AGENDA
CITY OF NEWTON
NEWTON CITY COUNCIL - REGULAR MEETING
March 21, 2017
7:00 p.m.

1. **Call to Order – Mayor Anne P. Stedman**
2. **Opening – Council Member Robert C. Abernethy Jr.**
3. **Approval of Minutes from the March 7, 2017, Regular Meeting**
4. **Consideration of Consent Agenda Items**
   A. Sewer Adjustments
   B. Consideration of Appointments to the Public Art Commission
   C. Consideration to Accept Revenues and Approve Expenditures for Carfax
5. **Comments from the Public:** (PERSONS WANTING TO MAKE A PUBLIC COMMENT ON NON-AGENDA ITEMS ARE ASKED TO SIGN IN WITH THE CITY CLERK PRIOR TO THE MEETING):
6. **Presentation**
   A. Downtown Newton Development Association Annual Report
7. **Old Business**
   A. Consideration of Resolution Adopting 10-Year Capital Improvement Plan for FY 2018-2027
   B. Consideration of Amendment to Animal Control Ordinance
8. **New Business**
   A. Consideration of North Carolina Urban Forestry Council Grant Proposal
9. **City Manager’s Report**
10. **Questions and Comments From Mayor and Council**
    A. Reports from Appointed Representatives on Outside Boards – Mayor Anne P. Stedman
11. **Adjournment**

PERSONS WANTING TO SPEAK ON AN AGENDA ITEM MUST SIGN IN WITH THE CITY CLERK PRIOR TO THE MEETING. PERSONS WANTING TO BE PLACED ON THE AGENDA FOR THE NEXT MEETING MUST CONTACT THE CITY MANAGER AT LEAST SEVEN WORKING DAYS BEFORE THE MEETING.

The City of Newton does not discriminate on the basis of disability in the provision of its services as charged by the City Council of the City of Newton. All meetings are held in accessible facilities. Any person with a disability needing special accommodations should contact Teresa Laffon, ADA Coordinator, at least 48 hours prior to the scheduled meeting.
MINUTES
REGULAR MEETING OF THE NEWTON CITY COUNCIL
March 7, 2017 – 7 p.m.

The regular meeting of the Newton City Council was held at 7 p.m. Tuesday, March 7, 2017 at Newton City Hall.

PRESENT: Mayor Anne P. Stedman, Mayor Pro Tem John Stiver, and Council Members Tom Rowe, Jerry Hodge, Wes Weaver, and Jody Dixon

ABSENT: Council Member Robert C. Abernethy, Jr.

STAFF: City Manager Todd Clark, City Clerk Amy S. Falowski, City Attorney John Cilley, City Department Heads and members of the management team

ITEM 1: CALL TO ORDER

Mayor Anne P. Stedman welcomed everyone and called the meeting to order.

ITEM 2: OPENING Invocation and Pledge of Allegiance

Council Member Jerry Hodge provided the invocation and Pledge of Allegiance.

ITEM 3: APPROVAL OF MINUTES

Upon motion duly made by Council Member John Stiver, seconded by Council Member Tom Rowe, it was unanimously RESOLVED:

That the Regular Minutes of the February 21, 2017 City Council meeting be – APPROVED

ITEM 4: CONSIDERATION OF CONSENT AGENDA ITEMS

Upon motion duly made by Council Member Jerry Hodge, seconded by Council Member John Stiver, it was unanimously RESOLVED:

That the Consent Agenda be – APPROVED

A. Tax Releases

B. Sewer Adjustments

C. Consideration of Audit Contract for Fiscal Year 2017

D. Consideration of Budget Ordinance Amendment for Electrical System Improvements Related to Corning Contract

E. Consideration of Budget Ordinance Amendment for Roof at Old Fire Headquarters

(Ordinances, Resolutions and Proclamations are hereby referenced and on file in the Office of the City Clerk)

ITEM 5: COMMENTS FROM THE PUBLIC: PEOPLE WHO WISH TO COMMENT ON NON-AGENDA ITEMS ARE ASKED TO SIGN IN WITH THE CITY CLERK PRIOR TO THE MEETING.

Mayor Anne P. Stedman asked if anyone present would like to make comment concerning non-agenda items. No one appeared.
ITEM 6: Presentation

A. Newton Depot Authority

Catherine LeFevers gave a presentation and slide show about the recent events and projects at the Newton Depot Authority.

ITEM 7: Old Business

A. Consideration of Contract Agreement with Catawba County for Hwy 16 Waterline Construction

City Manager Todd Clark stated that the City of Newton entered into an agreement with Catawba County in 2013 to cooperatively finance and construct a waterline within a North Carolina State right-of-way along N.C. Highway 16, south. The construction of this waterline project was to be coordinated with NCDOT and commence with the construction of a much anticipated multi-lane highway project planned for NC Highway 16, south.

Mr. Clark stated that in addition to the construction of a water line along N.C. Highway 16, south, the agreement included the construction of water lines on Buffalo Shoals Road and Balls Creek Road for the purpose of connecting existing dead end water lines. He explained the completion of the project would also provide municipal water service to property owners in the immediate area of the construction project.

Mr. Clark stated the agreement with Catawba County specified that the County would be responsible for acquiring all right-of-ways for the City, complete all engineering plans and specifications, bid construction, award construction, and conduct oversight of the project until its completion. Mr. Clark said the water lines would then be turned over to the City of Newton for ownership, maintenance, and operation when completed and that the agreement also specified that Catawba County would provide the City a loan for the project, with a required 75% match from the City at zero percent interest for a 10-year term.

Mr. Clark stated that in October of 2016, the City was notified by Catawba County that NCDOT will now be responsible for the coordination and completion of the construction project on N.C. Highway 16, south. Mr. Clark stated that as a matter of policy, NCDOT requires the future owner and operator of the water line to enter into an agreement with them for all facets of the project, including those outlined in this Request for Council Action. Since the City of Newton will be the future owner and operator of the water line, the agreement with Catawba County must be terminated and a new contract agreement approved. Mr. Clark stated that this includes a change that coordinates a payment from Catawba County to the City of Newton to satisfy our financial obligation to NCDOT.

Mr. Clark stated that the City Attorney and he have worked with the County Manager and his staff to draft a new contract agreement and that a copy of the contract agreement has been included with this Request for Council Action for review by City Council.

Mr. Clark stated that City Council is advised that Catawba County retained the services of McGill & Associates to complete engineering plans and specifications prior to October 2016 and that these plans and specifications are complete and have been accepted by NCDOT for the portion of the project located within the N.C. Highway 16, south right-of-way. The related engineering expenses have been incorporated into the proposed new contract agreement with Catawba County.

Mr. Clark explained the contract presented by NCDOT for consideration includes an estimated project construction cost of $3,765,078. The estimated construction project cost for Buffalo Shoals Road and Balls Creek Road is $1,474,206. The cost for Design Engineering on the entire project is $300,000 and Engineering Construction Administration is $300,000. The total cost for all phases of the water line project is $5,839,284.
Mr. Clark stated that the substantive changes to the contract agreement with Catawba County include updated project costs, assignments of responsibility for construction, amendments to the loan repayment schedule, a provision for Catawba County to assure the City will fulfill the terms of the loan repayment schedule, and a 5-year project commencement schedule.

Mr. Clark said that the contract has been reviewed by the City Attorney and also with the County Manager and his staff, and recommended City Council enter into the contract agreement with Catawba County for completion of the Highway 16, south water line project.

