificado (UDO)

De conformidad con las disposiciones de los Estatutos Generales de Carolina del Norte §160D-601 y con la sección 2.2.11 de la Ordenanza de Desarrollo Unificado (UDO) del pueblo de Apex, por la presente se notifican las audiencias públicas ante el Consejo Municipal del pueblo de Apex a fin de solicitar comentarios relativos a la siguiente modificación de la Ordenanza de Desarrollo Unificado que se aplican a toda la ciudad:

A solicitud del personal de Planificación:

1. Enmiendas a la sección 12.2 *Términos definidos* para ampliar los límites del distrito de festivales del centro de la ciudad.
2. Enmiendas a la sección 7.5.4.E *Requisitos de acceso público* para eliminar las normas relacionadas con el número requerido de puntos de acceso para los nuevos desarrollos residenciales con el fin de confiar generalmente en el apéndice D del Código Internacional de Protección contra Incendios de Carolina del Norte.
3. Enmiendas a la sección 6.1.11 *Usos permitidos dentro de la franja de amortiguación ribereña* para aclarar que los porches protegidos pueden invadir una franja de amortiguación ribereña del mismo modo que los cobertizos y cenadores, según la interpretación del Departamento de Calidad Ambiental de Carolina del Norte.

Lugar de la audiencia pública: Ayuntamiento de Apex
Cámara del Consejo, 2º piso
73 Hunter Street, Apex, Carolina del Norte

Fecha y hora de la audiencia pública del Consejo Municipal: 9 de enero de 2024 6:00 PM

Puede asistir a la reunión de manera presencial o seguir la transmisión en directo por YouTube a través del siguiente enlace: <https://www.youtube.com/c/townofapexgov>.

Si no puede asistir, puede enviar una declaración escrita por correo electrónico a public.hearing@apexnc.org, o presentarla a la Oficina del Secretario Municipal (73 Hunter Street o por correo USPS a P.O. Box 250, Apex, NC 27502), al menos dos días hábiles antes de la votación del Consejo Municipal. Debe proporcionar su nombre y dirección para que conste en el registro. Las declaraciones escritas se entregarán al Consejo Municipal antes de la votación. No olvide incluir el nombre de la audiencia pública en el asunto.

Se puede acceder a la UDO en línea en: <http://www.apexnc.org/233>.

Dianne F. Khin, AICP
Directora de Planificación

Fechas de publicación: 18 de diciembre de 2023 – 9 de enero de 2024

AN ORDINANCE TO AMEND CERTAIN SECTIONS OF THE UNIFIED DEVELOPMENT ORDINANCE

BE IT ORDAINED by the Town Council of the Town of Apex as follows:

Section 1. Section 12.2 of the Unified Development Ordinance is amended to read as follows with additions shown as bold underlined text and deletions shown as struck-through text:

12.2 Terms Defined

...

