



KANNAPOLIS CITY COUNCIL

MEETING AGENDA
Kannapolis City Hall
401 Laureate Way, Kannapolis NC
January 27, 2020
6:00 PM

Please turn off cell phones or place on silent mode.

CALL TO ORDER AND WELCOME

MOMENT OF SILENT PRAYER AND PLEDGE OF ALLEGIANCE

ADOPTION OF AGENDA - Motion to Adopt Agenda or make revisions

FIRST READING

1. Adoption of Street Addressing Ordinance (First Reading)

PROCLAMATIONS

1. February as Black Heritage Month

APPROVAL/CORRECTION OF MINUTES

1. November 25, 2019 Meeting Minutes
2. December 09, 2019 Meeting Minutes

BUSINESS AGENDA

- A. Public Hearing - In order to consider the findings of Refunding (refinancing) the 2010 Limited Obligation Bonds for the North Carolina Research Campus (Eric Davis, Finance Director)
- B. Declaration of Covenants, Conditions and Restrictions for Downtown (Walter M. Safrit, II City Attorney)

CITY MANAGER REPORT

CITY COUNCIL COMMENTS

SPEAKERS FROM THE FLOOR

In order to speak to Council, please fill out a white card and return to the City Clerk. Cards are located on the table as you enter the meeting room. Please limit comments to 3 minutes

CLOSED SESSION

GS. 143-318.11 (a) (3) to consult with an attorney in order to preserve the attorney client privilege; G.S. 143.318.11 (a) (4) for discussing matters relating to the location or expansion of industries or businesses in the area. (Mayor Pro tem Rowell)

MOTION TO ADJOURN MEETING

UPCOMING SCHEDULE

February 10, 2020

February 24, 2020

ADA Notice and Hearing Impaired Provisions

In accordance with the requirements of Title II of the Americans with Disabilities Act of 1990 ("ADA"), anyone who requires auxiliary aid or service for effective communication, or a modification of policies or procedures to participate in a program, service or activity of the City of Kannapolis, should contact the office of Tina H. Cline, Human Resource Director by phone at 704-920-4302 or email at tcline@kannapolisnc.gov as soon as possible, but no later than forty-eight (48) hours before the scheduled event.



**City of Kannapolis
City Council Meeting
January 27, 2020
Staff Report**

TO: Mayor and City Council
FROM: Zachary D. Gordon, AICP, Planning Director
TITLE Addressing Ordinance

A. Action Requested by City Council

First reading of Street Addressing Ordinance, no action required (Zachary Gordon, AICP, Planning Director)

B. Required Votes to Pass Required Action

Presentation Only, no action required

C. Background

On January 8, 1992, the City entered into an agreement with Cabarrus County for the County to provide addressing services for property located within the City's corporate limits (see attached). This agreement expired on June 30, 2001, with the expectation that the City would take over responsibility for addressing. Since that time, the County and City have both handled addressing services for the City.

The purpose of the proposed Street Addressing Ordinance is to formalize the City's for addressing property within the City's corporate limits. The City of Concord has adopted a similar ordinance.

City staff have modeled the Street Addressing Ordinance after the City of Concord Ordinance, with modifications to reflect the City's unique circumstances. This Ordinance will provide City staff with the policy guidelines to address property within the city limits - including in-fill property where there have been issues in the past. This ordinance will serve a number of purposes, including insuring that emergency services respond to the correct address in the event of a police, fire or medical event.

D. Fiscal Considerations

None

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| E. Policy Issues |
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None

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| F. Legal Issues |
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The Street Addressing Ordinance has been developed in a collaborative effort between the Planning Department and the City Attorney's office. The City Attorney has reviewed the proposed Ordinance and indicated that he is satisfied with it in its current form.

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| G. Alternative Courses of Action and Recommendation |
|--|

This is a First Reading of the Street Addressing Ordinance, with no action required. The 2nd Reading of the Ordinance will occur on February 10th.

ATTACHMENTS:

File Name

- ☐ Addressing_Ordinance_(Street_and_Sidewalk)_1-7-20.pdf
- ☐ Addressing_Agreement_-_Cabarrus_County_and_COK.pdf

CITY OF KANNAPOLIS

ORDINANCE

BE IT ORDAINED by the City Council for the City of Kannapolis that Chapter 15 of the Code of Ordinances “Streets and Sidewalks” is hereby amended by the addition of Sec. 15-8 as follows:

“Sec. 15-8 Road Names and Address Displays

(a) Purpose and Intent of Section.

The purpose and intent of this Section is to provide a uniform system of road addresses for all properties and buildings throughout the City, in order to facilitate provision of adequate public safety and emergency response services and to minimize difficulty in locating properties and buildings for public service agencies and the general public.

(b) Definitions.

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

Address coordinator means the official of the City Planning Department charged with the administration of this Section, including his/her authorized agent or delegate.

Building means a structure having a roof supported by columns or walls for the shelter, support or enclosure of persons, animals, chattels or equipment. When separated by division walls from the ground up without openings, each portion of such building may be deemed a separate building. For the purposes of this Section, the term “building” may also include other man-made structures.

Driveways means a private way, beginning at the property line of a lot abutting a public road, private road, easement or private right-of-way, giving access from that public road, recorded easement, recorded private road or right-of-way, and leading to a building, use or structure on that lot. A driveway may not serve more than a single lot unless it runs along a lot line shared by more than one lot.

Road means a public or private one-way or two-way road for ingress and/or egress. Such road may be of various types, including frontage roads, rear access roads, roads with cul-de-sacs, and dead-end roads. This definition includes secondary roads, but does not include driveways.

Road Address means the combination of numbers and road names assigned by the City and the County which uniquely identifies a particular building or lot.

Except as specifically set forth in this Section, the definitions of the City subdivision regulations shall govern the meaning of words and phrases.

(c) Road Names.

- (1) The road names listed in the master file of the Cabarrus or Rowan planning, zoning and building inspection departments are hereby declared the official names of these roads, unless changed by action of the county commissioners, or the City council, or the governing board of another municipality. The City planning department is hereby authorized to determine the need for road name changes and to recommend such changes to the City council.
- (2) All roads in the City shall be identified by a sign showing the official name and block numbers. These road signs shall be placed at all intersections and shall identify both intersecting streets.
- (3) All subdivisions or developments which have a new public or private streets, roads, or vehicular access drives that have an assigned name as recorded in the county E-911 ledger system shall have standard street signs installed by the City, except as otherwise provided in the Kannapolis Development Ordinance or any subsequent successive legislation. Such street signs shall comply with the Manual on Uniform Traffic Control Devices, published by the U. S. Department of Transportation, Federal Highway Administration. Actual installation of street signs shall be the responsibility of the City. The developer shall reimburse the City for the full cost of initial installation of these signs. Maintenance and replacement of such signs shall be the responsibility of the City, except as otherwise provided in the Kannapolis Development Ordinance or any subsequent successive legislation. These provisions shall also apply to intersecting private streets, rods or vehicular access drives that have an assigned name as recorded in the county E-911 ledger system. Requests for alternative street signs shall only be considered in accordance with the Kannapolis Development Ordinance or any subsequent successive legislation.
- (4) Single-family dwellings shall be prohibited from obtaining an assigned street name as recorded in the county E-911 ledger system for a vehicular access drive. This subsection shall not apply to new single-family lots fronting on publicly or privately dedicated streets in accordance with the City subdivision regulations.

(d) Administration and Application.

- (1) The City Planning Department will be responsible for the interpretation and administration of this Section within the City territorial jurisdiction, including:
 - (i) Assigning all numbers for properties and buildings.
 - (ii) Maintaining address records of each property and building.
 - (iii) Changing of existing addresses when necessary to facilitate sequential house numbers along a road.
 - (iv) Designating individual unit addresses within the multiple housing units in conformity with this Section.

- (v) Coordinating with emergency service personnel to assist the public in complying with the requirements of this Section.

(2) This Section shall apply in all areas of the City including its extraterritorial jurisdiction.

(e) Display of road address numbers.

(1) Road address numbers shall be clearly displayed in accordance with U. S. postal requirements so that the location can be identified easily from the road.

- (i) The official address number shall be displayed on the front of a building, or at the entrance to a building, whichever is most clearly visible from the street or road during day and night.
- (ii) If a building is more than 100 feet from any road, the address number shall be displayed within a three-foot perimeter at the end of the driveway or easement nearest the road which provides access to the building.
- (iii) Numerals indicating the address number of a single-family dwelling shall be at least three inches in height and shall be posted and maintained so as to be legible from the road.
- (iv) Numerals for multiple dwelling units and nonresidential buildings shall be at least six inches in height and shall be placed on the front of the building facing the road or at the end of the building nearest the road.
- (v) Mobile home lots shall have sequential address numbers throughout the park. Each lot shall have a separate address number assigned. The address number of each lot shall be clearly displayed on the lot so as to be legible from the road, or it may be mounted on the mobile home unit provided that it is removed if the home is transported to a new location.
- (vi) Numerals shall be of contrasting color to the background.

(2) The City Planning Department shall have the right to authorize and approve alternate methods of displaying house numbers which meet the intent of this Section when strict adherence to these standards cannot be reasonably met.

(3) In addition to the civil penalties provided for in Section (f)(4) hereinafter, violation of this Section shall be a misdemeanor punishable by a fine not to exceed \$50.00 as provided for in N.C.G.S. 14-4.

(f) Enforcement.

(1) No building permit shall be issued until an official house number has been assigned for a lot. The record plat of any subdivision shall show the address for each lot created and/or recorded.

(2) No certificate of occupancy shall be issued by the zoning administrator until such road address numbers are properly displayed.

- (3) Owners or occupants of buildings already constructed which do not comply with this Section will be notified and requested to meet these requirements within 60 days from the date of the notification. A warning notice will be issued after 60 days if the requirements have not been met. If the owner or occupant does not comply voluntarily with this Section within 30 days of delivery of a warning notice by registered or certified mail or by hand delivery to the building in violation, enforcement action pursuant to G.S. 160A-175 may be initiated.
- (4) This Section may be enforced by the City police department. The first violation of this Section shall result in a written warning notice. A second violation after seven or more days from the first written notice shall constitute a misdemeanor under G. S. 14-4(a), punishable by a fine of \$500.00 pursuant to Section 1-6 of this Code. Violators may be subject to a \$500.00 civil penalty, to be recovered in the nature of a debt.”

This Ordinance shall become effective from and after adoption.

Adopted this the ____ day of January, 2020.

Milton D. Hinnant
Mayor

Attest:

Bridgette Bell, MMC, NCCMC
City Clerk

A RESOLUTION TO ADOPT THE CABARRUS COUNTY
ROAD NAME AND ADDRESS DISPLAY ORDINANCE

WHEREAS, Cabarrus County's, the City of Concord's, the City of Kannapolis', the Town of Harrisburg's, and the Town of Mt. Pleasant's emergency response agencies and Concord Telephone Company are working to provide a 911 emergency system with Automatic Location Indication (A.L.I.) capacity for the benefit and protection of the citizens of Cabarrus County, and

WHEREAS, a comprehensive system of street and road addresses is a fundamental component of an E-911 System with A.L.I. capacity, and

WHEREAS, the City of Kannapolis, Town of Harrisburg, and Town of Mt. Pleasant have adopted resolutions authorizing Cabarrus County to provide addressing services,

WHEREAS, the targeted start-up date for the A.L.I. System is October 1, 1992,

NOW THEREFORE BE IT RESOLVED BY THE Cabarrus County Board of Commissioners:

Section 1. Purpose and Intent

The purpose and intent of this Ordinance is to provide a uniform system of road addresses for all properties and buildings throughout the County, and its municipalities, in order to facilitate provision of adequate public safety and emergency response services and to minimize difficulty in locating properties and buildings for public service agencies and the general public.

Section 2. Definitions

A) The following words and phrases when used in this Ordinance shall have the meanings respectively ascribed to them in this Section.

- 1) BUILDING: A structure having a roof supported by columns or walls for the shelter, support or enclosure of persons, animals, chattels, or equipment. When separated by division walls from the ground up without openings, each portion of such building may be deemed a separate building. For the purposes of this Ordinance, the term "building" may also include other man-made structures.
- 2) DRIVEWAYS: A private way, beginning at the property line of a lot abutting a public road, private road, easement, or private right-of-way, giving access from that public road, recorded easement, recorded private road or right-of-way, and leading to a building, use or structure on that lot. A driveway may not serve more than a single lot unless it runs along a lot line shared by two lots.

- B) This Ordinance shall apply in all areas of Cabarrus County not within a municipality or its extraterritorial jurisdiction, except for those municipalities that have contracted with the County for addressing services.

