AGENDA
CITY OF NEWTON

August 6, 2019
# AGENDA
## CITY OF NEWTON
## NEWTON CITY COUNCIL - REGULAR MEETING
### August 6, 2019
#### 7:00 p.m.

<table>
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<tr>
<th>Page</th>
<th>1. Call to Order – Mayor Anne P. Jordan</th>
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<tbody>
<tr>
<td>2.</td>
<td>Opening – Council Member Ed Sain</td>
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<tr>
<td>3</td>
<td>Approval of Minutes from the July 9, 2019 Regular and July 22, 2019 Special Meetings</td>
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<tr>
<td>4</td>
<td>Consideration of Consent Agenda Items</td>
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<tr>
<td></td>
<td>A. Sewer Adjustments</td>
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<td>B. Consideration of Street Closures</td>
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<td>• Bright Future Concert – September 19th, 3:30 p.m. – 10:00 p.m.</td>
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<td>• Foothills Folk Art Festival – October 5th, 5:00 a.m. – 10:00 p.m.</td>
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<td>C. Consideration of the Pyrotechnics Display Permit for the American Legion Fairgrounds</td>
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<td>D. Consideration to Adopt The Records Retention and Disposition Schedule for Local Government Agencies per the North Carolina Department of Cultural Services, Division Of Archives and History</td>
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<td>E. Consideration of Budget Ordinance to Carry Forward Outstanding Purchase Orders at June 30, 2019</td>
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<td>F. Consideration of Official Intent to Reimburse Capital Purchase of Five Police Vehicles</td>
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<td>5</td>
<td>Comments from the Public: (IF YOU WOULD LIKE TO MAKE A PUBLIC COMMENT ON NON-AGENDA ITEMS PLEASE SIGN IN WITH THE CITY CLERK PRIOR TO THE MEETING):</td>
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<tr>
<td>6</td>
<td>Public Hearings</td>
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<td>A. Consideration of Text Amendment #2019-01 – To Allow Members of the Planning Commission to Serve as Members of the Board of Adjustment</td>
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<td>B. Consideration of Text Amendment #2019-02 Eliminating Chapter 82 – Soil Erosion and Sedimentation Control from the Newton City Code</td>
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<tr>
<td>7</td>
<td>New Business</td>
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<td>A. Consideration of Memorandum of Agreement Between the North Carolina Sedimentation Control Commission and City of Newton</td>
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<td>B. Consideration of Contract Between Catawba County and City Newton for Enforcement of Soil Erosion and Sedimentation Control Regulations.</td>
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<td>C. Consideration to Approve Public Art Commission By-laws</td>
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<td>8</td>
<td>City Manager’s Report</td>
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<td>9</td>
<td>Questions and Comments From Mayor and Council</td>
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<tr>
<td></td>
<td>A. Reports from Appointed Representatives on Outside Boards – Mayor Pro Tem John Stiver</td>
</tr>
<tr>
<td>10</td>
<td>Adjournment</td>
</tr>
</tbody>
</table>

The City of Newton holds all public meetings in accessible rooms. Special requests for accommodations should be submitted by individuals at least 48 hours before the scheduled meeting time. Please call 828-695-4266 or 828-695-4261 for special accommodations.
The regular meeting of the Newton City Council was held at 7 p.m. Tuesday, July 9, 2019 at Newton City Hall.

PRESENT: Mayor Anne P. Jordan, Mayor Pro Tem John Stiver and Council Members Jerry Hodge, Anne Wepner, Jody Dixon, Tom Rowe and Ed Sain

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. Jordan welcomed everyone and called the meeting to order.

ITEM 2: OPENING Invocation and Pledge of Allegiance

Council Member Anne Wepner provided the invocation and Pledge of Allegiance.

ITEM 3: APPROVAL OF MINUTES

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

That the Regular Minutes of the June 18, 2019 City Council meeting be – APPROVED

ITEM 4: CONSIDERATION OF CONSENT AGENDA ITEMS

Upon motion duly made by Mayor Pro Tem John Stiver, seconded by Council Member Ed Sain, it was unanimously RESOLVED:

That the Consent Agenda be – APPROVED

A. Sewer Adjustments

B. Consideration of Proclamation Honoring International Paper Employee Albert McGlown for 50 Years of Service

C. Consideration of Budget Ordinance to Carry Forward Unspent Funds for Fire Department Rescue Truck

D. Consideration of Budget Ordinance to Carry Forward Unspent Funds for Police Department Prime Mover Truck

(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. Jordan asked if anyone present would like to make comment concerning non-agenda items. No one appeared.