Downtown Festival District

The purpose and intent of the Downtown Festival District is to celebrate the Salem Street corridor and vicinity and encourage a diversity of activities and programming by allowing more outdoor entertainment options on public and private properties than in other areas of Town while being cognizant of the surrounding residential neighborhoods. Legal description of boundaries: Beginning at an iron pipe being the southwest property corner of the Town of Apex Police Department and being the northwest corner of the Kenneth E. and Cheryl H. Koch, Jr. property; thence along the western property line of the Town of Apex Police Department N 29°37'50" E 91.05' to a point; thence continuing along said property line N 30°23'22" E 13.01' to a point; thence along the same property line N 40°38'29" E 142.69' to a point on the northern right-of-way of Saunders Street; thence along the Saunders Street northern right-of-way S 64°28'48" E 19.44' to a point; thence S 64°15'35" E 89.31' to a point on the aforementioned right-of-way; thence leaving the northern right-of-way of Saunders Street the following three (3) calls: N 18°01'23" E 184.23', N 65°08'53" W 31.82', and N 02°37'34" W 87.12' to a point on the southern boundary of the Brittany Trace neighborhood; then along the southern boundary of Brittany Trace, also being the rear property line for Lots 38 through 47, the following three (3) calls: S 89°48'07" E 14.82', N 89°06'04" E 194.87', and S 88°48'57" E 398.32' to a point; thence N 89°04'55" E 16.80' to a point; thence S 88°02'04" E 272.91' to a point on the western right-of-way of North Salem Street; thence along the North Salem Street western right-of-way the following six (6) calls: N 14°58'41" E 62.09', N 18°22'46" E 40.83', N 18°51'26" E 493.54', N 17°19'26" E 95.95', N 12°19'09" E 53.97', and N 14°51'47" E 151.61' to a point in the centerline of Hunter Street; thence with the Hunter Street centerline S 75°57'32" E 104.78' to a point in the centerline of the mainline track for CSX Transportation; thence along the CSX Transportation mainline track centerline N 02°16'41" E 1282.52' to a point; thence leaving the centerline of the mainline track for CSX Transportation and following the northern property line of the Town of Apex Hunter Street Park property S 87°43'03" E 580.19' to a point in the centerline of Ambergate Station; thence with the Ambergate Station centerline the following five (5) calls: S 02°43'42" W 159.30', S 02°06'51" W 103.90', S 03°09'44" W 15.57', S 05°10'12" W 20.26', and S 07°23'46" W 1.63' to a point; thence leaving the centerline of Ambergate Station S 87°56'20" E 157.12' to a point on the western right-of-way of CSX Transportation; thence along the CSX Transportation western right-of-way S 26°14'00" W 1091.25' to a point on the northern right-of-way of Hunter Street; thence along the Hunter Street northern right-of-way S 76°01'18" E 103.87' and S 75°58'18" E 78.32' to a point also being the western right-of-way of Metro Station; thence leaving the northern right-of-way of Hunter Street and following the Metro Station western right-of-way the next three (3) calls: N 26°17'55" E 139.57', N 29°35'10" E 20.07', and N 36°09'34" E 20.07' to a point; thence leaving the western right-of-way of Metro Station and following the centerline of Massapequa Station S 63°41'13" E 394.10' to a point; thence leaving the Massapequa Station centerline S 26°15'45" W 14.12' to a point on the eastern right-of-way of Grand Central Station; thence leaving the Grand Central Station eastern right-of-way and following the northern property line of Lot 105 (56 Hunter Street) Villages of Apex South Village – Phase 1A S 63°44'15" E 97.58' to a corner; thence crossing the Villages of Apex South Common Area and following a property line of Lot 1 Villages of Apex South N 75°06'49" E 272.40' to a point; thence continuing with the edge of said property