Section 5. Display of Road Address Numbers

- A) Road address numbers must be clearly displayed in accordance with U.S. Postal requirements so that the location can be identified easily from the road.
- 1) The official address number must be displayed on the front of a building, or at the entrance to a building, whichever is most clearly visible from the street or road during day and night.
 - 2) If a building is more than one hundred (100) feet from any road, the address number shall be displayed within a three foot perimeter at the end of the driveway or easement nearest the road which provides access to the building.
 - 3) Numerals indicating the address number of a single family dwelling shall be at least three (3) inches in height and shall be posted and maintained so as to be legible from the road.
 - 4) Numerals for multiple dwelling units and nonresidential building shall be at least six (6) inches in height and shall be placed on the front of the building facing the road or at the end of the building nearest the road.
 - 5) Mobile home lots shall have sequential address numbers throughout the park. Each lot shall have a separate address number assigned. The address number of each lot must be clearly displayed on the lot so as to be legible from the road, or it may be mounted on the mobile home unit provided that it is removed if the home is transported to a new location.
 - 6) Numerals must be of contrasting color to the background.
- B) The Cabarrus County Planning, Zoning and Building Inspection Department will have the right to authorize and approve alternate methods of displaying house numbers which meet the intent of this Ordinance when strict adherence to these standards cannot be reasonably met.

Section 6. Enforcement

- A) No building permit shall be issued until an official house number has been assigned for a lot. The record plat of any subdivision must show the address for each lot created and/or recorded.

16-92

sentence; Paragraph 6 - add the word "in" in the fourth line; Paragraph 5 - add commas and identify maximum amount as \$445,600.00; Paragraph 13 - add 60 days notice relative to cancellation; Paragraph 15 - Correct the County's mailing address; and add a pre-audit statement at the end of the Agreement.

UPON MOTION of Commissioner Simmons, seconded by Commissioner Hamby and unanimously carried, that Board authorized the Chairman to execute the Memorandum of Agreement as amended and the Proposal for Forest Plantings for Mitigation at the Coddle Creek Reservoir between the North Carolina State University and Cabarrus County. The contract for the forest plantings, referred to as the Research Program, is effective January 15, 1992, through December 31, 1996, at a cost of \$445,600.00.

UPON MOTION of Commissioner Barnhart, seconded by Commissioner Hamby and unanimously carried, the Board approved the submission of the grant application as requested by the Honorable Adam Grant, Chief District Court Judge, to the Cannon Foundation, Inc. for \$12,000.00 in funds to purchase audiovisual equipment for the "Meet the Courts and Law Enforcement Program". The Board further authorized the Chairman to execute the grant application and approved the use of \$3,000.00 already included in the Courts budget as matching funds for the purchase of this equipment.

UPON MOTION of Commissioner Hamby, seconded by Commissioner Barnhart and unanimously carried, the Board deferred the appointments to the Industrial Facilities and Pollution Control Financing Authority until later in the meeting.

Mr. Blair Bennett, Finance Director, reported that he had received proposals from the following companies for a voluntary dental plan for County employees: American Pioneer, Pacific Mutual, Kanawha, and Ameritas. He recommended that the Board of Commissioners implement the American Pioneer Dental Plan effective April 1, 1992 with the insurance premium to be incorporated in the County 125 cafeteria plan and treated as a premium conversion. Mr. Bennett noted that the voluntary dental plan would require no County matching funds, only the cost for administration. Monthly premium costs for this plan, which will require 20 percent participation by employees, were listed as follows: Employee - \$12.38; Employee/Spouse - \$25.46; Employee/Children - \$28.74; Full Family - \$41.84.

UPON MOTION of Commissioner Simmons, seconded by Commissioner Barnhart and unanimously carried, the Board approved the addition of the American Pioneer Dental Plan as a voluntary dental plan for County employees effective April 1, 1992 with the condition that the premium will be paid for by the employee at no cost to the County.

UPON MOTION of Commissioner Hamby, seconded by Commissioner Barnhart and unanimously carried, the Board approved the City of Concord Community Development Program Rehabilitation Work Contract (General) between Fannie Mae Patton and the Cabarrus County Department of Aging for the rehabilitation and/or repair on property located at 30 Sunderland Road, Concord, by the County's weatherization staff. The total cost of the project was estimated at \$9,347.00 and will be funded through the Community Development Program for the City of Concord.

County Attorney Hartzell reviewed recommended changes to the proposed Street Addressing Agreement between Cabarrus County and the City of Kannapolis. These changes included an effective date of January 8, 1992, the extension of addressing work by the County until June 30, 2001, and the involvement of the Kannapolis Community Development Department in the coordination of the project.

UPON MOTION of Commissioner Hamby, seconded by Commissioner Simmons and unanimously carried, the Board approved the following Street Addressing Agreement as amended between Cabarrus County and the City of Kannapolis and authorized the Chairman to execute the Agreement on behalf of Cabarrus County.

Contract # _____
Date Approved by BOC _____

NORTH CAROLINA

STREET ADDRESSING AGREEMENT

CABARRUS COUNTY

THIS AGREEMENT of Interlocal Cooperation, pursuant to the terms and conditions of North Carolina General Statutes Chapter 160-A, Article 20, effective the 8th day of January, 1992, by and between the CITY OF KANNAPOLIS, North Carolina (hereinafter referred to as "KANNAPOLIS"), and CABARRUS COUNTY, North Carolina (hereinafter referred to as "CABARRUS");

W I T N E S S E T H: that --

WHEREAS, KANNAPOLIS and CABARRUS agree that it is mutually beneficial for the residents of KANNAPOLIS and CABARRUS to coordinate street naming and house numbering; and

WHEREAS, KANNAPOLIS and CABARRUS recognize the importance of proper addressing of buildings for public safety and emergency response; and

WHEREAS, KANNAPOLIS desires the absolute correctness of its existing street names and addressing; and

WHEREAS, CABARRUS has the technical knowledge and skills to provide that accurateness, KANNAPOLIS and CABARRUS agree as follows:

1. Purpose. The purpose of this agreement is to establish the fundamental duties of each party to ensure that the necessary street renaming and addressing of properties is properly and timely completed so as to coincide with the beginning of operation of the E-911 system for CABARRUS and KANNAPOLIS.

2. Term of Agreement. This Agreement shall commence on the date set forth hereinabove following approval and execution by appropriate authority of both KANNAPOLIS and CABARRUS, and shall terminate on October 31, 1992. After said time period and upon implementation and activation of the operational system, CABARRUS shall continue the street naming and addressing function, which shall include all new development and streets, at no additional cost to KANNAPOLIS until the first to occur of (a) KANNAPOLIS no longer desires this service; or (b) June 30, 2001.

3. Undertakings of CABARRUS. CABARRUS agrees to provide the necessary personnel who will evaluate, correct, and assign street addresses and street names using a "mini-grid" and the unified house numbering system. The mini-grid will be established by CABARRUS. Within the area generally bounded by and located between Irish Buffalo Creek and Interstate 85, the address system already in place shall be used as the base (the "Base Area"). Outside the Base Area, the County-wide, unified house numbering system will be used. Corrections to the addressing system may include, but are not limited to: adjusting addresses where the two grid systems meet; adjusting addressing at the county boundary; changing addresses where range or ascension/descension problems exist; and, renaming roads with duplicate names.

The designated personnel from CABARRUS assigned to the addressing project will coordinate with the following organizations, at a minimum: (a) the Kannapolis Community Development Department regarding correct address ranges and street names for all Kannapolis streets; (b) the Southern Bell and Concord Telephone companies in supplying the necessary address information, including, but not limited to, providing a master street list and block ranges; (c) the Cabarrus County Sheriff's Department and, particularly, Sheriff Robert M. Canaday, the overall coordinator of the E911 project; (d) the Kannapolis Fire Department, and volunteer groups regarding the posting of addresses on the houses and properties within KANNAPOLIS.

Additionally, while all of the City of Kannapolis will ultimately be corrected, since E911 is already operational in the Rowan County portion of KANNAPOLIS, CABARRUS will direct its initial attention and activities to the non-served area so that all residents of KANNAPOLIS will be served by E911 as soon as possible.

4. Undertakings of KANNAPOLIS. KANNAPOLIS agrees to: (a) hold the required public hearings on street renamings; (b) provide three (3) sets of accurate street maps which will serve as base maps for this project; and (c) pay to CABARRUS the sum of Six Thousand Five Hundred Dollars (\$6,500.00) for the undertakings set forth herein (the "Compensation") in two (2) equal payments, one payable on or about February 28, 1992, and the second payable on or before May 31, 1992.

5. Method of Amendment/Termination of Agreement. This Agreement may be amended or terminated during its term only by a vote of the majority of the members of both of the respective governing boards majority of the members of both of the respective governing boards of KANNAPOLIS and CABARRUS.

6. Warranties. KANNAPOLIS and CABARRUS hereby warrant and represent that:

(a) Execution of this Agreement and full performance of its own obligations hereunder are fully authorized by law;

(b) Each has complied or will comply with all procedures necessary to render its execution of this Agreement and the performance of its obligations hereunder as valid, legal and binding acts of KANNAPOLIS and CABARRUS, respectively; and

(c) All contracts for work to be done in connection with the construction of the project will be performed in accordance with the laws and regulations to which KANNAPOLIS and CABARRUS are subject.

7. Miscellaneous. KANNAPOLIS and CABARRUS further say that:

(a) No failure or delays in exercising any rights hereunder or the part of either party shall operate as a waiver thereof, nor shall any single or partial exercise by either party of any right hereunder preclude any other further exercise thereof or the exercise of any other rights;

(b) All representations and warranties made herein shall survive the making of any payment or payments pursuant hereto; and

(c) Except as modified by separate written agreement of KANNAPOLIS and CABARRUS and/or termination as provided herein, this Agreement shall be binding upon and enure to the benefit of KANNAPOLIS and CABARRUS, and their respective successors and assigns.

IN WITNESS WHEREOF, KANNAPOLIS and CABARRUS have executed this Agreement the day and year first above written.

CITY OF KANNAPOLIS,
NORTH CAROLINA

By: _____
Mayor

ATTEST:

Clerk

Approved as to Form

City Attorney

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

Finance Director

CABARRUS COUNTY, NORTH CAROLINA

By: _____
Chairman
Board of Commissioners

ATTEST:

Clerk

Approved as to Form

County Attorney

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

Finance Director

Chairman Carpenter recessed the meeting of the Board until the conclusion of the meeting of the Water and Sewer District.

Chairman Carpenter reconvened the meeting of the Board.

UNFINISHED BUSINESS

Commissioner Barnhart nominated the following persons for appointment to the Parks and Recreation Advisory Commission: Township 3/4 - Mr. L. Giles Goodman, III; Township 3/4 - Mr. Thomas Lewis; and Township 1/2 - Mr. Mihran Hamangian.

UPON MOTION of Chairman Carpenter, seconded by Commissioner Barnhart and unanimously carried, nominations for appointments to the Parks and Recreation Advisory Commission were closed.

The Board unanimously voted to appoint Mr. L. Giles Goodman, III (T 3/4), Mr. Thomas Lewis (T 3/4), and Mr. Mihran Hamangian (T 1/2) to the Parks and Recreation Advisory Commission for three-year terms ending December 31, 1994.

Commissioner Simmons made a motion to nominate and appoint by acclamation the following individuals to the Council on Aging Advisory Board: Reappoint Mrs. Donna Udovich, Reverend Coy Privette, and Mr. Bill Nichols for three-year terms; appoint Mr. Frank Herrin and Mr. Wallace Hinnant to three-year terms; and appoint Mrs. Martha Miller to fill the vacancy created by the resignation of Mr. William Alexander. Motion was seconded by Commissioner Barnhart.



Office of the Mayor
KANNAPOLIS, NORTH CAROLINA
P R O C L A M A T I O N

“Black Heritage Month”

WHEREAS, February has been designated as “Black Heritage Month” in which we pause to reflect on the contributions of the African American community; and

WHEREAS, African American Month gives an opportunity to become more knowledgeable about black heritage, and to honor the many black leaders who have contributed to the progress of our nation; and

WHEREAS, such knowledge can strengthen the insight of all our citizens regarding the issues of human rights, the great strides that have been made in the crusade to eliminate the barriers of equality for minority groups, and the continuing struggle against racial discrimination and poverty; and

WHEREAS, we join with all Americans in celebrating our diverse heritage and culture and continuing our efforts to protect democracy for all people, and recognizing the vital achievements of our local African American residents.

NOW, THEREFORE, I MILTON D. HINNANT, Mayor of the City of Kannapolis, North Carolina, by the virtue of the authority vested in me as Mayor call upon all citizens to observe and commemorate ***February as Black Heritage Month.***



IN WITNESS WHEREOF I have set my hand and caused the Great Seal of the City of Kannapolis to be affixed this 27th January 2020

Milton D. Hinnant

**CITY OF KANNAPOLIS
COUNCIL MEETING MINUTES
November 25, 2019**

A regular meeting of the City Council of the City of Kannapolis, North Carolina was held on Monday, November 25, 2019 at 6:00 p.m., at the Kannapolis City Hall located at 401 Laureate Way, Kannapolis, NC.