Upon motion duly made by Council Member Wes Weaver, seconded by Council Member Tom Rowe, it was unanimously RESOLVED:

That Contract Agreement with Catawba County for Hwy 16 Waterline Construction be – APPROVED.

B. Consideration of Contract Agreement with North Carolina Department of Transportation for Hwy 16 Waterline Construction

City Manager Todd Clark stated that the City of Newton entered into an agreement with Catawba County in 2013 to cooperatively finance and construct a waterline within a North Carolina State right-of-way along N.C. Highway 16, south. The construction of this waterline project was to be coordinated with NCDOT and commence with the construction of a much anticipated multi-lane highway project planned for NC Highway 16, south. This agreement with Catawba County specified that the County would be responsible for acquiring all right-of-ways for the City, complete all engineering plans and specifications, bid construction, award construction, and conduct oversight of the project until its completion. Mr. Clark said the water line would then be turned over to the City of Newton for ownership, maintenance, and operation when completed. The agreement also specified that Catawba County would provide the City a loan for the project, with a required 75% match from the City at zero percent interest for a 10-year term.

In October of 2016, the City was notified by Catawba County that NCDOT will now be responsible for the coordination and completion of the construction project, and that as a matter of policy, NCDOT requires the future owner and operator of the water line to enter into an agreement with them for all facets of the project, including those outlined in this Request for Council Action. Mr. Clark said that since the City of Newton will be the future owner and operator of the project, the agreement with Catawba County must be terminated and a new contract approved, which you just approved. This new agreement includes changes to the original agreement that coordinates a payment from Catawba County to the City of Newton to satisfy our financial obligation to NCDOT.

Mr. Clark said that a standard agreement has been provided by NCDOT to the City for this project. The agreement has been reviewed by our City Attorney and a copy of the agreement has been included for review by City Council.

Mr. Clark said that the contract that has been presented by NCDOT to the City and includes an estimated construction project cost of $3,765,078. The total cost including design engineering and construction administration is $4,179,578. This cost has also been included in the amended contract agreement with Catawba County, which has been reviewed by the City Attorney and with the County Manager and his staff. Mr. Clark recommended ‘ City Council enter into the agreement with NCDOT for completion of the Highway 16, south water line project.

Upon motion duly made by Council Member Wes Weaver, seconded by Council Member John Stiver, it was unanimously RESOLVED:
That Contract Agreement with North Carolina Department of Transportation for Hwy 16 Waterline Construction be – APPROVED.

Council Member Jerry Hodge stated that this is a departure from the original arrangement and is this the model with DOT moving forward. Mr. Clark said that is correct.

C. Consideration of Amendment to Animal Control Ordinance

City Manager Todd Clark stated that several issues came before the Animal Control Officer last fall and the City council was asked to look at changes that could be made to the animal control ordinances such as number of animals, general upkeep, and location. He stated that information was given at the last meeting and now staff needs further guidance.

Mayor Stedman invited anyone that wanted to speak on the subject to do so now.

Mr. James Cannon, of 1120 Shannonbrook, stated that he has had 3 animal control officers tell him to close his blinds and not look outside. He said that there is no way to sell his house with those animals behind him and that it is all 63’ from the back door. He said there is horrendous odor in the summertime, and the pigs get out. He said that he can show video of pigs in yard, eating his tomatoes and that a lady up the street said they got in her trash. He said that it is an aggravation and he can’t do anything and he can’t sell.

Mr. John Sigmon asked that the council not penalize everyone because someone isn’t doing the right thing.

Mr. Cale Young stated that he owns land on 7th and Old Conover-Startown Rd. He said he moved so he could have horses and that he has improved the property from a tax value of $70,000 to $220,000 – 250,000. He said if managed correctly there shouldn’t be any issues. He said that horses don’t make as much noise as dogs or cats. He said that he would like to see the number of animals per acre stay the same. He said that he worked with a neighbor on the view of his property by building a hedge on his (Mr. Young’s) side. Mayor Stedman said that she is glad that they were able to work it out together.

Mrs. Jo Schmuker stated that she and her husband are the reason for this issue to be called to question. She said that this is the first farm they have ever had. She said that they have done everything they can to appease Mr. Cannon and that he used to send kids over to pet the animals. She stated that her house isn’t hurting his home value and that she is a real estate agent. She said the fence is there because a goat got lose and as she was trying to catch the goat Mr. Cannon was videotaping her and laughing at her and mocking her. She said it brought her to tears and that is when the fence went up. She said she had a right to put the fence up. She also apologized to all the other farmers that this might affect. She said that they don’t want these kind, considerate people to be punished. Ms. Schmuker said that the police department has been patient and understanding and that she and her husband have tried to do right.

Mr. Tim Dumire of 1109 Shannonbrook stated that he has no issues with anything that goes on at the Schmuikers’. He said that his grandchildren enjoy the animals and he wants to make that known.

Mr. Michael Waltuch stated that council is considering an amendment to an ordinance when there is a situation that involves a private dispute. He said the old ordinance works fine for everyone else and that the proposed distances and prohibitions in the proposal are not appropriate to the community.

Mr. Hiram Longfellow said that this is a dispute and that the old ordinance works fine for everyone else. He said that he has pigs, and chickens on 10 acres and he is a good steward of the land. He said that his neighbors have no problems.
Mrs. Cecilia Chiok said that she is a neighbor of the Schmukers and that she has never had a problem. She said the children like the animals and she would like to see a good solution.

Mr. Travis Schumuker said that he would like to thank the neighbors that spoke on their behalf. He said that he and his wife never intended any harm and that they always wanted a small farm. He said the pigs were a learning experience and that they are planning to sell them. He said the babies are gone and the adults will be gone soon. He said that he doesn’t want others to be punished.

Council Member Wes Weaver asked if they are selling the pigs because of this issue. Mr. Schumukers said that they are. Mr. Weaver said that he was strongly against these changes last time and that his opinion hasn’t changed. He said that he thinks this is an isolated incident. He said we live in a rural community and that he likes seeing animals and that he moved back here to get that again.

Council Member Tom Rowe stated that he is glad to hear the Schumukers are going to remove the pigs. He said he doesn’t agree because the pigs were right on the property line. He said that he knows others have farm animals but he is against having farm animals against a property line.

Council Member Jerry Hodge stated that he would do what Mr. Cannon did and get the city involved. He said that the Schumukers have created a barrier and removed pigs. He would like to see them work together.

Council Member Wes Weaver stated that he worked on a farm from age 11 until high school and he understands that animals get out occasionally. He said that he hates the Schumukers had to get rid of their pigs.

Mayor Pro Tem John Stiver stated that parts of the policy need amended. He said these include the definition of service animals, and things like setbacks. He also thinks that pet pigs should be considered. He said he would like to upgrade policy to help code enforcement have better options.

Mayor Stedman stated that the language needs to be cleaned up in the ordinance.

Council Member Jody Dixon stated that he is all good with defining the zoning, but he doesn’t believe that the city needs chickens in downtown Newton. He said that we are rural, but should look at some areas and so no chickens or pigs in downtown.

Council Member Tom Rowe stated that he feels strongly about this animal ordinance and that what Mr. Dixon says makes sense. He said there are subdivisions with lots of people and that they are more sparse.