ITEM 6: Old Business

A. Consideration of Change Order for Greenway and 15th Street Sewer Replacement Project
Parks and Recreation Director Sandra Waters stated that prior to June 9, 2019, staff noticed erosion from a storm water outlet behind the Catawba County Animal Shelter. This erosion was damaging the Greenway Trail to the point of being unsafe for walkers.

Ms. Waters stated that on June 8th and 9th of 2019, heavy rain caused this storm water pipe to fail. Over half of this crossing on the Greenway has washed away and exposed an 18” sewer main. This sewer main is made out of plastic, and now will need to be replaced with ductile iron pipe to meet sewer minimum design regulations. The Greenway at this location is closed, until repairs can be made.

Ms. Waters explained that the City of Newton has a contract with Hickory Sand Company Inc. for projects referenced as the 15th Street and Greenway Sewer Replacement Project. The greenway portion of this project is only 1,000 feet from where the compromised storm water pipe is located. She stated that combining this project along with the Greenway Storm Water Pipe Rehab Project will save money and speed up the process of opening the Greenway. Having a contract in place, means that most of the pricing is locked in, including mobilization, pipe, asphalt, and stone.

Ms. Waters stated that staff contacted Hickory Sand, Inc. for a price to repair the storm water drain pipe on the greenway. Prices came back through the engineering firm designing the 15th Street and Greenway Sewer Project. Hickory Sand’s change order cost is $74,140.00 without contingency. That cost includes repair of storm water drainage pipe, replacement of dirt and rock, asphalt, sewer pipe, and a head wall to prevent future problems. Since this is a change order, and is outside the scope of the agreement for engineering, there will be a cost from The Wooten Company on administration of paper work cost and some observation cost. That total amount for this work is not to exceed $1,600.00. The total cost with 10% contingency to fix the damaged storm water drainage pipe under the Greenway is $83,150.00.

Ms. Waters stated that staff recommends approval of Change Order No. 1 with Hickory Sand Company, Inc. in the amount of $74,140, approval of a contract with The Wooten Company in the amount of $1,600 for administration and observations services, and hold $7,410 as contingency against the construction phase of the storm water pipe replacement.

Upon motion duly made by Council Member Ed Sain, seconded by Council Member Anne Wepner, it was unanimously RESOLVED:

That Change Order No. 1 with Hickory Sand Company, Inc. in the amount of $74,140 be – APPROVED

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

That a Contract with The Wooten Company in the Amount of $1,600 for Administration and Observations Services, and Hold $7,410 as Contingency Against the Construction Phase of the Storm Water Pipe Replacement be – APPROVED

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

B. Consideration of Grant Project Ordinance to Recognize Building Reuse Grant Funds and Related Administrative Agreement – James River Real Estate, LLC

Finance Director Vickie Thomas stated that on January 15, 2019 the City was awarded a Building Reuse Project Grant through the North Carolina Department of Commerce Rural Economic Development Division in an amount not to exceed $60,000. An agreement with the Western Piedmont Council of Governments to administer the grant will serve as the City’s 5% match of $3,000.

Ms. Thomas stated that this grant is to assist with stimulating economic activity in Newton and to create new jobs for citizens. More specifically, this grant will assist with the reuse of a vacant building at 2616 Northwest Boulevard for James River Real Estate, LLC. This business will be an agricultural dealership that is an authorized service and sales provider for John Deere equipment.
Ms. Thomas stated that consideration of the related Grant Project Ordinance is necessary to recognize the $60,000 grant funds, authorize the 5% match from fund balance, authorize the related expenditure appropriation for the renovations, and approve the administrative agreement with the Western Piedmont Council of Governments.

Ms. Thomas recommended that Council consider a motion to approve the attached Grant Project Ordinance for the Building Reuse Grant – James River Real Estate, LLC., and a motion to approve the attached administrative agreement with the Western Piedmont Council of Governments.

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

That the Grant Project Ordinance for the Building Reuse Grant – James River Real Estate, LLC. be – APPROVED

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

That the Administrative Agreement with the Western Piedmont Council of Governments be – APPROVED

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

ITEM 7: City Manager’s Report

Meetings & Events

- July 10th – One Source Service Center Ribbon Cutting, 11:00 a.m. – 2218 North Main Ave
- July 12th – Raised by the South Ribbon Cutting, 11:00 a.m. – 103 North College Ave
- July 12th – Bright Future Concert, 5:30 p.m. – Frank & Sue Jones Amphitheatre
- July 11th, 18th and 25th – Public Meetings on Strategic Growth Plan Update
- July 17th, Catawba county EDC 2019 Annual Meeting, 11:45 a.m. – Catawba Country Club
- August 6th – Regular City Council Meeting

ITEM 8: Questions and Comments from Mayor and Council

Mayor Jordan asked if there were any questions or comments from City Council.