CITY COUNCIL MEMBERS PRESENT:

Mayor: Milton D. Hinnant

Council Members: Van Rowell
Dianne Berry
Doug Wilson
Tom Kincaid
Ryan Dayvault

Council Members Absent: Roger Haas

City Manager: Mike Legg

Deputy City Manager: Eddie Smith

City Clerk: Bridgette Bell

City Attorney: Walter M. Safrit

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| Staff Present: | Zac Gordon | Wilmer Melton |
| | David Jordon | Tony Eury |
| | Eric Davis | Annette Privette Keller |
| | Gretchin Coprin | Irene Sacks |
| | Gary Mills | Zac Gordon |
| | Kirk Beard | Terry Spry |
| | Donie Parker | |

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| Visitors Present: | Lynda Rape | Melvin Rape |
| | Rebekah Watson | Andrew Pierce |
| | Gary Crawford | Philly Duval |
| | Barry Shoemaker | David Ballantyne |
| | Tyler Hall | Michelle Ballantyne |
| | Cisio Garcia | Nathan Driessel |
| | Michele President | Garette Thomas |
| | Kaitlin Thomas | Greg Sloop |
| | Katie McDaniel | Pat Palmquist |
| | Dustin Keith | Melody Keith |

1 Isiah Keith
2 Reid Anderson
3 Suzy Angello
4 Carol Dimas
5 Chuck Blalie
6 Aaron Minehart
7 Tiffany Sanford
8 B. Todd Smith
9 Kellie Cartwright
10 Keith Overcash
11 Wayne Miller
12 JoAnn Lucas
13 Danny Thompson
14 Jade Bittle
15 Brian Rabon
16 Matthew Sloop
17 Angela Yates
18 Howard Boyell
19 Scott Brown
20 Juan Chavarria
21 Daniel Neil
22 Jane Hurlocker
23 Alana Sweatt
24 Janette Holt
25 Tony Cline
26 Stephen Arnold
27 Kirk Pinska
28 Steven Walton
29 Scott Rogers
30 Ron Glover
31 Carolyn Conley
32 Dena Wike
33 Sierra Richards
34 Gary Breem
35 Char Thompson
36 Timothy Gajus
37 Robert Grant
38 Jack McKinley
39 Kenneth Ferrell
40 Rick Hudson
41 Deidra Cantrell
42 Alex Cardwell
43 Mark Carpenter
44 Beth Minehart
45 Leon Deaton
46 Judy Warlock

Andrea Keith
Donna McKenzie
Jerald Chappelle
Harold Honbarrier
Louis Partain
Pete Lamar
Tammy Fox
Jewelette McDavid
Carolyn Koonce
Dale Cannon Jr
Josie Vermillion
John Lucas
Karen Thompson
Holly Rabon
Cierra Sloop
Todd Bittle
Veronica Cherry
Christine Atwell
Josh Shepherd
Meredith Powers
Alegondra Castilo Rivers
Marty Lester
Connie Rheinecler
Windy Holt
David Green
Jo Stephens
Loretta Stancil
Anthony Brown
Michael Cline
Ron Haithcock
Richard Conley
Iris Walker
Rochelle Dunbaugh
Melissa Kay
Jordon Thompson
Ryan Kruse
Gage Chandler
Terry Arnold
Tom Powell
Justin Cantrell
Ray Holt
Tiffany Cardwell
Bradley McDowell
Sarah Deaton
Allen Warlock
Trina Meltvedt

| | |
|--------------------------|--------------------|
| Anthony Meltvedt | John Marlow |
| Chris Castro | Billy Mullis |
| Chris Hamby | Shana Hamby |
| Edwin Shaver III | Shelby Arledge |
| Lucille Rolfes | GZ Rofes |
| Russ Haysen | Kevin Browning |
| Jen Taylor | Joe Hall |
| Kim Hall | Elizabeth Shawley |
| Paula Campbell | Dwight Brooks |
| Kathi Brooks | Alicia Brouillette |
| Damon Hucks | Joe Untz |
| Dayton McLean | Bill Boak |
| Carol Boak | Glenda Edwards |
| Kevin Webster | Cindy Webster |
| Mike Rowell | Richard Chaney |
| Janet Crawford | Brittany Printy |
| Tyler Printy | Judy Shoff |
| Steve Arnold | Douglas Roy |
| Nancy Rumble | David Miller |
| Dustin Keith | Barry Shoemaker |
| Timothy Gujus | Margaret Puckett |
| Lt. Colonel Chris Castro | |

CALL TO ORDER AND WELCOME:

Mayor Hinnant called the meeting to order and welcomed those in attendance. A moment of silent prayer and the Pledge of Allegiance was led by Council Member Kincaid.

ADOPTION OF AGENDA:

Mayor Hinnant noted revised agenda adding a closed session. Council Member Wilson made a motion to approve the revised agenda. Motion was seconded by Council Member Berry and approved by unanimous vote.

RECOGNITIONS:

Kannapolis 101

Each fall we offer an eight week course to our residents called Kannapolis 101. We also offer the class to employees. The focus is on educating residents and employees about the City and its services and operations. Participants visit each of the City departments such as police, fire, planning, public works, etc., and are to see firsthand how each department meets the needs of residents. The class completes many hands-on exercises to give them an appreciation for the various jobs and functions of city employees. Nineteen people have completed the Resident Session of Kannapolis 101 this fall. The following were recognized and presented a certificate of appreciation.

| | | | |
|----------------|----------------|-------------------|-------------------|
| Joe Hatley | Carolyn Conley | Nancy Rumble | Paula Campbell |
| Richard Conley | Ron Glover | Andrew Pierce | Debbie Funderburk |
| Dena Wike | Keith Overcash | Kellie Cartwright | Loretta Stancil |

1 Lucille Rolfes Mason Nance Nancy Anthony Rebekah Watson
2 Russell Hoyser Scotty Brown Suzy Agnello

3
4 Completing the Employee Kannapolis 101 Program were:

5
6 Barbara Black Alana Sweatt Ana Contreras Brett Mann
7 Chase Crowey Corey Barnes Gullian Prince Hannah Nall
8 Jack Lanaghan Michele President Ronald Sloop Tom Greene
9 Tony Cline Tyler Obrien Abie Mercado – Morales

10
11 Peacock Award

12 Planning & Public Transportation LJ Transportation Director, Zac Gordon, Planning Director
13 were awarded the prestigious Peacock Award voted by the participates of the academies.

14
15 **APPROVAL MINUTES:**

16 Council Member Dayvault made a motion to approve the October 07, 2019 special meeting
17 minutes. Motion was seconded by Council Member Wilson and approved by unanimous vote.

18
19 Council Member Kincaid made a motion to approve the October 14, 2019 meeting minutes.
20 Motion was seconded by Council Member Berry and approved by unanimous vote.

21
22 Council Member Wilson made a motion to approve the October 28, 2019 meeting minutes.
23 Motion was seconded by Council Member Kincaid and approved by unanimous vote.

24
25 Council Member Dayvault made a motion to approve the October 14, 2019 closed session
26 minutes. Motion was seconded by Council Member Berry and approved by unanimous vote.

27
28 Council Member Kincaid made a motion to approve the October 28, 2019 closed session minutes.
29 Motion was seconded by Council Member Dayvault and approved by unanimous vote.

30
31 **CONSENT AGENDA:**

32 Council Member Wilson made a motion to approve the Consent Agenda. Motion was seconded by
33 Council Member Dayvault and approved by unanimous vote.

34
35 Interlocal Agreement for the City of Kannapolis to provide Class "C" ORC Services to assist the
36 Town of Landis (Copy included as Exhibit A)

37
38 Little Texas Road Sidewalk Project PE Contract (TIP #EB-5844) (Copy included as Exhibit B)

39
40 Lane Street Water Main Replacement and Sewer Rehabilitation Award (Copy included as Exhibit
41 C)

42
43 Amend Parks and Recreation Fee Schedule (Copy included as Exhibit D)

44
45 Mooresville Road Water Line Capital Project Ordinance Amendment and Reimbursement
46 Resolution (Copy included as Exhibit E)

1 Capital Project Ordinance Amendment for the Irish Buffalo Creek Greenway (Copy included as
2 Exhibit F)

3
4 Downtown Sewer Outfall Project (Copy included as Exhibit G)

5
6 Budget Amendment for Downtown Christmas Decorations (Copy included as Exhibit H)

7
8 **BUSINESS AGENDA:**

9
10 **Public Hearing – (CZ-2019-07) Proposed rezoning of property on Orphanage Road by**
11 **CHLC Investments, LLC, to allow 92 detached single-family homes and 186 townhomes**
12 **(Zachary D Gordon, ACIP, Planning Director and Gretchin Coperine, AICP, Senior**
13 **Planner) (Copy included as Exhibit I)**

14 Mayor Hinnant explained the rules of procedure for speaking on case CZ-2019-07).

15
16 Ms. Coperine provided information on case CZ-2019-07 as contained in the staff report. Ms.
17 Coperine was asked about the egress and ingress entrance and how it will benefit the traffic
18 coming onto Orphanage Road. Mr. Melton, Director of Public Works explained that by making
19 these improvements would help with the mitigation. Ms. Coperine provided a petition in
20 opposition to the Orphanage Road Rezoning. (Copy included as Exhibit J)

21
22 Questions of Council were how many resident units, the density and cost of the homes. Ms.
23 Coperine explained that the applicant can answer those questions.

24
25 Ray Holt, CHLC Investments, introduced himself as well as Sarah Shirley (American
26 Engineering) and Mark Carpenter also of (CHLC Investments, LLC). Mr. Holt provided
27 information on the project.

28
29 Sarah Shirley noted as a result of concerns expressed during a neighborhood meeting, met with
30 NCDOT and the school systems. A great deal of thought was given to the site plan to making the
31 community a nice community with walking trails and sidewalks.

32
33 Mayor Hinnant opened the public hearing to those in attendance for an opportunity to speak.

34
35 Mark Carpenter of 6412 Ballantyne Road, Charlotte spoke on the traffic count.

36
37 Douglas Roy of 4100 Orphanage Road gave a powerpoint presentation (Included as Exhibit K),
38 stating he has attending all of the meetings since August. He also addressed the concerns of the
39 citizens and asked how can you call this a transition, it is not flowing into the community.

40
41 Bradley McDaniel of 1640 Dale Earnhardt Blvd., believes a better fit would be residential, rather
42 than townhomes.

43
44 Dale S. Cannon, Jr., of 3485 Orphanage Circle, Concord administrative assistant for the children's

1 home. He has been advised by the NCDOT that a two-lane road with a left hand lane can
2 accommodate up to 18-20,000 cars a day. He added that the trees along Orphanage Road will not
3 be removed.

4
5 Beth Rhynehart of 420 Peacehaven Lane, China Grove asked Council to vote for the request to
6 rezone.

7
8 Sarah Deaton of 1433 Matthew Allen Circle asked Council to vote for the request to rezone.

9
10 Brian Rabon of 254 Moose Road asked Council to vote in favor of the request to rezone. He
11 remarked the property has been for sale for some time and by rezoning, would help with the sale
12 of the property. Proceeds would be to set up an endowment fund for the children.

13
14 Pat Palmquist of 12718 Longstock Ct, Huntersville stated she is a board member for the children's
15 home and the home is struggling financially. The state has cut funding and is less than ½ of what
16 is needed.

17
18 Doris Sloop of 2211 West A Street sees the rezoning a great opportunity to help others. The
19 purpose is to sell the property and set up an endowment fund for the children.

20
21 Terry Arnold of 4142 Orphanage Road stated she has lived across from the property for the past
22 30 years and expressed concerns for the community including traffic concerns. She talked about
23 industrial versus light industrial zoning.

24
25 Chris Hamby of 4226 Barfield Street, Concord stated the church wants you to feel it is all about
26 the children, but it comes down to the fact that the property can't be sold as residential. He stated
27 once the children's home get what they want, the residents are left. He also spoke on the increased
28 traffic.

29
30 Anthony Meltvedt of 2402 Westminster Drive, Concord stated that NCDOT officials are not
31 experts and that he drives this road everyday. By having a turn lane will only make traffic worse.
32 He once sat on Applegate and waited for 24 cars to go by before he could turn.

33
34 Nancy Rumble of 6175 Pagemont Street feels there needs to be some consideration to older
35 housing and the fact that all senior citizens may not have a car.

36
37 David Miller of 1640 Dale Earnhardt Road voiced his support for the rezoning.

38
39 Dustin Keith of 4114 Orphanage Road expressed concern of the rezoning regarding the density as
40 well as traffic.

41
42 Barry Shoemaker of 5521 Dogwood Blvd stated one issue is to address the buses coming from the
43 area schools and the impact it will have.

1 Michael Ballantyne of 1975 Stratton Ct lives less than one mile from the Orphanage and is
2 opposed to the rezoning. He noted that most of the points concerning traffic have already been
3 said. He feels the square footage is lowered, would have more support from the community.

4
5 David Ballantyne of 1975 Stratton Ct asked to give consideration that Oakwood Avenue has been
6 under project for some time and the NCDOT is under funded.

7
8 Timothy Gajus of 2110 Grandhaven, Concord said the valuation of the homes will decrease. A
9 senior community would be better suited with less traffic. His grandmother just moved into one
10 and she loves it. There is a lot less children and a lot less cars because they use golf carts and will
11 reduce the number of volume in the neighborhood.