**ITEM 8: New Business**

A. Consideration of Pedestrian Crossing on N Ashe Ave at Newton-Conover High School

Planning Director Randy Williams stated that the Planning Department was requested to examine potential options concerning pedestrian crossing improvements on North Ashe Avenue between West 18th Street and West 15th Street – the area between Newton Conover High School and Discovery High School.

Mr. Williams explained that in early February, a student crossing this section of North Ashe Avenue was struck by a vehicle and injured. Since that time there has been an increased concern for pedestrian safety due to the students which must cross North Ashe Avenue during schools hours, but particularly between 2:00 pm and 3:00 pm as the schools are released. Mr. Williams stated that at this time, many students are waiting to be picked up by cars, going to their own cars and migrating between the schools for extracurricular activities.
Mr. Williams stated that although there are crosswalks painted on the street, students cross at many points between those schools. North Ashe Avenue is the primary access for both NCHS and DHS and vehicular use is high. He said that the city has a policy on traffic calming measures which indicates thresholds for implementation and includes the study of vehicular speed and volume. Mr. Williams stated that at this time the Planning Staff has not been able to place traffic counters to study speed and volume on the street.

Mr. Williams stated that Planning Staff met with Public Works, Police, Fire and Administration to discuss what options are available and which may be effective. This discussion produced three alternatives that should be further investigated:

1) Close North Ashe Avenue between West 18\textsuperscript{th} Street and the driveway and gate at Gurley Stadium. Vehicular traffic access to NCHS would come from West 15\textsuperscript{th} Street, down North Ashe Avenue to the entrance driveway at the front of the building, use that driveway and drop off students, then exit back onto West 15\textsuperscript{th} Street. Vehicular access to DHS would come from West 20\textsuperscript{th} Street via North Ashe Ave enter the campus from West 18\textsuperscript{th} street and exit onto West 18\textsuperscript{th} Street and proceed to Hwy 16 Business. The closed section of North Ashe could be opened for special events such as football and soccer games.

2) Return “No Parking Between 7:00 am and 4:00 pm” on the east side of North Ashe Avenue so that sight distances are improved and students do not enter the street at any point between parked cars, increasing visibility.

3) Construct three “crossing tables” at intervals on North Ashe Avenue, with proper signage. This option identifies the area where the majority of students cross and calms traffic in the area. It would also require the school district to construct a sidewalk on the DHS campus for access.

Mr. Williams stated that in review of these options, Planning and Police Department staffs recommend meeting with the Newton Conover School Administration to discuss the options, required improvements and costs. Staff feels that it is the best interest of both parties involved to consider the impacts and determine the best recommendation to proceed. Part of that discussion should also include potential grant options available to the City and to the school system for the recommended improvements.

Mr. Williams stated that it is the Newton Planning Department’s recommendation that Council direct staff to meet with Newton Conover School Administration to make a joint recommendation to the Council for implementation.

City Manager Todd Clark stated that this is for information only. Mayor Stedman asked if the kids use crosswalks. Council Member Jody Dixon stated that they did not, but that they are not in the correct place. He said parking was approved there because there was no place to park, and that it is a crowded area at certain times of the day. Council Member Jerry Hodge asked about caution lights or overhead lights. Council Member Wes Weaver asked if there are any proposals or a consensus from the school. Mr. Dixon said that he can’t speak for the schools, but that he would prefer tabletop speed control.

ITEM 9: City Manager’s Report

Meetings & Events

- March 10\textsuperscript{th} – Legislative Day in the District Breakfast, Catawba County Library 9:30 a.m.
- March 12\textsuperscript{th} - 15\textsuperscript{th} – NLC Conference, Washington, DC
- March 29, 2017 – Town Hall Day, Raleigh, NC
- May 4, 2017 – South Newton Elementary’s Leadership Day
- Service Excellence University Update
- Teen Leadership – Dates to be determined

Budget Workshop Dates *All begin at 5:15 in the Council Chamber*
Projects

- West A Street project – met with NCDOT today and working on getting Municipal Agreement underway
- Downtown Streetscape – meeting with the engineers on Thursday to review the survey data and design details
- Pedestrian Plan – held a Steering Committee meeting, Public Open House and Planning Commission meeting last Tuesday. The plan will be sent to NCDOT to review and if there are no major changes, the Planning Commission will forward the final draft to the City Council
- Footings for 2 industrial park signs should be started on March 15th
- A Scope of Work for NC16 Corridor Plan has been sent to the county planning staff to review
- Meeting with Newton-Conover High School & Discovery High School to discuss North Ashe Avenue safety on Friday
- Loves annexation should be coming to you in the next couple meetings
- US321B is going to be resurfaced and planning staff asked NCDOT if crosswalks could be installed/painted at that time
- Public Works and Utilities Project Updates

ITEM 10: Questions and Comments from Mayor and Council

Council Member Jody Dixon gave a brief summary of things going on with the Branding Committee, the Newton Depot and the Auditorium.

ITEM 11: Closed Session – per North Carolina General Statutes 143-318.11(a)(5) and 143-318.11(a)(6)

No Closed Session

ITEM 12: Adjournment

Upon motion duly made by Council Member Wes Weaver, seconded by Council Member Jody Dixon, it was unanimously RESOLVED:

That the Meeting be - ADJOURNED

__________________________________________
Anne P. Stedman, Mayor

Amy S. Falowski, City Clerk
TO: E. Todd Clark, City Manager  DATE: March 7, 2017  
RE: Sewer Adjustments – March 21, 2017  

FROM: Serina Hinson, Finance Director  

The following sewer adjustment is recommended for approval. The adjustment is recommended as a result of a water leak at the service address or a pool fill up. 

<table>
<thead>
<tr>
<th>Account Number</th>
<th>Name</th>
<th>Service Address</th>
<th>Adjustment Period</th>
<th>Amount of Adjustment</th>
</tr>
</thead>
<tbody>
<tr>
<td>12000940-002</td>
<td>Dana’s Fine Jewelry</td>
<td>108 N. Main Ave.</td>
<td>Feb</td>
<td>$368.02</td>
</tr>
<tr>
<td>19000205-001</td>
<td>Crystal Pardon</td>
<td>2409 Cobblestone Ct</td>
<td>Dec - Feb</td>
<td>$177.94</td>
</tr>
<tr>
<td>13000900-008</td>
<td>Tiffany Watts</td>
<td>210 W. D St.</td>
<td>Feb</td>
<td>$ 39.07</td>
</tr>
</tbody>
</table>

Backup documentation to support each adjustment is on file in the Finance Department. Should you have questions or require further clarification, please notify.
DATE: March 15, 2017

TO: City Council

FROM: Anne P. Stedman, Mayor

CONSIDERATION OF: Appointments to the Public Art Commission

Members of City Council, I would like to recommend the following appointments to the Public Art Commission:

Sherry Butler – Old Post Office Play House

Mara Johnson – DNDA

Suzanne White – Catawba County Library, Newton Branch

Jennifer Toney – Catawba County Museum of History

John David Welch – Newton-Conover Auditorium

Jill Towery – United Arts Council

Kristina Anthony – Hickory Museum of Art

Susan Wicklin – Newton Resident

Keith Wilson – Newton Resident

Lise Swensson – Professional Consultant

Mayor Anne P. Stedman – City Council Representative
DATE: March 13, 2017

TO: E. Todd Clark, City Manager

FROM: Donald G. Brown II, Chief of Police

CONSIDERATION OF: Adopt Budget Ordinance to recognize revenues and authorize expenditure appropriation within the Police Budget.