S 79°37'44" E 169.41' to a corner; thence crossing Lot 1 S 57°13'29" E 172.79' to a point in the centerline of Laura Duncan Road (**N.C.S.R. 1308**); thence along the Laura Duncan Road centerline the following seven (7) calls: S 30°28'38" W 15.53', S 36°13'57" W 28.13', S 36°18'01" W 50.25', S 38°00'41" W 69.01', S 40°05'16" W 110.45', S 39°37'43" W 106.22', and S 42°26'17" W 78.36' to the intersection of Laura Duncan Road and Hunter Street; thence leaving the intersection and continuing along the North Mason Street centerline the following twelve (12) calls: S 41°38'01" W 54.75', S 40°12'33" W 85.20', S 41°26'40" W 75.54', S 39°39'03" W 66.30', S 39°31'22" W 29.69', S 35°22'20" W 29.09', S 33°41'24" W 20.46', S 31°48'32" W 25.12', S 27°58'46" W 17.85', S 28°10'00" W 27.49', S 25°34'30" W 29.63', and S 25°01'01" W 26.26' to a point; thence leaving the centerline of North Mason Street and continuing along the northern property line of Town of Apex, also being the southern limit of an abandoned railroad easement, the following three (3) calls: S 57°30'04" E 71.43', S 51°04'36" E 36.87', and S 45°31'56" E 40.38' to a point; thence crossing the aforementioned Town of Apex property S 20°27'19" W 222.17' to its southern property line; thence along the southern property line of Town of Apex N 69°32'41" W 120.00' to a point on the eastern right-of-way of North Mason Street; thence N 22°06'06" E 34.22' to a point on the North Mason Street eastern right-of-way; thence crossing the right-of-way of North Mason Street and continuing along the southern property line of Town of Apex Town Campus N 66°08'18" W 199.31' to a corner; thence along a common line between Town of Apex and Larry Mack Jordan N 22°28'32" E 162.69' and N 77°35'02" W 96.38' to a corner; thence crossing a portion of Larry Mack Jordan, Town of Apex Town Campus, and North Hughes Street, also being collinear with the southern property line of the former Tunstall Life Estate, N 64°48'43" W 716.19' to a point in the centerline of the mainline track for CSX Transportation; thence along the CSX Transportation mainline track centerline S 26°12'58" W 2880.48' **1478.49' to the southern right-of-way of East Chatham Street; thence following the East Chatham Street right-of-way, also being the property line of Apex United Methodist Church, S 64°17'14" E 441.18' to the western right-of-way of South Hughes Street; thence S 25°56'18" W 422.48' along said right-of-way to the northern right-of-way of Olive Street; thence along the northern right-of-way of Olive Street N 63°57'19" W 177.20' to a point on the northern right-of-way and being the vehicle entrance for Apex United Methodist Church; thence crossing Olive Street and following the common line between Apex United Methodist Church and the property of Jon Douglas and Margaret Anne Allen S 25°57'20" W 175.73'; thence along the southern property line of Jon Douglas and Margaret Anne Allen S 64°30'43" E 177.80' to the western right-of-way of South Hughes Street; thence along the South Hughes Street right-of-way S 25°53'38" W 225.36' to the northern right-of-way of East Moore Street; thence following the East Moore Street right-of-way N 64°23'04" W 446.69' to a point in the centerline of the mainline track for CSX Transportation; thence along the CSX Transportation mainline track centerline across East Williams Street (NC Highway 55) and continuing with a clockwise curve for approximately 2074' to the eastern right-of-way of Tingen Road (N.C.S.R. 1153); thence leaving the centerline of the mainline track and following the eastern right-of-way of Tingen Road the following three (3) calls: N 01°33'18" E 229.62', N 00°35'34" W 74.00', and N 00°01'57" W 202.14' to a point; thence leaving the Tingen Road eastern right-of-way and crossing South Salem Street (N.C.S.R. 1011) N 60°23'59" W 67.78' to a point on the western right-of-way; thence following the western South Salem Street right-of-way, also being the property line of Walter J. McClamb (Albright Funeral Home), S 29°36'02" W 42.24'; thence continuing along the western South Salem Street right-of-way and across Justice Heights Street the following three (3) calls: S 30°11'02" W 98.31', S 32°41'15" W 42.11', and S 29°27'41" W 81.33' to the southeast corner of St. Mary's African Methodist Episcopal (A.M.E.) Church; thence along the southern property line of St. Mary's A.M.E. Church N 62°22'04" W 139.32'; thence along the western property line of said church and continuing across Justice Heights Street to a point in the northern right-of-way N 23°57'20" E 116.56'; thence with the Justice Heights Street right-of-way N 67°18'07" W 117.88' to the southwest corner of Walter J. McClamb; thence leaving said right-of-way, following the western property line of Walter J.**