12
13 Jack McKinley of 702 Possum Trot Road, Blacksburg, SC spoke in favor of the development and
14 feels it is exactly what Kannapolis needs. 673 tickets were issued within 23 months, an average of
15 29.29 tickets a month or less than 1 ticket per day. He feels Kannapolis has a good police
16 department and cover the areas pretty well. Housing is not harmful and Kannapolis has a tax
17 problem. He referred to a tax chart (Copy included as Exhibit L) showing that Kannapolis has the
18 highest tax rate within any of the 31 municipalities in the metrolina area. Kannapolis also falls in
19 the bottom third in growth. There is only one way to grow and that is to have roof tops. The
20 developer has shown that this will be positive tax revenue for the City. He finds it appalling that
21 anyone could oppose the Orphanage. They are model citizens and have worked with them in the
22 past. He said they raise great people under very certain circumstances. Mr. McKinley has been a
23 citizen of Kannapolis along time, is a licensed general contractor and licensed real estate broker.
24 He does not work in Kannapolis any longer because Kannapolis is hostile to development. He
25 brought a sub division plan a few years ago, met all of the standards and Kannapolis turned it
26 down. So he went where the pastures are greener. In closing Mr. McKinley told Council that
27 Kannapolis has to grow, people are going to be opposed, but you have to consider the greater good
28 and asked that Council not be intimidated by the group here tonight, but vote for the 50,000 people
29 in Kannapolis who are suffering because of high taxes, who need parks and need citizen
30 communities.

31
32 Kathi Brooks of 4108 Orphanage Road talked about opportunities to not make the same mistakes
33 as Concord and Charlotte. She is not opposed to rezoning but opposed to P-U-D-CZ (Planned Unit
34 Development-Conditional Zoning). She agrees we need residential and feels it should be RM-2
35 which would match the surrounding neighborhood and still provide an opportunity for the Church
36 of God to support the children.

37
38 Bill Boak of 2204 Grandhaven Drive, Concord stated that a lot of his points had already been
39 made. He lived directly across the street from the Orphanage and all of the area homes sit on $\frac{3}{4}$ up
40 to an acre lot. From the looks of the picture all of the homes are so close together, can throw a
41 block party and everybody can stay in their own house. He wondered if these homes would be
42 owner occupied or rental units. A lot of trees have already been cleared out.

43
44 Daniel Neil of 4530 Isenhour deferred his time to Terri Arnold.

45
46 Dwight Brooks of 4108 Orphanage Road deferred his time to Dustin Keith.

1
2 Steve Arnold of 4142 Orphanage Road deferred this time to Terri Arnold.

3
4 Judy Shoff of 335 Valleybrook Lane, SE, Concord deferred her time to Terri Arnold.

5
6 Trina Meltvedt of 2402 Westminster, Concord deferred her time to Anthony Meltvedt.

7
8 There being no further speakers, Mayor Hinnant closed the public hearing.

9
10 Following general discussion by Council, Council Member Wilson made a motion to approve a
11 Resolution approving a Statement of Consistency for CZ-2019-07. Motion was seconded by
12 Council Member Kincaid and approved by unanimous vote.

13
14 Council Member Kincaid made a motion to approve an Ordinance approving the rezoning of
15 property on Orphanage Road from I-1 (Light Industrial) to P-U-D-CZ (Planned Unit
16 Development-Conditional Zoning). Motion was seconded by Council Member Rowell, with
17 Council Member Berry voting against. The vote was approved by 6-1 vote.

18
19 **Public Hearing - Resolution Approving Purchase and Sale Agreement for a portion of Block**
20 **1, West Avenue (Mike Legg, City Manager and Walter M. Safrit II, City Attorney) (Copy**
21 **included as Exhibit M)**

22 The City has been committed to preserving the block surrounding the Gem Theatre (referred to as
23 "Block 1") as one of the more historic blocks of buildings in the downtown area. In July 2019, the
24 City released a Solicitation for Development Partners for the portion of Block 1 along West
25 Avenue and across from the new Sports & Entertainment Venue. The goal is to sell the buildings
26 to a developer who will renovate them, retain the historic character, and lease them to businesses
27 that will activate a key block of downtown. The other sections of Block 1 will be redeveloped in
28 future phases, so that the scale of the project is manageable and will not over saturate the market
29 all at once. Phase 1 of Block 1 contains 11 individual buildings, including the former Restaurant
30 46 space, with approximately 20,000 sf of ground floor space, 7,700 sf of second floor space, and
31 18,000 sf of basement space, totaling about 45,000 sf.

32
33 Two proposals were received in September, and City and DFI staff worked together to review and
34 evaluate the proposals, and conduct further due diligence. City staff identified Lansing Melbourne
35 Group (LMG) as the first choice developer, based on criteria that include: development team
36 experience, project's alignment with City's guiding public interests, developer's ability to execute,
37 and demonstration of confidence in the project. LMG is ready to proceed to get the spaces
38 completed as close to the April 2020 opening of the Sports & Entertainment Venue as possible,
39 and they also submitted letters of intent from several businesses who want to sign leases for the
40 Block 1 spaces. LMG is the same development group that is constructing the VIDA mixed-use
41 project on Block 3 in partnership with the City. They have formed Kannapolis Master Venture,
42 LLC for this and the VIDA project.

43
44 KMG/LMG has proposed purchasing the Block 1 Phase 1 buildings for \$450,000 and investing an
45 additional \$2.6 million to renovate the commercial spaces. As written, the Purchase Agreement
46 provides that City will finance \$400,000.00 of the purchase price for 18 months secured by a note

1 and deed of trust. The Agreement also provides a repurchase provision in the event Buyer defaults
2 under the Agreement. Prior to closing, the City will finalize a development agreement with
3 KMV/LMG as well as Covenants, Conditions, and Restrictions (CCRs) to protect the property.
4

5 Mayor Hinnant opened the public hearing to those in attendance for an opportunity to speak. There
6 being no speakers, Mayor Hinnant closed the public hearing.
7

8 Council Member Dayvault made a motion to approve a Resolution authorizing the City Manager
9 to execute a purchase and sale agreement for Block 1 of the downtown Kannapolis with
10 Kannapolis Master Venture, LLC. Motion was seconded by Council Member Kincaid and
11 approved by unanimous vote.
12

13 **Public Hearing - Purchase and Sale Agreement and Development Agreement for Downtown**
14 **Townhome project (Mike Legg, City Manager and Walter M. Safrit II, City Attorney)**
15 **(Copy included as Exhibit N)**

16 In May 2019, the City released a Solicitation for Development Partners for a nine-acre portion of
17 the former Plant 4 site for townhome development. Six proposals were received at the end of June,
18 and City and DFI staff worked together to review and evaluate the proposals, and conduct further
19 due diligence. City staff identified Sherwood Development as the first choice developer, based on
20 criteria that include: development team experience, project's alignment with City's guiding public
21 interests, proposed acquisition price, developer contribution to off-site infrastructure, and density
22 of the project.
23

24 Sherwood Development is led by Justin Mueller and Joe Untz. Both have development and
25 construction experience in Cabarrus County and the region, including several residential projects
26 that are underway. They have formed the Shiloh Church Development Group for this townhome
27 development.
28

29 Sherwood/Shiloh Church will develop the property for approximately 128 two- and three-story
30 townhomes with alley-loaded garages to be built by TriPointe Homes. In addition,
31 Sherwood/Shiloh Church will construct offsite improvements for public utilities, sidewalks, and
32 roads estimated to cost no less than \$4,178,500.
33

34 Sitework is expected to begin in mid to late-2020, with the first townhome units under
35 construction in early 2021 and becoming available by late 2021.
36

37 The property has been appraised for \$1,700,000 which is the purchase price. As additional
38 consideration for the purchase, Developer will assume all costs for the estimated \$4,178,500 in
39 off-site public road improvements for which Developer will receive a credit from the City against
40 the purchase price, in the amount of the difference of the Purchase Price and \$7,000 per approved
41 lot, up to a maximum credit of \$860,000. For example, if the City of Kannapolis approves 128
42 lots, the amount Shiloh pays will be \$896,000, equivalent to \$1,700,000, less the \$804,000 credit,
43 if the City of Kannapolis approves 115 lots, the amount Shiloh pays will be \$840,000, equivalent
44 to the \$1,700,000, less the maximum \$860,000 credit. The purpose of this approach is to sell the
45 property at its fair market value, based on the number of lots to be developed for the project. The
46 net sales price will be \$7,000 per approved lot.

1 The site plan and townhome designs will be finalized in the coming months. The townhomes are
2 expected to sell in the \$200,000-\$250,000 range, which would result in a total construction value
3 of approximately \$25 to \$30 million for the project.

4
5 Joe Untz of 4200 Mad Marion, Kannapolis spoke on the proposed plan and responded to
6 questions.

7
8 Mayor Hinnant opened the public hearing to those in attendance for an opportunity to speak. There
9 being no speakers, Mayor Hinnant closed the public hearing.

10
11 Council Member Dayvault made a motion to approve a Resolution authorizing the City Manager
12 to execute the Purchase and Sale Agreement with Shiloh Church Development Group, LLC.
13 Motion was seconded by Council Member Kincaid and approved by unanimous vote.

14
15 **Public Hearing - Amendments to Temerity Baseball Development Agreement and Lease**
16 **Agreement with Temerity Baseball (Mike Legg, City Manager and Walter M. Safrit II, City**
17 **Attorney) (Copy included as Exhibit O)** The original Development Agreement for construction
18 of the Sports and Entertainment Venue ("SEV") contains a provision relating to Temerity's
19 development rights for Blocks 4 and 5 adjoining the SEV. However, it was generally recognized
20 by City staff and Temerity that further clarification of what those "rights" are, are needed. The
21 first clarification in paragraph 2 of the Amendment more specifically requires that the Club and
22 the City will negotiate a Master Development Agreement or execute a Memorandum of
23 Understanding clearly defining and approving a mutually beneficial plan for development of the
24 sites. The Paragraph further clarified the nature and quality of City's assistance for development of
25 other portions of the Municipal Service District containing the downtown properties.

26
27 Paragraph 3 of the Development Agreement clarified that the City would provide temporary office
28 facilities at the former Wells Fargo site at 216 West Avenue.

29
30 Paragraph 4 of the Development Agreement clarified that the Club would construct commercial
31 space on Blocks 4 and/or 5 for permanent team facilities ("Facilities") including team store, team
32 ticketing office and team administrative offices. City would lease these Facilities from the Club, as
33 developer, if and when constructed in compliance with and satisfaction of SAL League and Minor
34 League baseball requirements.

35
36 Paragraph 4(c) provides that Club would provide temporary team store and ticket office pending
37 completion of the Facilities described above, in return for which City agrees to provide an
38 additional FF&E allowance of up to \$700,000. This paragraph also provides that City would
39 provide funding up to \$167,000 for a temporary ticket office in the form of a movable facility to
40 be owned by the City.

41
42 Finally, the Baseball Lease amendment is necessary to address the \$700,000 FF&E allowance
43 referred to above as this document provides the general FF&E requirements for both City and
44 Club. The Amendments do have financial impact although City requirements involved are not new
45 and were addressed in the original Development Agreement and Lease Agreement. A public
46 hearing is required as the amendments are substantive changes to both Agreements.

1 Mayor Hinnant opened the public hearing to those in attendance for an opportunity to speak. There
2 being no speakers, Mayor Hinnant closed the public hearing.

3
4 Council Member Kincaid made a motion to adopt a Resolution approving the execution of the
5 purchase and sale agreement between the City of Kannapolis and Temerity Baseball, LLC. Motion
6 was seconded by Council Member Berry and approved by unanimous vote.

7
8 **Public Hearing - ATM lease for 216 West Ave (Irene Sacks, Director of Economic &**
9 **Community Development) (Copy included as Exhibit P)**

10 Wells Fargo has closed its branch at 216 West Avenue, due to routine corporate evaluation of
11 branch locations and its desire to shift customers to the Jackson Park branch. This will allow the
12 baseball team to operate its administrative offices in this building until a permanent team office
13 location is established. In the meantime, Wells Fargo would like to maintain its ATM presence in
14 downtown Kannapolis in its existing location. It is proposing a three-year lease for the ATM
15 location.

16
17 Wells Fargo will pay \$850 per month for the first year, with 10% rent escalations per month for
18 each year after that.

19
20 Mayor Hinnant opened the public hearing to those in attendance for an opportunity to speak. There
21 being no speakers, Mayor Hinnant closed the public hearing.

22
23 Council Member Kincaid made a motion to approve a lease with Wells Fargo for an ATM at 216
24 West Avenue, subject to minor modifications as recommended by the City Attorney. Motion was
25 seconded by Council Member Wilson and approved by unanimous vote.

26
27 **Public Hearing - Economic Development Grant - Project Bay (Irene Sacks, Director of**
28 **Economic & Community Development) (Copy included as Exhibit Q)**

29 The former Ei Solutionworks facility at 2865 N. Cannon Blvd closed in September 2018, leaving a
30 150,000 pharmaceutical manufacturing building vacant. A company is proposing to lease the
31 facility for a manufacturing operation. The company is considering other buildings in North
32 Carolina and other states for this operation and is requesting incentives from the State of North
33 Carolina, Rowan County, and the City of Kannapolis to help make the project competitive.