Mayor Jordan gave reports on the DNDA Board and the Public Art Commission Board.

ITEM 9: Adjournment

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

That the Meeting be – ADJOURNED

________________________________________
Anne P. Jordan, Mayor

________________________________________
Amy S. Falowski, City Clerk
MINUTES
SPECIAL MEETING OF THE NEWTON CITY COUNCIL
July 22, 2019 – 7 p.m.

The regular meeting of the Newton City Council was held at 10:00 a.m. Monday July 22, 2019 at Newton City Hall.

PRESENT: Mayor Anne P. Jordan, Mayor Pro Tem John Stiver and Council Members Jerry Hodge, Anne Wepner, Jody Dixon, Tom Rowe and Ed Sain

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. Jordan welcomed everyone and called the meeting to order.

ITEM 2: Consideration to Adopt a Budget Ordinance to Amend Capital Project Funds and to Amend Revenues and Expenditures for Fiscal Year 2019-2020

City Manager Todd Clark stated that the reason for this special called meeting is the need to proceed with financing for Valley Drive Water Line and Phase 2 of Streetscape. Mr. Clark explained that the city needs to stick with the schedule for bank bids in accordance with the Local Government Commission’s schedule, and this meeting is necessary due to the fact that the city only has one scheduled meeting for each of the months of July and August.

Finance Director Vickie Thomas stated that the City of Newton periodically establishes capital project ordinances for endeavors that involve infrastructure/construction activities. In most cases, the duration of an infrastructure/construction project will extend from one fiscal year into another. Consequently, the adoption of a capital project ordinance allows the governmental entity to appropriate funds for the life of the project without the governing board having to reallocate funding on a fiscal year basis.

Ms. Thomas stated that The Downtown Streetscape Phase 2 Capital Project was approved and appropriated within the operating budget as part of the Fiscal Year 2019-2020 Budget in the amount of $1,607,250. For capital projects, the City includes the planned expenditures in the operating budget for transparency purposes, but then removes them from the operating budget at the beginning of the fiscal year since they are already authorized in a project ordinance.

Ms. Thomas explained that the original capital project budget for all four phases of Streetscape was adopted by City Council on January 23, 2018, at which time the estimate of probable cost for Phase 1 totaled $4,266,550. The capital project budget has been amended several times since January of 2018 in order to reflect the estimate of probable cost for all phases of Streetscape. The last budget amendment was adopted by City Council on October 2, 2018. At that time, the budget for all phases was estimated at $13,565,450.

Ms. Thomas stated that Phase 1 of this project is now complete and the City’s contractor is expected to produce a final invoice (i.e. “pay application requests”) prior to final close out. Consequently, the city does not have a final cost on Phase 1.

Ms. Thomas explained that the city has continued to work with McGill & Associates to complete plans and specifications for Phase 2 which includes A Street between Main Avenue and College Avenue, which also includes improvements to Yount Park. The City has gone out for bids on Phase 2 and the total estimated cost including engineering, construction, project administration and oversight is $1,907,543. The amount originally included in the Streetscape Capital Project Fund for Phase 2 was $2,784,763 so no increase in the capital project authorization is needed.

Ms. Thomas stated that the next step in moving Phase 2 to construction is for City Council to authorize the staff to solicit bank bids and prepare an application to the Local Government Commission for financing. As part of the review process, the staff has recognized an appreciable savings that has compounded over a period of time in the City’s Health Plan. Based on discussions with our insurance consultant, the balance in this fund is significantly higher than would be expected with a plan of our size. The Health Plan Fund Balance is intended to ensure that revenues will cover expenses over time.
It also provides for potential future catastrophic losses. Ms. Thomas stated that based on the current stop loss limits in place for the City’s plan and the potential cost of run-out claims in the event the City becomes fully-insured, Staff estimates that the Fund Balance needed in the Health Plan is $575,000. Due to the wellness initiatives implemented by the City, health claims growth has stabilized, and the Health Plan Fund Balance has grown to $1,375,000. As a result, Staff proposes transferring the $800,000 excess back to the respective funds which were charged. Ms. Thomas recommended that any excess Fund Balance be used for non-recurring costs such as capital expenditures, and not to fund recurring annual operating expenses. This budget ordinance amendment incorporates that transfer and use of the excess Health Plan Fund Balance for planned capital expenditures.