Approved for Council Consideration

Background:

In February 2017, the Newton Police department partnered with Carfax to make all Newton Police accident reports available online. This partnership gives anyone wishing to receive an accident report the ability to retrieve the report directly from Carfax for a fee of $3.00. One hundred percent of the fee collected by Carfax is then forwarded to the Newton Police department monthly.

The public, insurance companies and attorneys will now be able to access accident reports any time without having to drive to the Newton Police department. Reports will be available 24/7 not just 8:00 am until 5:00 pm Monday thru Friday. The public may still receive a copy of the accident report directly from Newton Police records at no cost. This partnership will also provide complete access to all Carfax data by Newton Police officers as an investigative and research tool.

Summary:

To recognize revenues from Carfax accident report sales and authorize expenditure appropriation within the Police Budget.

Requested Action:

Motion to adopt the attached budget ordinance to recognize revenues and authorize the expenditure appropriation in the Police Department operating budget.
ORDINANCE # 2017-10

AN ORDINANCE TO AMEND REVENUES AND EXPENDITURES FOR FISCAL YEAR 2016-2017 FOR THE CITY OF NEWTON.

WHEREAS, the City Council of the City of Newton have adopted a Budget Ordinance for fiscal year beginning July 1, 2016, and ending June 30, 2017, in accordance with the General Statutes of the State of North Carolina; and

WHEREAS, the City Council desires to recognize revenues of $500 resulting from a partnership with Carfax to make all Newton Police accident reports available online. This partnership gives anyone wishing to receive an accident report the ability to retrieve the report directly from Carfax for a fee of $3.00; and

WHEREAS, the City Council desires to recognize revenues from Carfax accident report sales and authorize expenditure appropriation within the Police Department’s operating budget.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NEWTON, NORTH CAROLINA, THAT:

THE FOLLOWING SOURCE OF REVENUE AND APPROPRIATION ARE HEREBY APPROVED.

General Fund Revenues
   Miscellaneous Police Reimbursement 11-4310.3761 $500

General Fund Appropriations
   Office Supplies and Materials 11-4310.5600 $500

Adopted this 21st day of March, 2017.

Attest:

Anne P. Stedman, Mayor

Amy S. Falowski, City Clerk
Downtown Newton Development Association

2016 Annual Report - A Year of Foundation Building

ORGANIZATION COMMITTEE

- Secured over $19,000.00 in funding.
- 1600 Volunteer hours
- Updated bylaws
- Developed and executed work plan.
- Secured accreditation through the National Main Street Association.

PROMOTIONS COMMITTEE

- Forged a partnership with the Hickory Museum of Art to plan and execute the inaugural Foothills Folk Art Festival with an attendance of 5,000 and record sales days for Downtown Businesses.
- Increased attendance at Spooktacular and Light Up the Town.
- Ramped up social media marketing for more DNDA likes.
- Initiated billboard advertising.

DESIGN COMMITTEE

- Updated duties of Design Committee.
- Revamped the Façade Grant Application.
- Held façade Design Workshop for Downtown Businesses.
- Completed Building Condition Inventory.

ECONOMIC VITALITY

- Secured $69,000.00 MS Solutions Grant for a new business.
- Created Newton Business Circle Monthly meetings for Downtown Businesses.
- Completed Business Inventory
- Completed Upstairs Living Capability Inventory.

Phone: 828 695 4360  |  Email: sjohnson@newtonnc.gov  |  Web: www.downtownnewton.org
DATE: March 9, 2017

TO: E. Todd Clark, City Manager

FROM: Serina Hinson, Finance Director

CONSIDERATION OF: Resolution for 10-Year Capital Improvement Plan for Fiscal Years 2018-2027

Approved for Council Consideration

City staff has prepared a 10-Year Capital Improvement Plan (CIP) which balances projected revenues and expenditures based on financial forecast and assumptions with the City’s long-range financial capacity.

The CIP is updated annually as part of the City’s regular budget process. First-year projects noted on the CIP will be incorporated into the City Manager’s recommended annual operating budget or in some cases a capital project ordinance with the exception of capital which will be funded by a potential grant that has not been awarded. The nine (9) subsequent years are not binding and are subject to change each year as the City’s priorities/needs, grant opportunities, emergency needs or other priorities established change.

The 10-Year CIP for Fiscal Years 2018-2027 was provided at the January 19, 2017 Newton City Council Annual Workshop followed by another workshop on March 7, 2017 for your review.

Action Suggested:

Adopt the Resolution Approving the 10-Year Capital Improvement Plan for Fiscal Years 2018 - 2027.
Resolution 2-2017
Adopting City of Newton Capital Improvement Plan
For Fiscal Years 2018-2027

WHEREAS, the City of Newton, North Carolina (the "City") continues to adhere to a high standard of professional financial management to ensure adequate public infrastructure, economic development and services for its citizens; and

WHEREAS, the City recognizes the Capital Improvement Plan to be an important management tool that coordinates community infrastructure needs with the financial capacity of the City; and

WHEREAS, the City prepared a ten-year Capital Improvement Plan which balances projected revenues and expenditures based on financial forecast and assumptions with the City’s long-range financial capacity; and

WHEREAS, the City will update the Capital Improvement Plan annually as part of the City’s regular budget process; and

NOW, THEREFORE BE IT RESOLVED by the governing body of the City of Newton, North Carolina in its regular session duly assembled, that it does hereby adopt the Capital Improvement Plan for Fiscal Years 2018-2027 as the long-range capital improvement plan for the City.

Adopted this 21st day of March, 2017.

Anne P. Stedman, Mayor

Amy S. Falowski, City Clerk
CITY OF NEWTON
REQUEST FOR COUNCIL ACTION

DATE: March 21, 2017

TO: E. Todd Clark, City Manager

FROM: Donald G. Brown II, Chief of Police

CONSIDERATION OF: Adopt changes to the Code of Ordinances, Chapter 14 – Animals and Fowl: Article I – In General.

Approved for Council Consideration

Background:

The Police Department staff was directed to review current city ordinance as it relates to the keeping of livestock within the city limits. During the review it was determined that there were some areas that needed clarification, deletion and addition. After two presentations to City Council, guidance was given to make limited changes.

Summary:

Amendments to Chapter 14 of the City Code have been drafted based upon discussion with City Council at the March 7, 2017 council meeting. City Staff recommends adoption of these amendments.

Requested Action:

Consider adopting the animal control regulating livestock within the city limits ordinance as presented.
Chapter 14 - ANIMALS AND FOWL

ARTICLE I. - IN GENERAL

Sec. 14-1. - Definitions.

For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

*Animal* means any living vertebrate, domestic or wild, excluding humans.

*Animal shelter* means a place provided and operated by the city, other governmental unit or subdivision for the restraint, care and disposition of animals.

*At large.* Any dog shall be deemed to be "at large" when it is off the property of its owner and not under the control of a competent person.

*Dangerous animal* means any animal found within the corporate limits which is determined to be dangerous to persons or property under the provisions of G.S. 67-4.1.

*Dog* includes both male and female dogs.

*Livestock* in this Chapter shall include, but shall not be limited to, equine animals, bovine animals, sheep, goats, llamas and swine.

*Owner* means any person owning, keeping, having charge of, sheltering, feeding, harboring or taking care of any animal. The head of the household shall be deemed to be the owner of any animal owned, kept or harbored by any person residing in such household and kept on such premises.