34 The project would bring 161 jobs within the first five years, with an average salary of \$57,238.

35
36 Because the building is an existing facility, the company would qualify for only new personal
37 property investment, estimated at \$21.4 million over the first five years.

38
39 The City's 3-year, 85% economic development grant would provide a total incentive of \$240,707
40 over the first three years. After that, the City would receive 100% of the new personal property tax
41 revenue, estimated at \$134,820 annually by year 5. The project meets the requirements of the
42 City's Industrial Development Grant Program.

43
44 Mayor Hinnant opened the public hearing to those in attendance for an opportunity to speak. There
45 being no speakers, Mayor Hinnant closed the public hearing.

1 Council Member Dayvault made a motion to approve a three year, 85% economic development
2 grant for Project Bay for 2865 N. Cannon Blvd. Motion was seconded by Council Member Rowell
3 and approved by unanimous vote.
4

5 **CITY MANAGER REPORT:** None
6

7 **CITY COUNCIL COMMENTS:** None
8

9 **SPEAKERS FROM THE FLOOR:**

10 Lt. Colonel Chris Castro representing the Selective Service System; which is an independent
11 agency within the Executive Branch of the Federal Government, distributed information related to
12 their board member program. The agency is requesting assistance for the recruitment and training
13 of local board members and invited anyone interested in becoming a local board member to
14 contact the Selective Service System at www.sss.gov (Board Member Section). Board members
15 serve without pay and are appointed by the Director of Selective Service in the name of the
16 President, upon recommendation by the Governor.
17

18 **CLOSED SESSION:**

19 Council Member Wilson made a motion to go into closed session pursuant to GS. 143-318.11 (a)
20 (3) to consult with an attorney in order to preserve the attorney client privilege; G.S. 143.318.11
21 (a) (4) for discussing matters relating to the location or expansion of industries or businesses in the
22 area and G.S. 143-318.11 (a) (6) for the purpose of discussing personnel matters. Motion was
23 seconded by Council Member Dayvault and approved by unanimous vote.
24

25 Council went into closed session at 9:55 PM.
26

27 Council Member Kincaid made a motion to come out of closed session. Motion was seconded by
28 Council Member Dayvault and approved by unanimous vote.
29

30 Council resumed regular session 10:45 PM.
31

32 Staff discussed lease terms for Lee Clothing and City Attorney Safrit briefed Council on details of
33 the Kannapolis Business Park/NCDOT/Elevate negotiations.
34

35 Council Member Dayvault made a motion to adjourn. Council Member Wilson seconded the
36 motion and approved by unanimous vote.
37

38 The meeting adjourned at 10:45 PM on Monday, November 25, 2019.
39
40
41

42 _____
Milton D. Hinnant, Mayor
43

44 _____
45 Bridgette Bell, MMC, NCCMC
46 City Clerk

**CITY OF KANNAPOLIS
COUNCIL MEETING MINUTES
December 09, 2019**

A regular meeting of the City Council of the City of Kannapolis, North Carolina was held on Monday, December 09, 2019 at 6:00 p.m., at the Kannapolis City Hall located at 401 Laureate Way, Kannapolis, NC.

CITY COUNCIL MEMBERS PRESENT:

Mayor: Milton D. Hinnant

Council Members: Van Rowell
Doug Wilson
Tom Kincaid
Ryan Dayvault
Roger Haas

Council Members Absent: Dianne Berry

City Manager: Mike Legg

Deputy City Manager: Eddie Smith

City Clerk: Bridgette Bell

City Attorney: Walter M. Safrit

| | | |
|----------------|----------------|---------------|
| Staff Present: | Zac Gordon | Wilmer Melton |
| | David Jordon | Tony Eury |
| | Rick Barnhardt | Irene Sacks |
| | Donie Parker | Eric Davis |
| | Wendy Heglar | Terry Spry |

| | | |
|-------------------|-----------------|--------------|
| Visitors Present: | Bobbi Hague | Diana Shipe |
| | Darrell Jackson | Mark Spitzer |

CALL TO ORDER AND WELCOME:

Mayor Hinnant called the meeting to order and welcomed those in attendance. A moment of silent prayer and the Pledge of Allegiance was led by Council Member Kincaid.

ADOPTION OF AGENDA:

Council Member Wilson made a motion to approve the agenda. Motion was seconded by Council Member Dayvault and approved by unanimous vote.

1 **CONSENT AGENDA:**

2 Modifications to the FY2020 Fee Schedule regarding Commercial Environmental Fees (Wilmer
3 Melton, Director of Public Works) (Copy included as Exhibit A)

4
5 Resolution Adopting a 2020 Meeting Schedule for City Council Meetings (Bridgette Bell, City
6 Clerk) (Copy included as Exhibit B)

7
8 Approval of a Budget Amendment for Water/Sewer Supplies and Services (Wilmer Melton, III,
9 Director of Public Works) (Copy included as Exhibit C)

10
11 Estoppel Agreement, Subordination Agreement and First Amendment to the Parking Garage
12 Unit Purchase and Sale Agreement ("PSA") (Walter M. Safrit, II City Attorney) (Copy included
13 as Exhibit D)

14
15 **BUSINESS AGENDA:**

16 Order of the Long Leaf Pine – Mayor Hinnant presented to Council Member Roger Haas the
17 prestigious Order of the Long Leaf Pine that is the highest award for state service granted by the
18 Office of the Governor. Just prior to the Council meeting, Mr. Haas received a proclamation on
19 behalf of City Council and the citizens of Kannapolis, thanking him for his service.

20
21 **Organizational Meeting of City Council:**

22 Superior Court Judge Martin McGee administered the Oath of Office to Council Member Elect,
23 Tom Kincaid, Ryan Dayvault and Darrell Jackson.

24
25 **Election of Mayor Pro Tempore**

26 Council Member Dayvault nominated Council Member Van Rowell as Mayor Pro tempore.
27 There being no further nominations, the floor was closed. Council Member Van Rowell was
28 declared Mayor Pro tempore by acclamation.

29
30 Superior Court Judge Martin McGee administered the Oath of Office to Mayor Pro tempore Van
31 Rowell.

32
33 **Public Hearing to consider TA 2019-05 to amend various sections of the Unified**
34 **Development Ordinance (UDO) pertaining to technical and engineering land development**
35 **standards for any development project within the City. The standards have been**
36 **incorporated into a separate document , titled "Land Development Standards Manual**
37 **(LDSM)" (Zachary D. Gordon, AICP, Planning Director) (Copy included as Exhibit A)**

38 Staff is proposing to amend various sections of the UDO by removing text for various technical
39 and engineering standards guiding land development in the City and incorporating this text into a
40 separate "Land Development Standards Manual (LDSM)". The LDSM will be maintained by the
41 Public Works Department and Engineering Staff. and updated as necessary. The LDSM will
42 implement the land development policies contained in the UDO.

43
44 The LDSM will provide a concise handbook with all the necessary land development
45 requirements in an easy-to-read format for developers. This amendment (along with the LDSM)

1 will provide clarification, consistency and a more user-friendly format for land owners and
2 developers looking to develop property within the City.

3
4 At their January 17, 2019 meeting, the Planning and Zoning Commission voted to recommend
5 the proposed text amendment to the City Council for adoption. See attached Table 1 and Exhibit
6 A for a summary of proposed text amendments. (Included with Exhibit)

7
8 Mayor Hinnant opened the public hearing for those in attendance an opportunity to speak. There
9 being no speakers, Mayor Hinnant closed the public hearing.

10
11 Council Member Kincaid made a motion to adopt a Resolution adopting a Statement of
12 Consistency for TA-2019-05. Motion was seconded by Council Member Wilson and approved
13 by unanimous vote.

14
15 Council Member Dayvault made a motion to approve an Ordinance to amend the text of the
16 UDO for proposed TA-2019-05. Motion was seconded by Council Member Rowell and
17 approved by unanimous vote.

18
19 **Presentation of Fiscal Year 2019 Audit (Eric Davis, Finance Director) (Copy included as**
20 **Exhibit B)**

21 The 2019 fiscal year audit was presented by Finance Director Eric Davis. Financial Statements
22 are prepared in conformity with the general accepted accounting principles in the United States
23 of America (GAPP) and audited in accordance with the GAPP.

24
25 Mr. Davis pointed out that from 2018, revenues had increased from \$43,642,363 to \$48,489,671
26 and expenditures decreased from \$43,453,584 to \$39,760,928. The audit found no material
27 internal control weaknesses and no findings or questioned costs, indicating the audit is clean and
28 thoroughly shows the City's strong financial position.

29
30 The General Fund Balance Summary indicates an increase from 2018 (22.1%) to 2019 (25.2%) .
31 The top 3 General Fund Revenues consist of Property tax 54%; Other taxes and license 22%;
32 other revenues 13% and restricted intergovernments 11%. Property tax rose from \$25,435,224 in
33 2018 to \$26,133,411 for 2019. The top 3 expenditures of the General Fund are Public Safety
34 40%; General Government 21%, Debt Services 21% and all other 18%. The Water and Sewer
35 Fund Summary shows in increase in revenues from \$17,032,109 to \$17,112,636 in 2019.

36
37 Mr. Davis responded to questions. No action was required.

38
39 **Approval of Construction Manager at Risk Contract for the Kannapolis Crossing Water**
40 **Main and Sanitary Sewer Service Extension Project and adopting a Resolution authorizing**
41 **the execution of same (Wilmer Melton, III - Director of Public Works) (Copy included as**
42 **Exhibit C)**

43 Construction Management at Risk delivery method requires the construction management
44 company to be selected using a qualifications-based selection process. The Construction
45 Manager at Risk serves as the City's fiduciary and coordinates subcontract bid packages to
46 develop optimum competition and compliance with the City's SDBE program. Construction

1 Management at Risk is the delivery method that most closely affords the benefits of integrated
2 project delivery, whereby the CMAR and Architect/Engineer are involved in the project
3 development during the design and preconstruction phase as an integrated team contracted by the
4 City, to provide design and preconstruction services in the best interests of the project and as a
5 team throughout the project lifecycle. Construction Management at Risk provides
6 prequalification of first tier subcontractors through a process developed jointly in conjunction
7 with the City. Construction Management at Risk delivery method provides for "open book"
8 project delivery, subject to audits, end of project reconciliation and sophisticated project
9 management during the preconstruction and construction phases.

10
11 Specific advantages to Construction Management at Risk delivery method over Separate-Prime
12 Bidding, Single Prime Bidding, and Dual Bidding for the Kannapolis Crossing Water and
13 Sanitary Sewer Service Extension are:

14
15 CMAR is involved during the design phase, providing preconstruction services for the benefit of
16 the project by providing cost estimates, phasing strategies, logistics plans, schedules,
17 constructability reviews, and subcontractor market analysis. Under separate prime/single prime
18 and dual bidding, these services are not provided by the contractor.
19 Pricing and cost model are developed along with the design; challenging constructability issues
20 are addressed earlier in the process, versus during construction via a change order. CMAR
21 delivery method affords opportunities to develop early subcontract bid packages in advance of
22 final design documents to enable the City to let early packages, such as demolition or long lead
23 packages, such as steel, in order to advance the project schedule. Traditional delivery methods do
24 not afford this option or flexibility. CMAR delivery method affords the ability to respond
25 quickly to non-performing subcontractors as necessary. CMAR delivery method provides
26 expertise in managing complex logistical projects. CMAR encourages and develops strategies for
27 preparing subcontract bid packages that foster competition, include pre qualified subcontractors
28 and leverage SDBE involvement. Separate prime/single prime and dual bidding delivery
29 methods encourage low bid subcontractor involvement. CMAR delivery method, unlike separate
30 prime/single prime and dual bidding, is not inherently antagonistic, as is low bid lump sum
31 competitive bidding.

32
33 For the reasons identified above and based on prior experience and analysis of project delivery
34 options available to the City, Construction Management at Risk delivery method is
35 recommended as "in the best interest of the project".

36
37 Request for Qualifications for Construction Manager at Risk was advertised on November 1,
38 2019; pre-proposal conferences were conducted on November 13, 2019; and written submittals
39 were received on December 3, 2019. Based on our review and scoring of the submittals received
40 from CMAR teams, Barton Malow was selected for the Project. To view the RFQ, click on this
41 link. Barton Malow RFQ for CM at-Risk- Services

42
43 Proceeds for the initial preconstruction services agreement, until we have a fully executed GMP,
44 will be funded from the Water and Sewer Fund within the Kannapolis Crossing Budget.