Council Member Jerry Hodge asked if this would have a negative impact on the health fund or any other funds. Mr. Clark stated that it will not, and that the health fund is very healthy.

Upon motion duly made by Council Member Jody Dixon, seconded by Mayor Pro Tem John Stiver, it was unanimously RESOLVED:

That Budget Ordinance to Amend the Capital Project Funds for Downtown Streetscape Project and to Amend the Capital Project Funds for the Downtown Streetscape Project be – ADOPTED.

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

That Resolution for Financing be – ADOPTED.

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

ITEM 3: Consideration of Resolutions Related to Debt Financing

a. Approval to Proceed with Capital Projects and to Submit LGC Application
b. Call for Public Hearing on September 3, 2019

Finance Director Vickie Thomas stated that the City of Newton wishes to finance the acquisition of certain infrastructure improvements, more specifically the Downtown Streetscape Project, Phase 2 and the Valley Drive Water Line Rehabilitation Project.

Ms. Thomas explained that the estimated cost of the infrastructure improvements is $1,460,000 ($550,700 for the General Fund, $700,000 for the Water/Wastewater Fund, and $209,300 for the Electric Fund). The estimated cost by project is as follows:

Downtown Streetscape – Phase 2 Project is $760,000
Valley Drive Water Rehabilitation Project is $700,000

Ms. Thomas stated that the Finance Department will be soliciting quotes from various financial institutions to borrow $1,460,000. We will provide a recommendation to City Council on awarding the financing on September 3, 2019, and will also call for a public hearing on this same date.

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

That Resolution Authorizing the City Manager and Finance Director to act on behalf of the City and to Authorize the Filing of an Application with the North Carolina Local Government Commission be – ADOPTED.
Upon motion duly made by Council Member Jody Dixon, seconded by Council Member Ed Sain, it was unanimously RESOLVED:

That Resolution Calling for a Public Hearing on September 3, 2019 be – ADOPTED.

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

ITEM 4: Adjournment

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

That the Meeting be – ADJOURNED

_________________________________  
Anne P. Jordan, Mayor  

_________________________________  
Amy S. Falowski, City Clerk
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>
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<tbody>
<tr>
<td>55000200-024</td>
<td>Carmen Ortiz</td>
<td>715-B Sandalwood Ct</td>
<td>Mar-May</td>
<td>$48.29</td>
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<tr>
<td>53000940-003</td>
<td>Brett Williams</td>
<td>2315 Brookwood Ave</td>
<td>June-Pool</td>
<td>$37.19</td>
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<tr>
<td>8001720-001</td>
<td>Sherry Sigmon</td>
<td>105 E K St</td>
<td>July-Pool</td>
<td>$57.72</td>
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<tr>
<td>44001540-006</td>
<td>Edwin Calderon</td>
<td>1074 Forrest Dr</td>
<td>July-Pool</td>
<td>$83.37</td>
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<tr>
<td>44001260-004</td>
<td>Rebecca Frediani</td>
<td>821 W 6th St</td>
<td>July-Pool</td>
<td>$124.76</td>
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<tr>
<td>41001140-001</td>
<td>Deborah Grigg</td>
<td>785 Boundary St</td>
<td>Apr-June</td>
<td>$1077.26</td>
</tr>
</tbody>
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Backup documentation to support each adjustment is on file in the Finance Department. Should you have questions or require further clarification, please notify.
DATE: July 29, 2019

TO: E. Todd Clark, City Manager

FROM: Randy Williams, Planning Director

CONSIDERATION OF: Street Closure – Bright Future Concert

Approved for Council Consideration

Background:

The Downtown Newton Development Association is requesting street closure for “Bright Future Concert”, September 19th from 3:30 p.m. until 10:00 p.m. Shannon Johnson, Main Street Coordinator, Newton has requested that the following streets close:

Thursday, September 19th, Main Ave. between 1st Street and A Street.

The streets will close at 3:30pm and re-opened at 10:00 p.m.

If approved by City Council, staff will assist with filing the request on behalf of Shannon Johnson for the Downtown Newton Development Association for the street closure with the N.C.D.O.T. for the closure of this street per the attached map.