*Pasture* means a fenced area with sufficient grass for grazing of not less than one acre.

*Reptile* means any cold-blooded vertebrate of the class Reptilia including tortoises, turtles, snakes, lizards, alligators, crocodiles and extinct forms.

*Service animal* as defined by the Americans with Disabilities Act is as follows:

Service animal means any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. Other species of animals, whether wild or domestic, trained or untrained, are not service animals for the purposes of this definition. The work or tasks performed by a service animal must be directly related to the individual’s disability. Examples of work or tasks include, but are not limited to, assisting individuals who are blind or have low vision with navigation and other tasks, alerting individuals who are deaf or hard of hearing to the presence of people or sounds, providing non-violent protection or rescue work, pulling a wheelchair, assisting an individual during a seizure, alerting individuals to the presence of allergens, retrieving items such as medicine or the telephone, providing physical support and assistance with balance and stability to individuals with mobility disabilities, and helping persons with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors. The crime deterrent effects of an animal’s presence and the provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for the purposes of this definition.” (Service Animal as defined by the ADA, Title III, subpart A 36.104 definitions, July 2010)
In addition to the provisions about Service Dogs, the U.S. Department of Justice’s revised ADA regulations have a new, separate provision about miniature horses that have been individually trained to do work or perform tasks for people with disabilities. (Miniature horses generally range in height from 24 inches to 34 inches measured to the shoulders and generally weigh between 70 and 100 pounds.) Entities covered by the ADA must modify their policies to permit miniature horses where reasonable. The regulations set out four assessment factors to assist entities in determining whether miniature horses can be accommodated in their facility. The assessment factors are (1) whether the miniature horse is housebroken; (2) whether the miniature horse is under the owner’s control; (3) whether the facility can accommodate the miniature horse’s type, size, and weight; and (4) whether the miniature horse’s presence will not compromise legitimate safety requirements necessary for safe operation of the facility.

The ADA limits the definition of Service Animals to dogs and miniature horses.

Therapy dogs, emotional support dogs and companion dogs are not Service Animals as defined by the ADA.

In North Carolina, this law also applies to animals in training to become Service Animals. Training organizations and people training a Service Animal have the same access rights as people with disabilities using a Service Animal. The animal must wear a collar and leash, harness or cape that identifies it as a Service Animal in Training. The trainer is liable for any damage caused by the animal while in a place of business.

Stray dog means any dog within the city, wandering at large or lost which does not have an owner; or any dog that within the city whose owner fails to have such dog vaccinated against rabies as provided by law.

Therapy animal is normally a dog (but can be other species) that has been obedience trained and screened for its ability to interact favorably with humans and other animals. The primary purpose of a therapy animal is to provide affection and comfort to people in hospitals, retirement homes, nursing homes, schools, hospices, disaster areas, and to people with learning difficulties.

Vicious animal means any animal whose owner or keeper knows, or reasonably should know, has a propensity to attack a person by biting or in any manner causing injury or the reasonable likelihood of injury; or one which has a propensity to habitually or repeatedly attack livestock or other domestic animals. However, this provision shall not apply to any animal which bites, attacks or attempts to attack any person or animal unlawfully present upon the premises upon which such animal is properly kept, or which is provoked to attack.

Wild animal means any animal which can normally be found in a wild state; those feral, exotic, dangerous or nondomestic animals which generally do not live in or about the habitation of humans, including, but not limited to, lions, tigers, leopards, wildcats, bears, deer and the like.

(Code 1972, § 4-8; Ord. No. 73.60, § 2; Ord. No. 89.9, § 1; Ord. No. 2015-12, 5-19-2015)

- Sec. 14-2. - City animal wardens.

The chief of police is hereby authorized to appoint one or more city animal wardens and to determine the amount of salary. Such wardens shall be supervised and answerable to the chief of police, shall be
responsible for the enforcement of the provisions of this chapter and shall be authorized to wear badges
and uniforms but shall not be required to be members of the police department of the city.

(Code 1972, § 4-17; Ord. No. 73.60, § 2; Ord. No. 77.141, § 1; Ord. No. 89.9, § 1; Ord. No. 2015-12, 5-19-
2015)

- **Sec. 14-3. - Interference with impoundment.**

It shall be unlawful for any person to obstruct or interfere with, in any way, the impoundment of any
dog found in violation of the provisions of this chapter. It shall be unlawful for any person to release, or
attempt to release, any dog which has been impounded.

(Code 1972, § 4-18; Ord. No. 73.60, § 2; Ord. No. 89.9, § 1; Ord. No. 2015-12, 5-19-2015)

- **Sec. 14-4. - Authority of police officers.**

Members of the police department of the city shall be empowered to perform the duties of the animal
warden. Members of the police department are also empowered to use such force as is necessary for
the protection of persons, including the immediate destruction of an animal under the existing police
policy.

(Code 1972, § 4-19; Ord. No. 73.60, § 2; Ord. No. 89.9, § 1; Ord. No. 2015-12, 5-19-2015)

- **Sec. 14-5. - Reserved**

Editor's note— (Ord. No. 2015-12, adopted May 19, 2015 repealed § 14-5 pertaining to permit fees and
derived from the Code of 1953; the Code of 1972; Ord. No. 73.63; and Ord. No. 89.9)

- **Sec. 14-6. - Permit fees—Payment schedule. Reserved**

  Permit fees shall be paid by the dog owners at the office of the city clerk not later than January
31 of each year, or within 40 days from the date of acquisition of ownership of each dog, and
shall be valid until January 31 of the following year; except, that the permit fee applicable for
dogs acquired after July 31 of each year shall be one-half the regular fee for the remainder of
the applicable year.

(Code 1972, § 4-10; Ord. No. 73.63, § 2; Ord. No. 89.9, § 1; Ord. No. 2015-12, 5-19-2015)

- **Sec. 14-7. - Rabies inoculation required.**

No dog shall be permitted within the corporate limits unless it shall have been inoculated against rabies
as required by G.S. 130A-185(a), and proof of such inoculation shall be attached to such dog.

(Code 1972, §4-11; Ord. No. 73.60, §2; Ord. No. 89.9, § 1; Ord. No. 2015-12, 5-19-2015)

- **Sec. 14-8. - Responsibility of owners for securing permit tags and for acts of animals. Reserved**

  (a)

  Every owner of a dog shall be responsible for securing the proper city permit tag from the office
of the city clerk or the animal warden, upon payment of the fee fixed by the council from time
to time. Such permit tag shall be attached to such dog at any time while the dog is off the premises of the owner.

— (b)

Owners of animals are responsible for acts of their animals. The owner of any animal which commits a nuisance upon the property of another person, or which damages another person’s property or person, is fully responsible and accountable for these acts.

(Code 1972, § 4-12; Ord. No. 73.60, § 2; Ord. No. 89.9, § 1; Ord. No. 2002.31, 8-21-2002; Ord. No. 2015-12, 5-19-2015)

- **Sec. 14-9. - Allowing dog to run at large.**

It shall be unlawful for an owner to permit a dog to run at large.

(Code 1972, § 4-13; Ord. No. 73.60, § 2; Ord. No. 89.9, § 1; Ord. No. 2015-12, 5-19-2015)

**State Law reference** — Authority of city to regulate, prohibit, etc., the running at large of dogs, G.S. 160A-186.

- **Sec. 14-10. - Barking dogs.**

It shall be unlawful for any dog owner to keep or have within the city a dog that habitually or repeatedly barks in such manner or to such extent that it is a public nuisance.