1 Council Member Wilson made a motion to accept staff's selection of Barton Malow as our
2 Construction Manager at Risk. Motion was seconded by Council Member Kincaid and approved
3 by unanimous vote.
4

5 Council Member Dayvault made a motion to approve a Resolution authorizing the City Manager
6 to execute the CMAR contract between Barton Malow and the City. Motion was seconded by
7 Council Member Kincaid and approved by unanimous vote.
8

9 **Appointments to the Transportation Advisory Committee (TAC) and the Technical**
10 **Coordinating Committee (TCC) to Serve as the City's Representatives of the Cabarrus-**
11 **Rowan Urban Area Metropolitan Planning Organization (Mike Legg, City Manager)**
12 **(Copy included as Exhibit D)**

13 Mr. Legg asked that the appointment for the TCC be delayed until the next regular meeting due
14 to potential restructuring of departmental staff.
15

16 Council Member Kincaid made a motion to appoint Council Member Dayvault as representative
17 and Council Member Wilson as alternate to the TAC. Motion was seconded by Council Member
18 Jackson and approved by unanimous vote.
19

20 Motion was made by Council Member Dayvault and seconded by Council Member Kincaid to
21 defer action on the appointment of the TCC. The motion was approved by unanimous vote.
22

23 **Appoint a representative to serve on the Concord Kannapolis Transit Commission (CKTC)**
24 **(Mike Legg, City Manager) (Copy included as Exhibit E)**

25 Council Member Dayvault made a motion to appoint Council Member Jackson to serve as
26 representation on the CKTC serving out Mr. Haas' remaining term. Motion was seconded by
27 Council Member Wilson and approved by unanimous vote.
28

29 **CITY MANAGER REPORT:** City Manager Legg reported on Chief Woody Chavis' retirement
30 from the Kannapolis Police Department after serving for 37 years. Terry Spry has been named as
31 Interim Police Chief.
32

33 **CITY COUNCIL COMMENTS:** None
34

35 **SPEAKERS FROM THE FLOOR:** None
36

37 **CLOSED SESSION:**

38 Mayor Pro tem Rowell made a motion to go into closed session pursuant to GS 143.318.11 (a)(3)
39 to consult with an attorney in order to preserve the attorney client privilege; GS 143.318.11(a)(4)
40 for discussing matters related to the location or expansion of industries or businesses in the area
41 and GS 143-318.11 (a)(6) for the purpose of discussing personnel matters. Motion was seconded
42 by Council Member Wilson and approved by unanimous vote.
43

44 Council went into closed session at 6:50 PM.
45

1 Council Member Wilson made a motion to come out of closed session. Motion was seconded by
2 Council Member Dayvault and approved by unanimous vote.

3
4 Council resumed regular session at 7:40 PM.

5
6 Council Member Wilson made a motion to authorize the City Manager to terminate the service
7 agreement with Technologies Edge effective December 31, 2019. Motion was seconded by
8 Council Member Kincaid and approved by unanimous vote.

9
10 Council Member Wilson made a motion to assign information technology job classifications to
11 pay grades within the schedule as recommended. Council Member Jackson seconded the motion
12 and it was approved by unanimous vote.

13
14 Council Member Dayvault made a motion to move funds within the Network Administration
15 operational budget to various personnel line items to fund five new positions within the
16 Information Technology Department.

17
18 Council Member Dayvault made a motion to adopt an Ordinance amending the Code of the City
19 of Kannapolis by adding Chapter 2 Administration-Information Technology and Data Services.
20 Motion was seconded by Council Member Jackson. The motion was approved by unanimous
21 vote.

22
23 Council Member Wilson made a motion to adjourn. Council Member Dayvault seconded the
24 motion and approved by unanimous vote.

25
26 The meeting adjourned at 7:45 PM on Monday, December 09, 2019.

27
28
29
30
31 _____
32 Milton D. Hinnant, Mayor

33
34 _____
35 Bridgette Bell, MMC, NCCMC
City Clerk



**City of Kannapolis
City Council Meeting
January 27, 2020
Staff Report**

TO: Mayor and City Council
FROM: Eric Davis; Finance Director
TITLE Public Hearing - In order to consider the findings
of Refunding (refinancing) the 2010 Limited
Obligation Bonds for the North Carolina Research
Campus

A. Action Requested by City Council

1. Conduct a Public Hearing
2. Adopt a Motion approving the Resolution Authorizing the Negotiation of an Installment Financing Contract and Providing for Certain Other Related Matters Thereto.

B. Required Votes to Pass Required Action

Majority present at meeting

C. Background

In 2010, the City of Kannapolis and Cabarrus County entered into an agreement to issue \$35 Million in Limited Obligation Bonds in support of the North Carolina Research Campus. These Bonds assisted with the construction of utilities, roads, a parking deck and the construction of the Cabarrus Health Alliance. The structure of the debt issuance in 2010 was very complicated, due in part to the fact that the City had been working on this deal for approximately five years.

The agreement between Kannapolis and Cabarrus County; simply put; was that the debt service obligation would be split evenly between the two local governments, with the Health Alliance building providing the largest piece of collateral for the loan. The debt was issued in two parts; a taxable component, and a non-taxable component. In March of 2020, the taxable bonds will be completely paid off. All that will remain are the non-taxable bonds that will be paid off on March 1st, 2027 (7 more years).

Since April of 2019, the non-taxable bonds have been eligible to be refunded (refinanced). This public hearing and resolution adoption starts this process, with a goal of closing on the refunded bonds in mid March, 2020.

D. Fiscal Considerations

Refunding these remaining non-taxable bonds with Bank of America (1.84%) will result in an overall savings of \$2,224,357. This is loan interest that we will avoid paying over the next seven years. The annual savings under this refunding is approximately \$318,000.

E. Policy Issues

Per our agreement, we will split these savings with Cabarrus County. The savings are actually realized in the form of reduced debt payments from 2021 through 2027.

Under the new payment structure, each local government will save a total of \$1.11 million or \$159,000 annually from 2021 to 2027.

F. Legal Issues

The City of Kannapolis and Cabarrus County are currently working on amending the interlocal agreement that will allow for this refunding to be executed. Cabarrus County has to approve this agreement as well.

G. Alternative Courses of Action and Recommendation

1. **Motion to approve the Resolution Authorizing the Negotiation of an Installment Financing Contract and Providing for Certain Other Related Matters Thereto. And to award the financing contract to Bank of America. Recommended.**
2. Do not approve the resolution and remain under the current debt service schedule.
3. Table Action to a future meeting.

Table action to a future meeting.

ATTACHMENTS:

File Name

- ❑ Initial_Resolution_-_City_of_Kannapolis_IFC_(2020_refunding_of_2010B_BABs)_-rev_to_v1_(1).pdf
- ❑ City_of_Kannapolis_NC_Summary_of_Interest_Rates_1.17.20.pdf

EXTRACTS FROM MINUTES OF CITY COUNCIL

* * *

A Regular Meeting of the City Council of the City of Kannapolis, North Carolina was duly held at in the City Hall Council Chambers, 401 Laureate Way in Kannapolis, North Carolina, the regular place of meeting, at 6:00 p.m. on January 27, 2020:

Members Present:

Members Absent:

* * * * *
* * *

Notice of a public hearing was published on January __, 2020 stating that the City Council would hold a public hearing thereon on January 27, 2020 at or about 6:00 p.m. regarding the City entering into an installment financing contract in order to provide funds to refinance its installment financing obligations related to Taxable Limited Obligation Bonds (Build America Bonds), Series 2010B.

The Mayor announced that the City Council would hear anyone who wished to be heard on the questions of the proposed installment financing contract. **[No one spoke at the public hearing.]**

Councilmember _____ moved that the public hearing be closed. The motion was seconded by Councilmember _____ and was unanimously adopted.

Councilmember _____ introduced the following resolution, a summary of which had been provided to each Councilmember, copy of which was available with the City Council:

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KANNAPOLIS, NORTH CAROLINA, AUTHORIZING THE NEGOTIATION OF AN INSTALLMENT FINANCING CONTRACT AND PROVIDING FOR CERTAIN OTHER RELATED MATTERS THERETO

WHEREAS, the City of Kannapolis, North Carolina (the “City”) is a validly existing municipal corporation existing as such under and by virtue of the Constitution, statutes and laws of the State of North Carolina (the “State”);

WHEREAS, the City has the power, pursuant to the General Statutes of North Carolina to (1) purchase real and personal property, (2) enter into installment contracts in order to finance or refinance the purchase of real and personal property used, or to be used, for public purposes, and (3) grant a security interest in some or all of the property purchased to secure repayment of the purchase price;

WHEREAS, the City has previously executed and delivered Taxable Limited Obligation Bonds (Build America Bonds), Series 2010B (the “2010B Bonds”), the proceeds of which were used, together

with other funds, to finance and refinance infrastructure projects to support the North Carolina Research Campus, to finance the construction and equipping of a public health facility operated by the Cabarrus Health Alliance and to pay certain other costs related to the 2010B Bonds (the projects financed and refinanced with the proceeds of the 2010B Bonds are herein referred to as the “*Projects*”);

WHEREAS, in order to secure its obligations related to the 2010B Bonds, the City granted a security interest in the public health facility described above (the “*Mortgaged Property*”);

WHEREAS, the City has been advised that it may be advantageous to refinance the 2010B Bonds to achieve debt service savings;

WHEREAS, the City Council of the City (the “*City Council*”) hereby determines that it is in the best interest of the City to (1) enter into an installment financing contract (the “*Contract*”) with Bank of America, N.A. (the “*Lender*”) in order to refinance the 2010B Bonds, and (2) enter into a deed of trust, security agreement and fixture filing (the “*Deed of Trust*”) from the City to the deed of trust trustee named therein, granting to the Lender a lien on the Mortgaged Property, as may be required by the Lender;

WHEREAS, the City Council has previously determined and hereby determines that the acquisition of the Projects is essential to the City’s proper, efficient and economic operation and to the general health and welfare of its inhabitants; that the Projects provide an essential use and permits the City to carry out public functions that it is authorized by law to perform; and that entering into the Contract and Deed of Trust is necessary and expedient for the City by virtue of the findings presented herein;

WHEREAS, the City Council hereby determines that the Contract allows the City to refinance the 2010B Bonds at a favorable interest rate currently available in the financial marketplace and on terms advantageous to the City;

WHEREAS, the City Council hereby determines that the estimated cost of refinancing the 2010B Bonds is an aggregate amount not to exceed \$19,750,000 and that such cost of refinancing the 2010B Bonds exceeds the amount that can be prudently raised from currently available appropriations, unappropriated fund balances and non-voted bonds that could be issued by the City in the current fiscal year pursuant to Article V, Section 4 of the Constitution of the State;

WHEREAS, although the cost of refinancing of the 2010B Bonds pursuant to the Contract is expected to exceed the cost of refinancing the 2010B Bonds pursuant to a bond financing for the same undertaking, the City hereby determines that the cost of refinancing the 2010B Bonds pursuant to the Contract and the Deed of Trust and the obligations of the City thereunder are preferable to a general obligation bond financing or revenue bond financing for several reasons, including but not limited to the following: (1) the cost of a special election necessary to approve a general obligation bond financing, as required by the laws of the State, would result in the expenditure of significant funds; (2) the time required for a general obligation bond election would cause an unnecessary delay which would thereby decrease the financial benefits of refinancing the 2010B Bonds; and (3) insufficient revenues are produced by projects financed under the 2010B Bonds so as to permit a revenue bond financing;

WHEREAS, the City Council hereby determines that the estimated cost of refinancing the 2010B Bonds pursuant to the Contract reasonably compares with an estimate of similar costs under a bond financing for the same undertaking as a result of the findings delineated in the above preambles;

WHEREAS, the City does not anticipate a future property tax increase to pay installment payments falling due under the Contract;

WHEREAS, Parker Poe Adams & Bernstein LLP, as special counsel ("*Special Counsel*"), will render an opinion to the effect that entering into the Contract and the transactions contemplated thereby are authorized by law;

WHEREAS, no deficiency judgment may be rendered against the City in any action for its breach of the Contract, and the taxing power of the City is not and may not be pledged in any way directly or indirectly or contingently to secure any moneys due under the Contract;

WHEREAS, the City is not in default under any of its debt service obligations;

WHEREAS, the City's budget process and Annual Budget Ordinance are in compliance with the Local Government Budget and Fiscal Control Act, and external auditors have determined that the City has conformed with generally accepted accounting principles as applied to governmental units in preparing its Annual Budget ordinance;

WHEREAS, past audit reports of the City indicate that its debt management and contract obligation payment policies have been carried out in strict compliance with the law, and the City has not been censured by the North Carolina Local Government Commission (the "*LGC*"), external auditors or any other regulatory agencies in connection with such debt management and contract obligation payment policies;

WHEREAS, a public hearing on the Contract after publication of a notice with respect to such public hearing must be held and approval of the LGC with respect to entering the Contract must be received; and

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF KANNAPOLIS, NORTH CAROLINA, AS FOLLOWS:

Section 1. ***Authorization to Negotiate Amendment Number One and Amendment Number Two.*** That the City Manager, the Deputy City Manager and the Finance Director, with advice from the City Attorney and Special Counsel, are hereby authorized and directed to proceed and negotiate on behalf of the City for the refinancing of the 2010B Bonds under the Contract to be entered into in accordance with the provisions of Section 160A-20 of the General Statutes of North Carolina, as described in this Resolution.

Section 2. ***Application to LGC.*** That the Finance Director of the City, or his designee, with advice from the City Manager, the Deputy City Manager and Special Counsel, is hereby authorized, directed and designated to file with the LGC an application for its approval of the Contract and all relevant transactions contemplated thereby on a form prescribed by the LGC and to state in such application such facts and to attach thereto such exhibits regarding the City and its financial condition as may be required by the LGC.