Requested Action:

That City Council decides whether to authorize the closure of the streets as requested by Downtown Newton Development Association event, for the 19th of September 2019 from 3:30 p.m. until 10:00 p.m.
DATE: July 29, 2019

TO: E. Todd Clark, City Manager

FROM: Randy Williams, Planning Director

CONSIDERATION OF: Street Closure – Foothills Folk Art Festival

Approved for Council Consideration

Background:

The Downtown Newton Development Association is requesting street closure for “Foothills Folk Art Festival”, a juried art festival that is a partnership with the Hickory Museum of Art. The requested date is October 5th, 2019 from 5:00 a.m. until 10:00 p.m. Shannon Johnson, Main Street Coordinator, Newton has requested that the following streets close:

Saturday, October 5th from 5am: C Street between Brady and Ashe Ave., B Street between Brady and Ashe Ave., A Street between Brady and Ashe Ave., 1st Street between Brady and Ashe Ave., 2nd Street between Brady and Ashe Ave., 3rd Street between Brady and Ashe Ave., College Ave. between C Street and 4th Street, Main Ave. between C Street and 4th Street.

The streets will be re-opened Saturday evening at 10 p.m.

If approved by City Council, staff will assist with filing the request on behalf of Shannon Johnson for the Downtown Newton Development Association for the street closure with the N.C.D.O.T. for the closure of this street per the attached map.

Requested Action:

That City Council decides whether to authorize the closure of the streets as requested by Downtown Newton Development Association event, for the 5th of October, 2019 from 5:00 a.m. until 10:00 p.m.
DATE: July 22, 2019
TO: E. Todd Clark, City Manager
FROM: Kevin Yoder, Fire Chief
ACTION REQUESTED: Approval of the pyrotechnics display permit for the American Legion Fairgrounds.

Approved for Council Consideration

1. NC General Statute §14-410 states the City Council has to approve any discharge of pyrotechnics at any public exhibit or concert in their jurisdiction.
2. The American Legion Fairgrounds has requested a permit to discharge pyrotechnics during the period of August 28th - September 1st, 2019 at approximately 10:00 pm-11:00 pm each night. This will result in five separate evenings that pyrotechnics will be displayed.
3. The American Legion has applied to the City of Newton Fire Department for a permit to discharge pyrotechnics upon approval of the authority having jurisdiction and subsequent inspection by the City of Newton Fire Department each night prior to the pyrotechnics display.
4. It is a requirement of the NC General Statute that the responsible party displaying pyrotechnics be certified by the Office of the State Fire Marshal.
5. Attached please find a copy of the pyrotechnics display permit issued to the American Legion Fairgrounds by the City of Newton Fire Department, Certificate of Liability Insurance, Catawba County Board of Commissioners Resolution No. 2010-13, NC General Statute §14-410, and a copy of the NC Outdoor Pyrotechnics Display Operators License for Jason Michael Vaughan and Tara Vaughan.

ACTION SUGGESTED:

Approval of the permit for pyrotechnics display at the American Legion Fairgrounds from August 28th - September 1st, 2019. We have attached a copy for your convenience.
CITY OF NEWTON FIRE DEPARTMENT
PERMIT TO POSSESS AND DISPLAY FIREWORKS

Application having been made in accordance with the laws of the State of North Carolina (GS 14-413), as modified in session law 1983, chapter 116, and the City of Newton Fire Prevention Code, (Sec. 12-47) this permit is issued to:

DATE: August 28th, 2019 - September 1st, 2019

NAME Hale Artificer, Inc. LICENSE# 1-NC-057-51-1I-00088

Proper bond of $500,000 Has been acquired: X Yes No

Giving them the right to exhibit displayed fireworks on the above dates at 22:00 hours, at Hickory American Legion Fairgrounds

in connection with Hickory American Fair celebration.

CITY CLERK (Approval of City Col.) Date

FIRE CHIEF Date

FIRE OFFICIAL Date

THE FIRE OFFICIAL SHALL SEIZE, TAKE, REMOVE, OR CAUSE TO BE REMOVED AT THE EXPENSE OF THE OWNER ALL STOCKS OF FIREWORKS IN THE EVENT OF CARELESSNESS TO PRESERVE LIFE AND PROPERTY.
In accordance with the NC Fire Code an operational permit is required to conduct certain operations. The following Operational Use Permits are included in the General Inspection Use Permit and if approved, will be listed as a provision. Approval to conduct these operations shall not be construed as permission to violate or set aside any of the provisions of the applicable technical codes or standards that regulate those operations. Deviation from the applicable operation(s) would require another permit to be obtained.

Fire Inspector Shall Initial All Applicable Operations:

Amusement Buildings/Theme: An operational permit is required to operate a special amusement building.

 COVERED MALL BUILDINGS: An operational permit is required for the following:
1. The placement of retail fixtures and displays, concession equipment, displays of highly combustible goods and similar items in the mall.
2. The display of liquid or gas-fired equipment in the mall.
3. The use of open flame or flame-producing equipment in the mall.