McClamb and crossing West Street N 28°07'02" E 334.67'; thence along the northern West Street right-of-way to the eastern right-of-way for First Street, also being the southwest corner of Town of Apex (West Street Park) N 60°49'18" W 57.97'; thence along the eastern First Street right-of-way N 29°33'54" E 413.62' to the northwest corner of Town of Apex; thence leaving said right-of-way S 64°02'10" E 105.35' to a point in the common line of Town of Apex and Kyler L. Zadell; thence crossing Kyler L. Zadell N 29°16'02" E 49.73' to a point on the northern property line; thence along the northern property line of Kyler L. Zadell S 63°55'11" E 45.52' to a corner with KC2 Holdings, LLC; thence S 65°13'20" E 50.56' to a corner of KC2 Holdings, LLC; thence N 32°29'05" E 144.34' along the western property line of KC2 Holdings, LLC to the southern right-of-way for Harwood Street; thence across Harwood Street N 27°42'28" E 36.66' to a property corner for Sauls Investment Properties, LLC; thence along the Harwood Street northern right-of-way the following four (4) calls: N 64°00'51" W 58.43', N 64°01'22" W 48.92', N 63°54'08" W 77.36', and a curve to the right having a radius of 21.41' feet and a chord bearing and distance of N 21°34'11" W 28.85' to a point in the eastern right-of-way of First Street; thence along said right-of-way N 29°27'20" E 21.97' to the southern right-of-way of West Williams Street; thence along the southern West Williams Street right-of-way S 64°26'19" E 100.86' and S 66°54'43" E 45.16' to a property corner of Sauls Investment Properties, LLC; thence crossing West Williams Street N 25°38'03" E 100.09' to the northern right-of-way and being a common corner of A.T. Seymour Heirs and K2 Holdings, LLC; to a point on the eastern right-of-way of East Williams Street (NC Highway 55); thence with the NC Highway 55 eastern right-of-way N 66°53'40" W 628.99' to a point on the eastern right-of-way of West Williams Street, also being the southeast corner of A.T. Seymour Heirs; thence along the eastern property line of A.T. Seymour Heirs the following three (3) calls: N 26°16'51" E 166.66', S 64°40'27" E 3.99', and N 27°36'14" E 109.53' to a point on the southern property line of Thomas E. Seymour; thence along the property lines of Thomas E. Seymour the following three (3) calls: N 64°44'27" W 209.92', N 29°11'13" E 116.32', and S 63°52'04" E 170.02' to the southeast corner of Eric D. and Patricia Pollock Creta; thence along the eastern property line of Eric D. and Patricia Pollock Creta N 26°07'32" E 184.96' to a point on the southern right-of-way of West Moore Street; thence along the West Moore Street southern right-of-way S 63°57'53" E 10.10' to a point; thence leaving the southern right-of-way of West Moore Street and following the eastern right-of-way of Hudson Avenue N 28°53'12" E 130.24' to a point; thence leaving the Hudson Avenue eastern right-of-way S 61°06'48" E 109.23' to a point; thence N 28°09'08" E 80.92' to a point; thence N 60°52'34" W 33.18' to a point; thence N 30°30'46" E 85.93' to a point; thence N 62°41'01" W 76.03' to a point; thence N 28°25'56" E 128.57' to a point being on the eastern right-of-way of Hudson Avenue and the southern right-of-way of Holleman Street; thence crossing Hudson Avenue N 56°56'16" W 20.07' to the northeast corner of William J. Evans, Jr.; thence along the Holleman Street southern right-of-way, also being the northern property line of William J. Evans, Jr., N 60°00'00" W 192.72' to the northeast corner of Carey C. Jones Memorial Park; thence leaving the southern right-of-way of Holleman Road and following the eastern edge of Carey C. Jones Memorial Park the following six (6) calls: S 29°51'00" W 150.00', N 60°03'08" W 5.20', S 26°14'24" W 99.23', N 63°24'21" W 11.54', N 65°03'26" W 89.86', and S 29°57'39" W 162.25' to a point on the northern right-of-way of West Moore Street; thence with the West Moore Street northern right-of-way N 71°38'54" W 546.63' to a point on the eastern right-of-way of Upchurch Street; thence along the Upchurch Street eastern right-of-way N 30°10'39" E 558.38' to a point on the northern right-of-way of Holleman Street; thence along the Holleman Street northern right-of-way S 61°48'47" E 284.70' and S 59°01'13" E 289.14' to a corner of Apex Baptist Church; thence leaving the northern right-of-way of Holleman Street and following along the western edge of Apex Baptist Church the next four (4) calls: N 28°31'39" E 174.53', S 65°08'57" E 67.87', S 65°34'53" E 64.94', and N 29°20'38" E 256.34' to a point on the northern right-of-way of West Chatham Street; thence along the West Chatham Street northern right-of-way S 64°49'33" E 156.08' to a point; thence leaving the northern right-of-way of West Chatham Street N 27°15'51" E 159.33' to a point on the southern property line of the Town of