(Code 1972, § 4-14; Ord. No. 73.60, § 2; Ord. No. 89.9, § 1; Ord. No. 2015-12, 5-19-2015)

- **Sec. 14-11. - Teasing or molesting dogs.**

It shall be unlawful for any person to tease, molest or bait any dog not belonging to him or legally under his control.

(Code 1972, § 4-15; Ord. No. 73.60, § 2; Ord. No. 89.9, § 1; Ord. No. 2015-12, 5-19-2015)

- **Sec. 14-12. - Wild, vicious or dangerous animals.**

(a)

*Keeping or possession prohibited.* It shall be unlawful for any owner to own, keep, possess or in any way maintain a wild, vicious or dangerous animal within the corporate limits. After a determination by the animal warden or other properly designated agent or employee of the city that a particular animal is wild, vicious or dangerous, that designee may order that the owner of such animal have it humanely destroyed or shall otherwise immediately remove it from within the corporate limits. If the animal is to be destroyed, a designee from the city shall bear witness to the destruction. If the animal is removed from the corporate limits, it shall be permanently marked for future identification and available for periodical inspection as determined by the chief of police.

(b)

*Right of appeal.* An owner of a dog declared potentially dangerous or dangerous shall follow the appeal process established in G.S. 67-4.1 et seq.
(c)

Vicious animals.

(1)
The animal control supervisor has the authority to declare an animal vicious. Any animal declared to be a vicious animal shall be immediately impounded and held for a ten calendar-day quarantine period and then humanely destroyed unless an appeal is filed as prescribed in this chapter. If an appropriate appeal is filed, the dog shall be held at the shelter, at the owner’s expense, pending the final outcome of the appeal.

(2)
The owner shall deposit with the shelter the anticipated fee for the estimated time of the appeal beginning with the first day of quarantine. Such amount shall be calculated based on transportation fees, boarding fees and any known veterinary care the animal is in need of at the time the quarantine period begins. Payment of the fees is a required part of the appeals process. If the owner fails to pay the determined amount of fees, the appeal application will be deemed incomplete and no appeal heard.

(3)
Nothing in this section shall prohibit the owner from voluntarily releasing the dog to be destroyed in a humane way.

(d)

Appeal procedure. To appeal any other determination or finding in this chapter such as a finding or determination that an animal is vicious or is a public nuisance, the following provisions shall apply:

(1)
The filing of a written appeal stays all proceedings in furtherance of the action appealed, unless the animal control supervisor whose decision is being appealed certifies to the chief of police, after the appeal is filed, because of facts stated in the certification: (i) that a stay would cause immediate peril to life or property; or (ii) that the solution appealed from is transitory in nature, and therefore an appeal would seriously interfere with enforcement of the provisions of the Newton City Code or the operation of any program in the city.

a.

In such case, proceedings shall not be stayed other than by a restraining order, which may be granted by a court of record having jurisdiction in the county.

b.

The animal control supervisor shall transmit to the chief of police, as appropriate, all papers constituting the record upon which the action appealed is taken and shall provide a copy of such record to the city clerk.

(2)
Within 30 days of the receipt of the written appeal, the chief of police shall hold at least one hearing on the appeal. Following the close of the hearing, the chief of police shall take final action based on the procedures and requirements of this section.

a.
In exercising the appeal power, the chief of police shall have all the powers of the official from whom the appeal is taken, and the chief of police may reverse or affirm wholly or partly or may modify the decision being appealed.

b.
If the chief of police determines that it is necessary to obtain additional evidence in order to resolve the matter, he shall remand the appeal to the animal control supervisor from whom the appeal is taken, with directions to obtain such evidence and to reconsider the decision in light of such evidence.

(3)
The chief of police may reverse or modify an order, requirement, decision, or determination of the animal control supervisor. The decision of the chief of police shall be supported by written findings of fact. After the hearing, the chief of police has ten days to make the final decision.

a.
Within five days after a final decision of an administrative appeal is made by the chief of police, copies of the written decision shall be sent to the appellant and filed in the office of the city clerk, where it shall be available for public inspection during regular office hours.

b.
Contemporaneous with the filing of the decision of the chief of police, a written copy of the chief of police's decision shall be sent, via first class mail or personal service, to the appellant at the appellant's last known address, or such other addresses as the appellant may request in writing in the appeal documents.

(4)
Any person who is directly affected by a decision of the police chief may appeal the decision to the county superior court. An appeal to superior court must be filed within 30 days of the filing by the chief of police of the decision in the office of the city clerk.

(5)
Individuals participating in the appeals process set forth above may, at their own cost and expense, be represented by legal counsel if they so desire.

(6)
Only individuals licensed as attorneys to practice law in the State of North Carolina are permitted to represent individuals in these proceedings.

(7)
If an animal has already been found to be a nuisance, vicious, dangerous, potentially dangerous, or otherwise found to be in violation of this chapter, and the appeal process has either lapsed or has been exhausted, no appeals may be filed regarding future citations written under these sections.

(e)

**Impounded animals.** If an animal has been seized under some other provision of this chapter and is subject to a determination as being a wild, vicious or dangerous animal, it may continue to be held pending final decision of that determination. If the animal is finally adjudged not to be wild, vicious or dangerous, it shall be returned to its owner, and all impoundment fees attributable to the determination under this section shall be waived. Nothing herein precludes assessment of impoundment fees with respect to any other violations of this chapter simultaneously occurring. If the animal has been seized, and a final determination is made that the animal is wild, vicious or dangerous, the animal may be returned to the owner, provided request is made within three days of the final determination, and the owner makes satisfactory arrangement for disposition of the animal as required by subsection (a) of this section and the payment of all impoundment fees.

(f)

**Notice to owner.** Upon a determination by the animal warden or other properly designated agent or employee of the city that a particular animal is wild, vicious or dangerous under the provisions of subsection (a) of this section, such warden or agent will undertake to ascertain, with reasonable diligence, the owner of such animal. If the owner of the animal is determined, such warden or agent shall immediately notify the owner of such determination. Notification shall be completed by receipt of registered mail signed for by an adult member of the owner’s household or personal delivery to an adult member of the owner’s household. If the owner cannot be determined with reasonable diligence within three days of the determination, the animal may be disposed of in a humane manner by the custodian of the animal shelter wherein the animal is impounded.

(Code 1972, § 4-16; Ord. No. 89.9, § 1; Ord. No. 2015-12, 5-19-2015)

- **Sec. 14-13. - Impoundment and redemption of dogs; sale and disposal of impounded dogs.**

(a)

Any dog within the city without an owner, as defined in section 14-1, or any dog running at large is subject to being picked up and impounded by the animal warden. If the animal warden can determine the ownership of the dog by tag or other means, in lieu of impoundment, the dog may be taken to the owner, and a notice of violation shall be served charging the owner with a violation of this chapter. No penalty shall be charged for the first such notice of violation, but a penalty of $25.00 shall be charged for the second such violation in any fiscal year. A third violation and all subsequent violations shall have a penalty of $50.00. The penalties provided for herein shall be in addition to any impoundment charges or fees assessed and collected by another governmental unit which operates an animal shelter in which any seized animal may be impounded.