EXPLOSIVES: An operational permit is required for the manufacture, storage, handling, sale or use of any quantity of explosive, explosive material, fireworks, or pyrotechnic special effects within the scope of Chapter 33.
Exception: Fireworks allowed by NC General Statute 14-414.

Flammable and Combustible Liquids: An operational permit is required as follows:
1. To operate tank vehicles, equipment, tanks, plants, terminals, wells, fuel-dispensing stations, refineries, and similar facilities where flammable and combustible liquids are produced, processed, transported, stored, dispensed or used.
2. To manufacture, process, blend or refine flammable or combustible liquids.
3. To engage in the dispensing of liquid fuels into the fuel tanks of motor vehicles at commercial, industrial, governmental or manufacturing establishments.
4. To utilize a site for the dispensing of liquid fuels from tank vehicles into the fuel tanks of motor vehicles at commercial, industrial, governmental or manufacturing establishments.

Fumigation and Thermal Insecticidal Fogging: An operational permit is required to operate a business of fumigation or thermal insecticidal fogging and to maintain a room, vault or chamber in which a toxic or flammable fumigant is used.

LIQUID OR GAS-FUELED VEHICLES OR EQUIPMENT IN ASSEMBLY BUILDINGS: An operational permit is required to display, operate or demonstrate liquid or gas-fueled vehicles or equipment in assembly buildings.

Spraying or Dipping: An operational permit is required to conduct a spraying or dipping operation utilizing flammable or combustible liquids or the application of combustible powders regulated by Chapter 15.

Other:

Remarks/Conditions:

Occupant Signature ___________________________ Fire Inspector ___________________________
Name of Occupant ___________________________ Title ___________________________
(Please Print) (Please Print)

WHITE - FIRE PREVENTION CANARY - OCCUPANT PINK - SPECIALIST
CERTIFICATE OF LIABILITY INSURANCE

PRODUCER
Mountcastle Insurance
307 W. Center Streeet
Lexington NC 27292

INSURED
Hall Articler Inc.
545 New Bowers Rd.
Lexington NC 27292

CONTACT NAME: Betty Callcut
PHONE (336) 240-4981
EMAIL bcallcut@mountcastleinsurance.com

INSURER AFFORDING COVERAGE
National Fire & Marine

REVISION NUMBER:

COVERAGES

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<tr>
<th>TYPE OF INSURANCE</th>
<th>POLICY NUMBER</th>
<th>POLICY EFF DATE</th>
<th>POLICY EXP DATE</th>
<th>LIMITS</th>
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<td>04/23/2020</td>
<td>£ 2,000,000,000</td>
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B AUTOMOBILE LIABILITY

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DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES

Dates: 8/28 - 9/12/2019
Any Rain Dated Added into next available right.

American Legion and Town of Newton, NC are included as additional insureds with regards to general liability as required by a written contract.

CERTIFICATE HOLDER
Hickory American Legion Fair
PO 1844
Hickory NC 28603

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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ACORD 25 (2016/03)
CITY OF NEWTON
RESOLUTION

A RESOLUTION APPROVING AND ACCEPTING THE RECORDS RETENTION AND DISPOSITION SCHEDULE FOR LOCAL GOVERNMENT AGENCIES

WHEREAS, “Public Record” means any document, paper, letter, map, book, photograph, film, sound recording, magnetic, or other tape, electronic data processing record, artifact, or other documentary material, despite physical form or characteristics, made or received pursuant to law or ordinance in connection with the transaction of public business by any agency of North Carolina government or its subdivisions; and

WHEREAS, without a retention program public records can accumulate causing the need for additional storage space; and

WHEREAS, without a schedule for disposal valuable documents can mistakenly be discarded; and

WHEREAS, the Records Retention and Disposition Schedule is endorsed by the North Carolina Department of Cultural Services, Division of Archives and History; and

WHEREAS, the City of Newton currently uses this system for records retention and disposal; and


NOW, THEREFORE, BE IT RESOLVED that the Newton City Council approves and accepts the updated Records Retention and Disposition Schedule, General Records Schedule for Local Government Agencies issued by the North Carolina Department of Cultural Resources, Division of Archives and Records, Government Records Section dated March 1, 2019.