Section 3. ***Approval of the Financing Team.*** That Parker Poe Adams & Bernstein LLP has been retained by the City to serve as special counsel and Davenport & Company LLC been retained to serve as financial advisor. The City Manager, the Deputy City Manager and the Finance Director are each hereby authorized to retain other persons or organizations as may be necessary and appropriate to carry out the intention of this Resolution.

Section 4. ***Repealer.*** That all motions, orders, resolutions and parts thereof in conflict herewith are hereby repealed.

Section 5. ***Effective Date.*** That this Resolution is effective on the date of its adoption.

STATE OF NORTH CAROLINA)
)
CITY OF KANNAPOLIS) SS:

I, _____, _____ Acting City Clerk of the City of Kannapolis, North Carolina, ***DO HEREBY CERTIFY*** that the foregoing is a true and exact copy of minutes of the City Council of the City of Kannapolis, North Carolina, reflecting the holding of a public hearing and the adoption of a resolution entitled “**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KANNAPOLIS, NORTH CAROLINA, AUTHORIZING THE NEGOTIATION OF AN INSTALLMENT FINANCING CONTRACT AND PROVIDING FOR CERTAIN OTHER RELATED MATTERS THERETO**” at a meeting of the City Council of the City of Kannapolis, North Carolina held on the 27th day of January, 2020.

WITNESS my hand and the corporate seal of the City of Kannapolis, North Carolina, this the 27th day of January 2020.

[Seal]

Rebecca Barbee
Acting City Clerk
City of Kannapolis, North Carolina

Summary of Interest Rates



| A | | B | C |
|------------|-----------------------------|---|------------------------------------|
| Lender | | Rate | |
| Tax Status | | Tax-Exempt | Taxable |
| 1 | Bank of America | 1.84% | 1.93% |
| 2 | Capital One | 2.34% | 2.75% |
| 3 | First Bank | 2.20% | 2.20% |
| 4 | First Internet Bank | 3.25% | 3.25% |
| 5 | Key Bank | 2.052% | 2.500% |
| 6 | Pinnacle Financial Partners | 2.17% | 2.17% |
| 7 | Pinnacle Public Finance | 2.48% | 3.13% |
| 8 | PNC | 1.98% | 2.08% |
| 9 | Regions Bank | 1.96% | 2.43% |
| 10 | Sterling National Bank | 2.32% | 3.09% |
| 11 | TD Bank ¹ | Option A: 1.89% Option B: 2.01% Option C: 1.96% | Option A: 2.33% Option B: 2.47% |
| 12 | Truist | 1.90% | 2.13% |
| 13 | Wells Fargo ² | 1.90% | 3.30% |

¹ Option A is subject to Make Whole Call, Option B is prepayable at par, and Option C is subject to "Half-Life" prepayment (Make Whole Call through 9/1/2023, then prepayable at par thereafter).

² Rates are indicative. The actual Fixed Rate shall be determined on the Rate Set Date (3/12/2020).



**City of Kannapolis
City Council Meeting
January 27, 2020
Staff Report**

TO: Mayor and City Council
FROM: Walter M. Safrit, II City Attorney
TITLE Declaration of Covenants, Conditions and
Restrictions for Downtown

A. Action Requested by City Council

Motion to adopt Resolution authorizing City Manager to execute and record Declaration of Covenants, Conditions and Restrictions.

B. Required Votes to Pass Required Action

Majority present at meeting

C. Background

In order to protect the development integrity of the downtown area, including the commercial area and former Plant 4 area, it is in the best interests of the citizens to regulate the quality of development located or proposed for location there. Most importantly those would be an Architectural Committee to regulate construction and approval of improvements. This document would supplement rather than replace any Development Agreement provisions agreed to between a developer and the City.

D. Fiscal Considerations

None

E. Policy Issues

None

| |
|------------------------|
| F. Legal Issues |
|------------------------|

None

| |
|--|
| G. Alternative Courses of Action and Recommendation |
|--|

1. **Approve the Resolution. (Recommended)**
2. Amend and then approve the Resolution.
3. Reject the Resolution.
4. Table to a future meeting

ATTACHMENTS:

File Name

- ☐ Resolution_Approving_Execution_of_Declaration_of_Covenants.pdf
- ☐ Declaration_of_Restrictive_Covenants_(Kannapolis)__12-2-19)_(1).pdf

**RESOLUTION APPROVING EXECUTION OF A
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

WHEREAS, North Carolina General Statutes, Chapter 160A, Article 19, Part 8, authorizes municipalities to engage in appropriations and expend funds for community development programs and activities for restoration or preservation of blighted, deteriorated, undeveloped or inappropriately developed properties for sound community development and growth; and

WHEREAS, North Carolina municipalities are encouraged to acquire such properties for public purposes or community development projects with redevelopers for residential, recreational, commercial or other uses for the general benefit of its citizens; and

WHEREAS, the Kannapolis City Council adopted a Master Development for Downtown Kannapolis on July 25, 2016 setting forth a vision for the City's central business district with the intention to engage developers to create downtown development projects intended to achieve one or more of the goals contained in the Master Development Plan; and

WHEREAS, the City has acquired real property in the central business district which the City Council desires to encumber with covenants, conditions and restrictions designed to encourage maintenance and development of property in a manner best suited to promote a proper and most desirable use of the property; and

WHEREAS, pursuant to and consistent with the provisions of North Carolina General Statutes 160A-457, 160A-457.3 and 158-7.1 the City Council desires to approve and record the attached Declaration of Covenants, Conditions and Restrictions to accomplish the goals stated herein.

NOW, THEREFORE, BE IT RESOLVED, that the Declaration of Covenants, Conditions and Restrictions attached hereto is hereby approved and adopted; and

BE IT FURTHER RESOLVED, that the City Manager is authorized to execute and record in the Cabarrus Registry the Declaration on behalf of the City subject to the correction of clerical, typographical and other non-substantive changes, or modifications as may be necessary, desirable and consistent with the intent of this Resolution.

Adopted this the 27th day of January, 2020.

Milton D. Hinnant, Mayor

ATTEST:

Rebecca Barbee
Acting City Clerk

Prepared by and return to: Walter M. Safrit, II, City Attorney, City of Kannapolis, 401 Laureate Way, Kannapolis, North Carolina 28081

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS ("Declaration") is executed as of December 9, 2019 by **CITY OF KANNAPOLIS**, a North Carolina municipal corporation ("**Declarant**").

A. Declarant is the owner of those parcels of real property located in Cabarrus County, North Carolina more particularly being the property acquired by Declarant by deed recorded in Book 11615, Page 176 (Tracts 1-7) and Book 11615, Page 182 (Tract 1), Cabarrus County Registry, and is located in the central business district of the City of Kannapolis and comprises a significant part of Declarant's downtown area (the "Property") being shown in Map Book 68 at Pages 106 and 107.

B. Declarant desires to preserve the character of its downtown area by imposing certain restrictive covenants on the Property, as set forth in this Declaration.

NOW THEREFORE, Declarant hereby declares that the Property shall be held, transferred, conveyed, leased, occupied or otherwise disposed of and used subject to the following restrictive covenants:

1. Definitions. All capitalized terms used in this Declaration shall have the meanings set forth in this **Section 1**, unless otherwise defined in this Declaration.

(a) "**Architectural Review Committee**" or "**ARC**" means the committee established by Declarant to regulate the construction and alteration of Improvements.

(b) "**Building Site**" means any parcel of land composed of a portion of the Property that is shown on any recorded plat of all or a portion of the Property as being a parcel of the Property, and that is suitable for construction of Improvements.

(c) "**Declarant Control Period**" means the period of time beginning on the date of this Declaration and ending on the first day of the Owner Control Period.

(d) "**Improvement**" or "**Improvements**" means any and all structures, betterments, construction and improvements made or placed upon any portion of the Property, and shall include, without limitation, all changes in site topography, lighting fixtures, communications equipment,

underground utilities, all buildings, roofed structures, parking areas, roads, loading docks, loading areas, fences, wall hedges, landscaping, mass plantings, poles, signs, and monuments.

(e) **"Majority of Owners"** means more than fifty percent of the Owners; provided, however, that if a Building Site has more than one owner of the fee simple interest in such Building Site, (by way of example, a condominium complex) or a development which has a property owners association which represents the fee owners as a group (by way of example, townhome development) such Building Site shall be considered to have only one vote when determining a Majority of Owners.

(f) **"Mortgagee"** means the beneficiary or holder of a Mortgage.

(g) **"Owner"** means any party and its successors, assigns, heirs and legal representatives owning a record fee simple interest in and to all or any portion of the Property (including the Declarant if it owns all or any portion of the Property); provided however, the term "Owner" shall not include any person or entity having an interest merely as security for the repayment of indebtedness or the performance an obligation.

(h) **"Owner Control Period"** means the period of time after the earlier to occur of the following: (i) Declarant no longer owns any portion of the Property or (ii) Declarant assigns its rights to appoint the members of the ARC by the execution of a written instrument that is recorded in the Cabarrus County Public Registry.

2. General Purposes of Declaration. The Property is hereby subjected to this Declaration for the following purposes:

(a) To encourage maintenance and development of the Property in a manner suitable for the public and that is free from danger of fire, explosion, toxic and noxious matter and other hazards, and from offensive noise, vibration, smoke, dust odorous matter and other objectionable influences or threats to public health, safety and welfare.

(b) To promote the proper and most desirable use and development of the Property in accordance with a well-considered plan and suitable for a downtown urban experience utilizing both vehicular and pedestrian travel.

(c) To protect and enhance the appearance of (including the landscaped appearance of) and to preserve the value of the Property and its component Building Sites.

(d) To protect against construction of Improvements that are of poor design or quality and to encourage construction of Improvements that utilize good quality and attractive material and good architectural and planning standards, and which are compatible with other Improvements on the Property.

(e) To preserve the historical character of the City of Kannapolis, its downtown areas and its heritage as a textile mill town, including the preservation of various aspects of life emanating from Kannapolis' rich mill village history.

(f) To promote the renovation of the Kannapolis downtown by preserving the downtown shopping district to the extent possible while recognizing the North Carolina Research Campus as an integral part of the area adjacent to the downtown.

3. Regulation of Improvements.

(a) **General.** No construction or site preparation on any Building Site, no change in grade or slope or drainage patterns of any Building Site, no construction or placement of any building or

exterior additions or alterations to any building situated upon a Building Site, no removal of trees (except for dead, dying and diseased trees) and no construction of or changes or additions to any other Improvement on a Building Site shall be commenced nor shall any of the same be placed, maintained or allowed to remain, on any Building Site until all the following conditions have been satisfied:

- (i) an application for approval has been submitted to Declarant and ARC;
- (ii) the ARC and Declarant have given written approval for the plans and specifications for the Improvements, the location of such Improvements, and the commencement of construction, all in accordance with the applicable regulations of the City of Kannapolis and terms and requirements in the architectural guidelines published by the ARC ("**Guidelines**"); and
- (iii) any fees set forth in or contemplated by this **Section 3** have been paid in full by the Owner.

The provisions of this **Section 3** shall not apply to the construction or alteration of any Improvements commenced, erected or maintained by Declarant or at Declarant's direction on any portion of the Property or required and approved in a Purchase and Sale Agreement between Declarant and the Owner. Declarant may delegate to the ARC any powers or authority reserved or granted to it under this **Section 3**.

(b) **Composition of ARC.** During the Declarant Control Period, Declarant shall appoint the members of the ARC. During the Owner Control Period, the authority to appoint the members of the ARC shall automatically be vested in the Owners. Prior to December 31 of each year during the Owner Control Period, the Owners shall appoint the members of the ARC by the approval of a Majority of the Owners. The ARC shall have the right, power and authority to employ and/or use the services of any architects, engineers or other professionals as it deems necessary or advisable, in its sole discretion, to carry out its duties and obligations as described in this **Section 3**. When groups of Owners are aggregated into a formal owner's association with respect to the portion of the Property owned by such Owners (an "**Owner's Association**"), for purposes of this Section 3(b) only, "Owners" shall mean the Owner's Association and not each owner that is a member of such Owner's Association. For example, if a portion of the Property is developed into condominiums, only the condominium owner's association shall be considered to be an "Owner" for purposes of this Section 3(b), not each owner of a condominium unit.

(c) **Architectural Guidelines.** The ARC may, from time to time, publish, promulgate and amend the Guidelines. The Guidelines shall be explanatory and illustrative of the general intent of the ARC with respect to the construction of Improvements on Property and are intended as a guide to assist the ARC in reviewing plans and specifications for Improvements. The Guidelines shall also set out, among other things, the procedures for submission, review and approval of plans and specifications (for the construction of Improvements) to the ARC and the fees to be imposed by the ARC, as more specifically described in **Section 3(g)** below. In any event, the Guidelines shall not be binding upon the ARC, may be revised and amended at any time by the ARC, in its sole discretion, and shall not constitute, in every event, the basis for approval or disapproval of plans, specifications and other materials (for the construction of Improvements) submitted to the ARC for approval. The ARC may issue and amend the Guidelines, from time to time, and may publish and promulgate different Guidelines for different phases, sections or portions of the Property.