Apex Police Department; thence along the southern property line of the Town of Apex Police Department the following four (4) calls: N 64°05'39" W 289.37', N 64°18'46" W 80.73', N 64°41'58" W 94.64', and N 64°14'26" W 103.74' to the point and place of beginning.

...

Section 2. Section 7.5.4.E of the Unified Development Ordinance is amended to read as follows with additions shown as bold underlined text and deletions shown as struck-through text:

7.5.4 Required Improvements, Streets

...

E) Public Access Requirements

All residential development or any portion thereof shall **meet and may exceed the minimum public access requirements established by Appendix D of the North Carolina International Fire Code.** ~~(either by itself or in combination with another existing development through which it accesses the public street system) propose no more than 50 single-family units, 100 multi-family units, or 50 units of single-family and multi-family combined unless it is served by at least two (2) points of access to the public street system. When more than one (1) point is required, one (1) of those two (2) points must be a full-movement intersection and both points of access must be constructed to Town of Apex standards. A stub street allowing for future connectivity but not being extended to the public street system in conjunction with the proposed development cannot be considered a point of access. The points of access serving the development shall be separated by a minimum distance of 500 feet. The spacing between points of access is subject to approval by the North Carolina Department of Transportation if the access is proposed along a state-maintained roadway. Any residential development exceeding 300 residential units shall provide at least three (3) points of access to the public street system. Construction of a Major Collector or Thoroughfare on the Advance Apex: The 2045 Transportation Plan can provide opportunities for additional points of access when the existing roadway frontage cannot provide those opportunities.~~ **For multi-family development, at least one (1) point of access shall be full-movement.** See also Sec. 7.2.1.A.2 *Points of ingress/egress.*

...

Section 3. Section 6.1.11.G of the Unified Development Ordinance is amended to read as follows with additions shown as bold underlined text and deletions shown as struck-through text:

Table 6.1.11.G.1

Use	Exempt*	Allowable*	Allowable with Mitigation*
...			
Recreational and accessory structures in Zones 2 and 3: <ul style="list-style-type: none"> Sheds and, gazebos, and screened porches in Zones 2 and 3, except along perennial waters in Neuse River Basin where high-density development option is utilized <ul style="list-style-type: none"> Total footprint less than or equal to 150 square feet per lot Total footprint greater than 150 square feet per lot 		X	X

Use	Exempt*	Allowable*	Allowable with Mitigation*
<ul style="list-style-type: none"> Slatted uncovered decks and associated steps, provided the use meets the requirements of Sec. 6.1.11.E and F of this Ordinance: <ul style="list-style-type: none"> Deck at least eight (8) feet in height in Zone 2 and no vegetation removed from Zone 1 Deck less than eight (8) feet in height in Zone 2 or vegetation removed from Zone 1 Deck in Zone 3 		X	X
...			

Section 4. The Planning Director and/or Town Manager are hereby authorized to renumber, revise formatting, correct typographic errors, to verify and correct cross references, indexes and diagrams as necessary to codify, publish, and/or accomplish the provisions of this ordinance or future amendments as long as doing so does not alter the terms of this ordinance.