(b)

Any dog running at large without a current city tag or identifiable owner shall be taken to the animal shelter. Any such animal taken to the animal shelter shall be confined for a period of five days for redemption by the owner. If such animal is not redeemed by the owner within such period of five days,
it shall be offered for sale to any member of the public and sold to such member of the public first
paying for it as herein provided, or it may be disposed of in accordance with the law, rules and
regulations in effect for the animal shelter in which the animal is impounded, if such animal shelter is
operated by another governmental unit.

(c)

If such animal is not redeemed by the owner, as herein provided, or sold within nine days after it is
taken into custody, it may be disposed of in a humane manner by the custodian of the animal shelter, or
it may be delivered to some duly constituted, reputable research organization, or it may be disposed of
in accordance with the law, rules and regulations in effect for the animal shelter in which the animal is
impounded, if such animal shelter is operated by another governmental unit.

(d)

Any animal determined by the animal warden to be a wild, vicious or dangerous animal under the
provisions of section 14-12 may be immediately seized and impounded, to be held and disposed of in
accordance with the provisions of such section.

(e)

The animal warden or other person authorized to enforce the provisions of this chapter is hereby
authorized to utilize the facilities of the county animal shelter for the purpose of impounding any animal
picked up or seized under the provisions of this chapter. If such facilities are utilized, the owner, if
otherwise applicable, shall be responsible for all fees, charges and assessments made by the county for
the impoundment of any such animal, in addition to all other penalties and fees required by this chapter
to be paid to the city.

(f)

In order for the owner to redeem such animal, such owner must:

(1)

Pay for and produce a permit, if he does not have one for a dog;

(2)

Have the dog duly vaccinated for rabies, if it has not been currently vaccinated before the redemption
date; and

(3)

Pay a penalty as specified in subsection (a) of this section, and likewise pay the cost to the animal
warden for taking care of and caring for such animal, including $25.00 for capture.

(Code 1972, § 4-20; Ord. No. 73.60, § 2; Ord. No. 89.9, § 1; Ord. No. 2015-12, 5-19-2015)

- Sec. 14-14. - Fowl running at large prohibited.
No person shall permit ducks, geese, chickens or other fowl to remain on or in any public street or public place at any time or to run at large in the corporate limits, except upon the premises of the owner thereof.

(Code 1953, ch. J, art. 2, § 9; Code 1972, § 4-1; Ord. No. 89.9, § 1)

- **Sec. 14-15. - Grazing of animals.**

   No person shall graze or tie up on any vacant lot or tract of land, any cattle, sheep or other animal; except, that such animals shall be permitted to graze within a fenced area or pasture of no less than one acre as defined in 14-1.

   (Code 1953, ch. J, art. 2, § 12; Code 1972, § 4-2; Ord. No. 89.9, § 1)

- **Sec. 14-16. - Keeping hogs or cattle livestock.**

   No person shall keep more than five hogs or five head of cattle within 100 yards of any dwelling. Keeping means a stable, pen, enclosure, shelter or other place where animals and livestock are kept. Each day or part thereof hogs or cattle are so kept shall be a separate offense.

   (Code 1953, ch. J, art. 2, § 14; Code 1972, § 4-3; Ord. No. 89.9, § 1)

- **Sec. 14-17. - Protection of birds and wild fowl.**

  (a)  

  *City designated bird sanctuary.* The entire area embraced within the corporate limits is hereby designated as a bird sanctuary.

  (b)

  *Unlawful acts; exceptions; control of undesirable species.* It shall be unlawful for any person to trap, hunt, shoot or attempt to shoot, trap or molest any bird or wild fowl or to rob bird nests or wild fowl nests within the corporate limits; provided, that starlings, pigeons and other similar birds whose presence or actions constitute a public nuisance or a menace to health or which commit depredations to property are not protected by this section; provided, further, that if starlings or other similar birds are found to be congregating in such numbers, in a particular locality, that they may, in the opinion of the city manager, constitute a nuisance or menace to health or property, the city manager shall contact and so inform representatives of the Audubon Society, bird club, garden council or humane society or as may of such clubs as are found to exist in the city. If, as a result of such contacts, no satisfactory alternative is found to abate such nuisance, such birds may be destroyed in such numbers and in such manner as is deemed advisable by the public health authorities under the supervision of the chief of police of the city.

   (Code 1972, § 4-4; Ord. No. 74.89, §§ 1, 2; Ord. No. 89.9, § 1)

**State Law reference**— Permits required for killing certain birds, G.S. 113-274; authority of city to establish bird sanctuaries, G.S. 160A-188.

- **Sec. 14-18. - Cleanliness and location of stables, pens and similar enclosures.**

  (a)
No person who owns, operates or maintains a stable, pen, enclosure, lot, shelter or other place where animals and livestock are kept within the city, in which swine, horses, mules, cows, dogs or goats are kept, shall keep such stable, pen or enclosure, in an unclean and unsanitary condition. No stable, pen or enclosure in which swine, horses, mules, cows or goats livestock are kept or dog kennel in which more than two dogs are kept shall not be located closer than 300 feet to any residence or place of business other than that of the owner, without the written consent of all of the owners of all of the existing residences and/or places of business within 300 feet of the proposed location of a stable, pen or enclosure in which swine, horses, mules, cows or goats livestock are to be kept, or dog kennel in which more than two dogs are to be kept.

(b)

There shall be provided a watertight and fly proof bin or pit or a watertight barrel with a close-fitting lid. Manure accumulating in such stable, pen or enclosure shall be placed in the pit, bin or barrel each day, and the same shall be removed from such structure at intervals of no longer than five days. Such stable, pen, etc., shall be maintained in a sanitary and humane manner.

(Code 1953, ch. J, art. 6, § 1; Code 1972, § 4-5; Ord. of 9-7-1948; Ord. No. 89.9, § 1; Ord. No. 2002.9, § 1, 4-2-2002)

- **Sec. 14-19. - Cleanliness and fly control for coops or pens where fowl are kept.**

Any person who owns or maintains pens, coops or shelters in which chickens, turkeys, ducks or other fowl are kept for family purposes shall maintain such pens, coops or shelters in a sanitary condition. Manure accumulating shall be placed in a watertight and fly-proof bin or in a watertight barrel with a tight-fitting lid every five days. Effective fly-control methods, such as the use of an approved insecticide, shall be practiced during the fly breeding period from April 15 to November 1 of each year.

(Code 1953, ch. J, art. 6, § 2; Code 1972, § 4-6; Ord. of 9-7-1948; Ord. No. 89.9, § 1)

- **Sec. 14-20. - Notice of violation of section 14-18 or 14-19.**

Any person who fails to comply with the provisions of section 14-18 or 14-19 shall be given written notice to remove or otherwise destroy the stables, pens, coops or shelters within 15 days after the receipt of such notice.

(Code 1953, ch. J, art. 6, § 3; Code 1972, § 4-7; Ord. of 9-7-1948; Ord. No. 89.9, § 1)

- **Sec. 14-21. - General care; prohibited acts.**

All animals shall be kept and treated under sanitary and humane conditions and it shall be unlawful for any person to engage in one or more of the following acts:

(1)

*Failure to provide adequate food, water and shelter.*

a.