(d) **Enforcement.**

(1) It is Declarant's intent that the architectural control provisions of this Declaration are to permit control of the architectural design and to establish quality standards for construction within the Property and to help preserve values of the Property. All Owners, by purchasing property subject to this Declaration, acknowledge that a violation of any such provisions could result in

irreparable harm and damage to other Owners and to Declarant, and to the values of the Property, a monetary measure of which harm and damage would be difficult to establish. Accordingly, Declarant and the ARC shall have the specific right (but not the obligation) to enforce and/or to prevent any violation of the provisions contained in this **Section 3** by a proceeding at law or in equity against the person or persons violating or attempting to violate any such provisions. Declarant hereby specifically reserves and grants to the ARC the right of entry and inspection upon any portion of the Property for the purpose of determining whether any construction of any Improvement violates any approval by the ARC, the Guidelines, this Declaration, as amended.

(2) If Improvements are commenced or constructed in violation of this **Section 3**, Declarant may require any Owner to remove such Improvements or restore the Building Site to the condition in which it existed prior to the construction of such Improvements. If it becomes necessary to resort to litigation to determine whether any constructed Improvement was approved or conforms to the Guidelines, to remove any unapproved Improvement, or otherwise to remedy a violation of the Guidelines, Declarant shall be entitled to recover court costs, reasonable attorneys' fees and expenses incurred by Declarant and/or the ARC.

(e) **Failure of ARC to Act.** There is no implied approval of any plans submitted to the ARC for any failure of the ARC to act on said plans. If plans and specifications or other submittals are not sufficiently complete or are otherwise inadequate, the ARC may reject them as being inadequate or may approve or disapprove part, conditionally or unconditionally, and reject or approve the balance.

(f) **Variances.** Upon submission of a written request, the ARC may, from time to time, in its sole discretion, permit Owners to construct, erect or install Improvements which are at variance with restrictions, requirements or provisions of this Declaration from which a variance is permitted. In any case, however, such variances shall be in basic conformity with and shall blend effectively with the general architectural style and design of the Property and shall not materially change the scheme of restrictions herein set forth. Written requests for variances shall be deemed to be disapproved in the event the ARC has not expressly approved such request in writing within thirty (30) days of the submission of such request. No member of the ARC shall be liable to any Owner for any claims, causes of action, or damages arising out of the grant or denial of any variance to any Owner. Each request for a variance shall be reviewed separately and apart from other such requests and the grant of a variance to any Owner shall not constitute a waiver of the ARC's right to strictly enforce the covenants, restrictions and architectural standards provided hereunder against any other Owner.

(g) **Fees Required by the ARC.** The ARC, in its sole discretion, may require that each Owner submitting plans and specifications for Improvements pay one or more fees to the ARC or to Declarant as a condition to commencement of construction of such Improvements. Such fee(s), including the amount(s), payee and purpose(s) thereof shall be established by, and may be increased, from time to time, by the Declarant or ARC and shall be set forth in the Guidelines. Plans and specifications for Improvements to be constructed on any portion of the Property shall not be deemed to have been properly submitted unless and until any and all fees required by the ARC to be paid in connection with such Improvements, as provided in this **Section 3(g)** shall have been paid to the ARC or Declarant, as required by the Guidelines.

(h) **Notices and Submittals.** Notices and submittals to the ARC shall be in accordance with the notice provisions set forth, from time to time, in the Guidelines.

(i) **Limitation of Liability.** No member of the Declarant or ARC shall be liable for claims, causes of action or damages (except where occasioned by willful misconduct of such member) arising out of services performed pursuant to this **Section 3**. Neither the ARC, the members thereof, Declarant, nor any officers, directors, members, employees, agents or affiliates of any of them, shall be liable for damages or otherwise to anyone submitting plans and specifications and other submittals for

approval or to any Owner by reason of mistake of judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval of, or the failure to approve or disapprove of, any plans and specifications. The approval of plans and specifications by the ARC shall not be deemed or construed as a representation or warranty of the ARC, Declarant, or any officer, director, member, employee, agent or affiliate of any of them (i) that Improvements constructed in accordance with such plans and specifications will comply with applicable zoning ordinances, building codes, or other governmental or quasi-governmental laws, ordinances, rules and regulations; or (ii) as to the structural soundness, quality, durability, suitability, fitness or proper functioning of Improvements constructed in accordance with such plans and specifications. Any responsibility or liability therefor is expressly hereby disclaimed. Every Owner who submits plans and specifications agrees to not bring any action or suit against Declarant, the ARC, or the officers, directors, members, employees, agents or affiliates of any of them, to recover any such damages and hereby releases, demises, and quitclaims all claims, demands and causes of action arising out of or in connection with any judgment, negligence or nonfeasance and hereby waives the provisions of any law which provides that a general release does not extend to claims, demands and causes of action not known at the time the release is given. Declarant shall be the sole party responsible for the performance of Declarant's obligations under this Declaration, and no other person, firm or entity, including, without limitation, any entity affiliated with Declarant, shall have any obligation or liability for Declarant's obligations under this Declaration.

4. Use Restrictions.

(a) The Property shall not be utilized for any of the following prohibited uses:

(1) Any manufacturing, refining, smelting, agricultural or mining operation, including any roadside stand for the display and sale of agricultural products (except in one specifically designated for a farmer's market), and any metal products foundries, blast furnaces, coke ovens or rolling mills.

(2) Any use which involves the raising, breeding, processing, boarding, maintaining, treating or slaughter of any livestock, swine, poultry or other animals.

(3) Any use that emits noise that unreasonably disturbs occupants of the property adjacent to the Property, whether due to intermittence, beat, frequency, shrillness or loudness.

(4) Any use that creates strong, unusual or offensive odors, fumes, dust or vapors.

(5) Freight terminals or truck terminals.

(6) Junkyards, scrap metal yards, stock yard or storage yard and any use involving the storage of heavy equipment or storage or processing of wrecked or junked motor vehicles or other materials (including recycling operations).

(7) Mobile home park or trailer court.

(8) Jails, prisons, labor camps, penal, detention or correctional facilities or farms.

(9) Cemetery, mortuary, funeral home, crematorium or mausoleum.

(10) Dumping, disposing, incinerating or reducing of garbage (exclusive of dumpsters for the temporary storage of garbage and any garbage compactors), and any landfills or hazardous waste disposal or storage facilities.

(11) Outdoor racetracks, raceways and drag strips.

(12) Massage parlors (other than first class therapeutic massage facilities offering massages by licensed professionals), topless night clubs, adult movie theater, adult video store, adult bookstore or similar adult oriented business operations.

(13) Flea market, pawnshop; amusement park (other than on a temporary basis), carnival (other than on a temporary basis), bingo parlor, shooting gallery, gun club, shooting range, off-track betting parlor or other gambling establishment; tattoo parlor, body-piercing establishment, discotheque, or night club, video or game center, amusement center or arcade.

(14) Central laundry, dry cleaning plant or laundromat; provided, however, this restriction shall not be construed to prevent on-site pickup and delivery by consumers in connection with laundry or dry cleaning businesses, provided that no on-site cleaning or processing activities are conducted on the Property.

(15) Warehouse and/or storage uses (excluding storage for retail purposes within the building site and incidental to such owner's retail use conducted within the building site).

(16) Selling or leasing new or used automobiles, trucks, trailers or recreational vehicles; any automotive service or repair facility.

(17) Any establishment which stocks, displays, sells, rents or offers for sale or rent any merchandise or material commonly used or intended for use with or in consumption of any narcotic, dangerous drug or other controlled substance, including, without limitation, any hashish pipe, waterpipe, bong, cilium, pipe screens, rolling papers, rolling devices, coke spoons or roach clips.

(18) Veterinary clinic or kennel.

(19) Plasma and/or blood bank or donation facility.

(20) Drug or alcohol treatment facility or methadone clinic.

(b) **Right to Enter.** During reasonable business hours after at least one hour prior notice to the Owner, Declarant or its authorized agents, shall have the right to enter any Building Site, but not the insides of buildings, for the purpose of ascertaining whether the restrictions provided herein may have been violated. Declarant or its agents must present themselves at the main office of the Owner on the Building Site or at such other comparable location at the Building Site, present appropriate identification or credentials to the Owner or the Owner's authorized representative prior to any further inspection of the Building Site, and, at the Owner's discretion, be accompanied by the Owner or the Owner's authorized representative during any such inspection. Any such entry shall constitute an authorized entry.

5. Binding Effect. Every person or entity who now or hereafter owns or acquires any rights, title or interest in or to any portion of the Property shall be conclusively deemed to have consented and agreed to and assumed every covenant, condition, and restriction contained herein, whether or not any reference to this Declaration is contained in the instrument by which such person or entity acquired an interest in the Property. All restrictions, conditions, covenants and agreements contained herein are made for the direct, mutual and reciprocal benefit of each and every part and parcel of the Property; shall create a mutual, equitable servitude upon each portion of the Property in favor of every other portion of the Property; shall create reciprocal rights and obligations between the respective Owners of any portion of the Property; and, as to the Owners, shall operate as covenants running with the land, for the benefit of the rest of the Property.

6. **Amendment.** This Agreement shall not be modified or amended in any respect except by a written instrument executed by Declarant. Notwithstanding the foregoing, the City Manager, to the extent permitted by a Resolution of Council, is authorized to amend this Agreement without Council approval pursuant to the terms stated therein.

7. **No Delay.** No delay or failure on the part of Declarant to invoke an available remedy with respect to a violation of any restriction contained in this Declaration shall be held to be a waiver by Declarant of any right available to it upon the recurrence or continuance of that violation or the occurrence of a different violation.

8. **Governing Law.** North Carolina law governs this Declaration.

9. **Enforcement.**

(a) **Responsibility of Owner.** Each Owner shall be responsible for compliance with the terms, provisions and conditions of this Declaration by its employees, agents, independent contractors, tenants, building occupants, customers and visitors.

(b) **Abatement and Suit.** Violation or breach of any restriction herein contained shall give to the Declarant and every Owner subject to this Declaration, the right to prosecute a proceeding at law or in equity against the Owner who has violated, is attempting to violate or is permitting the violation on its Building Site of any of these restrictions, including, without limitation, actions to enjoin or prevent such Owner from doing so, to cause said violation to be remedied, or to recover actual damages for said violation.

(c) **Deemed to Constitute a Nuisance.** Any action or omission whereby any restriction herein contained is violated in whole or in part is hereby declared to be and to constitute a nuisance, and every remedy allowed by law or equity against an Owner, either public or private, shall be applicable against every such action or omission and may be exercised by the Declarant or by any Owner.

(d) **Attorney's Fees.** In any legal or equitable proceeding for the enforcement of this Declaration or any provision hereof, the Declarant or ARC in any such proceeding shall be entitled to recover from the losing party against whom a final, unappealable order is issued the party's or parties' actual out of pocket costs and expenses including, but not limited to, its attorney's fees and expenses incurred in connection with or related to such proceeding in such amounts as may be fixed by the court in such proceedings. All remedies provided herein or at law or in equity shall be cumulative and not exclusive of any other remedies.

(e) **Failure to Enforce Not a Waiver of Rights.** The failure of the Declarant or any other Owner to enforce any restrictions herein contained shall in no event be deemed to be a waiver of the right to do so, nor of the right to enforce any other restriction. No suit shall lie against the Declarant for any failure, refusal or omission to institute or join in any action or proceeding for the enforcement hereof or to restrain the violation of any of the provisions hereof.

[Signature and Notary Acknowledgment Page Follows]

Declarant has caused this Declaration to be executed by its duly authorized officer as of the day and year first above written.

City of Kannapolis, North Carolina

By: _____

Michael B. Legg
City Manager

ATTEST:

Rebecca Barbee
Acting City Clerk

[CORPORATE SEAL]

Approved as to form:

Walter M. Safrit, II, City Attorney

STATE OF NORTH CAROLINA

COUNTY OF CABARRUS

I, _____, a Notary Public of the State and County aforesaid, certify that Rebecca Barbee personally came before me this day and acknowledged that she is Acting City Clerk of the City of Kannapolis, and that by authority duly given and as the act of the Council, the foregoing instrument was signed in its name by its City Manager, sealed with its corporate seal and attested by herself as its Acting City Clerk.

WITNESS my hand and official seal, this _____ day of _____, 2019.

Notary Public
Printed Name: _____
My commission expires: _____



**City of Kannapolis
City Council Meeting
January 27, 2020
Staff Report**

TO: Mayor and City Council
FROM: Mike Legg, City Manager
TITLE Closed Session

A. Action Requested by City Council

GS. 143-318.11 (a) (3) to consult with an attorney in order to preserve the attorney client privilege; G.S. 143.318.11 (a) (4) for discussing matters relating to the location or expansion of industries or businesses in the area. (Mayor Pro tem Rowell)

MOTION TO ADJOURN MEETING

B. Required Votes to Pass Required Action

C. Background

D. Fiscal Considerations

E. Policy Issues

F. Legal Issues

G. Alternative Courses of Action and Recommendation

ATTACHMENTS:

File Name

No Attachments Available