Section 5. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed. If any section, paragraph, subdivision, clause or provision of this ordinance shall be adjudged invalid, such adjudication shall apply only to such section, paragraph, subdivision, clause or provision so adjudged and the remainder of the ordinance shall be deemed valid and effective.

Section 6. The ordinance shall be effective upon enactment on the ____ day of _____ 2024.

Introduced by Council Member _____

Seconded by Council Member _____

Attest: TOWN OF APEX

Allen Coleman, CMC, NCCCC
Town Clerk

Jacques K. Gilbert
Mayor

Approved As To Form:

Laurie L. Hohe
Town Attorney

| Agenda Item | cover sheet

for consideration by the Apex Town Council

Item Type: CLOSED SESSION

Meeting Date: January 9, 2024

Item Details

Presenter(s): Steve Adams, Real Estate/Utilities Acquisition Specialist

Department(s): Transportation and Infrastructure Development

Requested Motion

Possible motion to go into closed session pursuant to NCGS § 143-318.11(a)(5) to discuss matters related to acquisition of real property.

Approval Recommended?

N/A

Item Details

NCGS § 143-318.11(a)(5)

"To establish, or to instruct the public body's staff or negotiating agents concerning the position to be taken by or on behalf of the public body in negotiating (i) the price and other material terms of a contract or proposed contract for the acquisition of real property by purchase, option, exchange, or lease; or (ii) the amount of compensation and other material terms of an employment contract or proposed employment contract."

Attachments

- N/A



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for consideration by the Apex Town Council

Item Type: CLOSED SESSION

Meeting Date: January 9, 2024

Item Details

Presenter(s): Brian Meyer, Deputy Town Attorney

Department(s): Legal Services

Requested Motion

Possible motion to go into closed session pursuant to NCGS 143-318.11(a)(3) to consult with the town attorney to discuss the handling of the matter of the ExperienceOne Homes LLC v. Town of Apex.

Approval Recommended?

N/A

Item Details

NCGS § 143-318.11(a)(3)

"To consult with an attorney employed or retained by the public body in order to preserve the attorney-client privilege between the attorney and the public body"

Attachments

- N/A



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for consideration by the Apex Town Council

Item Type: CLOSED SESSION

Meeting Date: January 9, 2024

Item Details

Presenter(s): Laurie Hohe, Town Attorney

Department(s): Legal Services

Requested Motion

Possible motion to go into closed session pursuant to NCGS 143-318.11(a)(3) to consult with the town attorney to discuss the handling of the matter of the Town of Apex v. CJS Assemblage, LLC.

Approval Recommended?

N/A

Item Details

NCGS § 143-318.11(a)(3)

"To consult with an attorney employed or retained by the public body in order to preserve the attorney-client privilege between the attorney and the public body"

Attachments

- N/A



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for consideration by the Apex Town Council

Item Type: CLOSED SESSION

Meeting Date: January 9, 2024

Item Details

Presenter(s): Councilmember Terry Mahaffey

Department(s): Governing Body

Requested Motion

Possible motion to go into closed session pursuant to NCGS 143-318.11(a)(3) to consult with the town attorney to preserve the attorney-client privilege.

Approval Recommended?

N/A

Item Details

NCGS § 143-318.11(a)(3)

"To consult with an attorney employed or retained by the public body in order to preserve the attorney-client privilege between the attorney and the public body"

Attachments

- N/A



| Agenda Item | cover sheet

for consideration by the Apex Town Council

ADDED ITEM

Item Type:

CLOSED SESSION

Meeting Date:

January 9, 2024

Item Details

Presenter(s): Councilmember Arno Zegerman

Department(s): Governing Body

Requested Motion

Possible motion to go into closed session pursuant to NCGS 143-318.11(a)(3) to consult with the town attorney to preserve the attorney-client privilege.

Approval Recommended?

N/A

Item Details

NCGS § 143-318.11(a)(3)

"To consult with an attorney employed or retained by the public body in order to preserve the attorney-client privilege between the attorney and the public body"

Attachments

- N/A