All animals, unless otherwise indicated in this chapter, shall be given at suitable intervals, not to exceed 24 hours, a quantity of wholesome foodstuff in a container suitable for the age and species of the animal and sufficient to maintain a healthful level of nutrition.
b. All animals shall have constant access to a supply of clean, fresh, portable [potable] water or a supply of clean, fresh portable [potable] water provided at suitable intervals. If access is not constant, then adequate amounts of water must be provided at least twice in a 24-hour period. If water is provided at intervals, it must remain in the animal's enclosure for at least one hour during each interval.

c. All animals shall be provided with adequate shelter from the weather at all times. It shall be within the discretion of animal control officer to determine what constitutes adequate shelter. Examples of inadequate shelter include, but are not limited to the following:

1. Underneath outside steps, decks and stoops.
2. Underneath houses.
3. Inside or underneath motor vehicles.
4. Inside metal or plastic barrels.
5. Inside cardboard boxes.
6. Inside temporary animal carriers or crates.
7. Shelters located in flood prone areas.
8. Shelters surrounded by waste, debris, obstructions or impediments that may endanger an animal.

(2) Failure or refusal of any owner of a sick, diseased or injured animal to provide proper medical treatment for the animal.

a. A sick, diseased or injured animal shall go no longer than 24 hours without veterinary care.
Animal cruelty. Examples of animal cruelty include, but are not limited to the following:

a. Allowing a collar, rope or chain to become embedded in or cause injury to an animal’s neck.

b. Allowing a choke or pinch collar to be used as a primary collar when the animal is left unsupervised.

c. Allowing a dog or cat to be left outside in inclement weather or extreme temperatures without adequate shelter.

d. Intentionally allowing animals to engage in a fight.

e. Allowing animals to live in unsanitary conditions.

f. Allowing animals to live in crowded conditions.

g. Failure or refusal to obtain medical treatment for an animal when in an animal control officer’s opinion such treatment is needed.

h. Shooting a dog, either on or off of the owner's property, unless the dog is in the act of chasing or attacking a human being, sheep, cattle, horse, hog, goat, poultry or any other domestic animal.

i. Trapping a dog or cat without a request for animal trap issued by animal control.

j. Permitting any exhibit, function or activity where animals are being cruelly treated or animals run the risk of causing injury to the public or them. The animal control division shall have the authority to inspect and to close down public exhibits of animals which are part of fairs, carnivals, festivals, fund-raising events, petting zoos and any other activity or function carried out in the city if it is determined that animals are being cruelly treated, abused or run the risk of causing injury to the public or themselves.

k.
Animals being confined to or restrained on the premises of a vacant or abandoned structure.

I.

Failure to provide adequate drainage to prevent surface water from standing in the area of the pen or enclosure where the animal is kept. It shall be within the discretion of animal control as to what constitutes adequate drainage.

(4)

[Chaining or tethering.] Chaining or tethering an animal to a stationary object for a period of time or under conditions that an animal control officer deems harmful or potentially harmful to the animal. Examples of improper chaining or tethering include, but are not limited to the following:

a. Using a length or weight of a chain or tether that is not appropriate for the size, weight and age of the animal. Guidelines for the proper weight and length of chains or tethers can be obtained from the animal shelter or animal control.

b. Using a chain or tether made of rope, twine, cord or similar material.

c. Using a chain or tether that is less than ten feet in length and/or does not have swivels on both ends. All chains or tethers must be attached to the animal by means of a properly fitting harness or collar of not less than one inch in width.

d. Allowing an animal to be chained or tethered such that the animal is not confined to the owner’s property or such that the chain or tether can become entangled and prevent the animal from moving about freely, lying down comfortably or having access to adequate food, water and shelter.

e. Using a chain as a primary collar. All collars used for the purpose of chaining or tethering an animal must be made of nylon or leather.

(5)

Leaving an animal in a closed vehicle, etc. Leaving an animal in a closed vehicle or other enclosure for such duration or at such temperatures as an animal control officer or police officer deems harmful or potentially harmful to the animal.

(6)

Failure or refusal to report injured domestic animals.

a.
All persons who injure a domesticated animal by running over, into or otherwise coming into contact with such animal with an automobile, motorcycle, bicycle or other vehicle shall notify the owner of the animal immediately.

b.

If the owner is unknown, the person who injured the animal shall immediately notify animal control or any police officer by giving his or her name and address, a description of the animal and the location of the incident.

(Ord. No. 2014-2, § 1, 1-7-2014)

- Sec. 14-22. - Sanctions, penalties, fines, remedies.

Any person who fails or refuses to abide by or otherwise violates this article shall be subject to the following sanctions or penalties:

(1)

Pursuant to G.S. 19A-46, animal control may obtain a magistrate’s order to take possession of the animal.

(2)

If the conditions pose an immediate threat to the health or safety of the animal or the public, the animal control officer or police officer may summarily seize the animal.

a.

A notice of seizure describing the exigent circumstances warranting the seizure shall be left with the owner or affixed to the premises. Examples of exigent circumstances include, but are not limited to the following:

1.

Unsanitary conditions resulting from the number of animals involved.

2.

Unsanitary conditions resulting from the owner’s inability or unwillingness to clean the area where the animals are housed.

b.

The owner of animal seized pursuant to this section may appeal the seizure by filing a request for appeal with the chief of police.

c.

If the owner fails to redeem the animal within the time limit provided by this chapter, or fails to timely request an appeal, or fails to timely appeal a decision of the chief of police, the animal shall become the property of the county.
If it is determined by the animal control officer or police officer that the animal is not in immediate danger, or the problem which gives rise to the inadequate treatment or abuse can be corrected within 72 hours, the officer may, in lieu of subsection (1) or (2) above issue a written notice of violation directing the owner or possessor of the animal to correct the problem within 72 hours. If the condition or problem is not corrected within 72 hours, the animal control officer or police officer may take action as outlined in subsection (1) or (2) above.

Notwithstanding the other provisions and sanctions of this article, an animal control officer or police officer may issue a civil penalty for violation of any provision of this section in accordance with section 1.6 [sic].

Violation of state law. When it has been determined by the animal control officer or police officer that there has been a violation of one or more provisions of state law regarding cruelty to animals, including G.S. 14-360, the officer may initiate a criminal summons or warrant.

Sec. 14-23. - Exemptions.

This article shall not apply to agencies conducting biomedical research or training, the production of livestock or poultry for sale as a consumer product and the lawful destruction of any animal for the purpose of protecting livestock, poultry or humans.
CITY OF NEWTON
REQUEST FOR COUNCIL ACTION

DATE: March 21, 2017

TO: E. Todd Clark, City Manager

FROM: City of Newton Tree Board

CONSIDERATION OF: Eastview Cemetery Tree Replacement Project

Approved for Council Consideration

Background:

Over mature trees in Eastview Cemetery pose danger to monuments, vehicles and persons. We request permission to submit a North Carolina Urban Forestry Council Grant Proposal to fund removal and replacement of these 80+ year old trees.

- Grant proposal is due March 31, 2017
- Grant amount may range from $5,000 to $15,000 and requires 1:1 match from the City of Newton.
- Hours of labor provided by employees and volunteers count as matching funds, as do any donations or grants from local businesses or individuals.
- Activities to be covered include removal of existing trees, grinding of stumps, and planting of new trees (approximately 40).
- These will require purchasing a stump grinder to eliminate costs of renting one or contracting out this service.
- Trees (approximately 40) will need to be purchased, along with mulch and stakes.
- Grant period (if received) extends from September 2017 to July 2018.
- Grant is under supervision of Department of Parks and Recreation.

Action Suggested:

That Newton City Council approve submission of Urban Forest Council Grant for the Eastview Cemetery Tree Replacement Project by the Tree Board with the City of Newton.