Adopted this the 6th day of August, 2019

_______________________________
Anne P. Jordan, Mayor

___________________________________
Amy S. Falowski, City Clerk
DATE: August 1, 2019

TO: E. Todd Clark, City Manager

FROM: Vickie Thomas, Finance Director

CONSIDERATION OF: Budget Ordinance Amendment to Carry Forward Outstanding Purchase Orders at June 30, 2019

Approved for Council Consideration

Background:

As of June 30, 2019, the City of Newton had $1,045,250 in outstanding purchase orders. In accordance with Governmental Accounting Standards, these purchase orders will not be recognized as expenditures in Fiscal Year 2019 since they were not complete. However, for reporting purposes, these purchase orders will be reflected as a reservation of fund balance. This is a normal and routine practice of all counties and municipalities. These purchase orders are still legal, valid obligations of the City.

The attached budget ordinance reflects the necessary appropriations to reinstate these purchase orders in Fiscal Year 2020.

Requested Action:

Motion to approve the attached Budget Ordinance Amendment to provide funding for the outstanding purchase orders at June 30, 2019.
ORDINANCE

AN ORDINANCE TO CARRY FORWARD
OUTSTANDING PURCHASE ORDERS AT JUNE 30, 2019

WHEREAS, The City Council of the City of Newton have adopted a Budget Ordinance for fiscal year beginning July 1, 2019, and ending June 30, 2020, in accordance with the General Statutes of the State of North Carolina, and

WHEREAS, The City of Newton has outstanding purchase orders encumbered at June 30, 2019, that were not received before year end; therefore, those will be received and payable in the current fiscal year, and

WHEREAS, The City Council desires to honor these encumbrances and appropriate funds in the budget for Fiscal Year 2020.

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.

<table>
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<tr>
<th>General Fund</th>
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<tr>
<td><strong>Revenue</strong></td>
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<td>Parks and Recreation - Central</td>
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<tr>
<td>Capital Outlay – Other</td>
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</table>
**Powell Bill Fund**

**Revenue**
- Fund Balance Appropriation 13-0000.3992 $359,650

**Appropriation**
- Street Con/Recon/Repair 13-4253.6571 $359,650

**Water & Wastewater Fund**

**Revenue**
- Fund Balance Appropriation 61-0000.3995 $288,100

**Appropriation**
- Water & Wastewater Operations
  - Professional Services – Engineering 61-7100.4940 $14,150
  - Equipment Repair/Maintenance 61-7100.6520 17,050
  - Vehicle Repair/Maintenance 61-7100.6530 1,550
  - Capital Outlay – Water Lines 61-7100.8951 30,800
- Water Treatment Plant
  - Reserve for Liability Insur Claims 61-7130.7501 2,100
  - Capital Outlay – Bldg/Bldg Improvement 61-7130.8800 99,100
- Wastewater Treatment Plant
  - Capital Outlay – Other Equipment 61-7141.8500 123,350

**Electric Fund**

**Revenue**
- Fund Balance Appropriation 63-0000.3995 $220,800

**Appropriation**
- Professional Services – Engineering 63-7201.4940 $25,000
- Generator Repair/Maintenance 63-7201.6560 40,000
- Other Services 63-7201.6990 92,850
- Service/Maint Contract –Soft 63-7201.7430 13,450
- Capital Outlay – Other Equipment 63-7201.8500 49,500

Adopted this 6th day of August, 2019.

_________________________
Anne P. Jordan, Mayor

Attest:

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

DATE: July 24, 2019
TO: Todd Clark, City Manager
FROM: Vidal A. Sipe, Chief of Police


Approved for Council Consideration

Background:

In the 2019-2020 FY budget, Newton City Council approved $322,800.00 to purchase and equip six (6) new vehicles for the Newton Police Department. Five (5) of the six (6) vehicles will be financed at a cost of $274,850.00. Once financing has been arranged, ordering of new vehicles usually takes place in January or February of the following calendar year using borrowed funds. The current estimated delivery time for patrol vehicles is between 90-120 days, sometimes later depending on supply disruptions, pushing back delivery to May or June. This time frame does not include vehicle up-fitting requiring an additional 30-60 days.

The City of Newton Police Department has received notification from the NC Sheriffs’ Association’s Cooperative Purchasing Programs and the State of NC Purchase Contract that all current vehicle pricing is locked in until October 2019. This option will allow for the potential cost savings as the pricing of new patrol vehicles is expected to increase for the 2020 purchase contract. It is the desire of the police department to pre-order vehicles and equipment necessary to install and up-fit for duty with the “Intent to Reimburse”. Vehicles could be purchased and up-fitted prior to June 2020, pending no supply or installation issues. This option would reduce the current burden placed on the police fleet for the short term until additional vehicles can be purchased in the future.

Summary:

Use an “Intent to reimburse” to move forward with the purchase of five (5) police department vehicles including equipment and installation necessary for up-fitting.

Requested Action:

Motion to adopt the attached “Intent to Reimburse” resolution authorizing the Newton Police Department to purchase five (5) vehicles and equipment to include installation and complete up-fitting.
Resolution
A Resolution Declaring Official Intent
to Reimburse Expenditures

WHEREAS, the City of Newton desires to incur certain capital expenditures prior to the issuance of debt; and

WHEREAS, the City of Newton intends to reimburse such expenditures from the proceeds of debt to be issued; and

WHEREAS, this is made pursuant to the requirements of the United States Treasury Regulations Section 1.150-2 and is intended to constitute a Declaration of Official Intent to Reimburse under such Treasury Regulations Section; and

WHEREAS, the undersigned is authorized to declare the official intent of the City of Newton, North Carolina with respect to the matters contained herein.

NOW, THEREFORE, BE IT RESOLVED

The City’s 10-Year Capital Improvement Plan and Fiscal Year 2020 Budget reflect $322,800 for the purchase of six police vehicles. Five of the six vehicles will be financed with a cost of $274,850. The City can purchase these vehicles at the 2019 contract pricing which will provide potential savings as the pricing for 2020 is expected to increase. Expediting the purchasing process by ordering in advance of the financing will not only provide savings but will help alleviate extended delivery times of the new vehicles.

The cost is estimated to be $274,850 for the five financed vehicles which includes equipment upfitting as well.

The City of Newton intends to finance the cost of the Project with the proceeds of debt to be issued, the interest on which is to be excluded from gross income for Federal income tax purposes,

The maximum principal amount of the Borrowing to be incurred by the City of Newton to finance the Project noted above is $274,850.

The City of Newton hereby declares its official intent to reimburse itself with the proceeds of the Borrowing for any of the Expenditures incurred by it prior to the issuance of the Borrowing.

Adopted this 6th of August, 2019

Anne P. Jordan, Mayor

Amy S. Falowski, City Clerk
DATE: July 30, 2019

TO: E. Todd Clark, City Manager

FROM: R. S. Williams, AICP, Planning Director

CONSIDERATION OF: Combining Membership Roles of the Planning Commission and Board of Adjustment

Approved for Council Consideration

Background:

The Planning Department provides guidance to the Planning Commission and the Board of Adjustments (BOA) in review of development matters as defined by the Code of Ordinance and in creating the vision of City of Newton. This guidance ensures future orderly development and economic growth that is reflective of the community’s desires and needs. Membership of these boards is appointed by the City Council for terms of three years with no more than four consecutive terms.

Review:

The Planning Commission meets on a monthly basis as needed to review development proposals and zoning amendments, among other similar revisions. The Board of Adjustments meets on an ‘as needed’ basis to review specific type requirements in a quasi-judicial manner. These reviews consist of variances, special use permits, and interpretation of staff decisions. It is important that both boards have full membership and availability to serve the city and its citizens in review of these important matters.

The Board of Adjustments last met in November 2011. Since that time, the membership of the board has declined due to term expirations, relocations and death. Since there have been no applications submitted for review and staff turnover in the Planning Department to advise the Council of the membership deficit, the City Council has not appointed any new members and the Board of Adjustment membership is incomplete. Therefore if an application was submitted for review, an untimely delay would occur to the applicant in order to appoint and train new members.

This issue is not unique in Newton. Several cities and towns have seen similar issues arise due to the ‘on-call’ need for the Board of Adjustments to meet. The NC General Statues permit the combination of membership rosters for the Planning Commission and Board of Adjustments, while their duties and actions would follow course with separate board considerations and reviews.

Action Suggested:

Planning Commission recommends approval to the City Council to amend the Code of Ordinances as attached to combine the membership rosters of the Planning Commission and Board of Adjustments and be staffed by the present members of the Planning Commission.
DIVISION 2. – BOARD OF ADJUSTMENT

Sec. 102-91. – Establishment.

There is hereby established the city board of adjustment as provided in G.S. 160A-388, hereafter the board.

(Code 1972, § 26-12.1; Ord. No. 91.53, 10-16-1991; Ord. No. 91.56, § 1, 12-10-1991)

Sec. 102-92. – Composition.

(a) The board shall be phased down to consist of five members and two alternates, all of whom shall be persons of recognized experience and qualifications, and who shall hold no other official position.

(A) EFFECTIVE OCTOBER 1, 2019, THE SITTING MEMBERSHIPS OF THE BOARD OF ADJUSTMENT ARE HEREBY ABOLISHED. EFFECTIVE OCTOBER 1, 2019, THE BOARD OF ADJUSTMENT SHALL CONSIST OF FIVE MEMBERS AND TWO ALTERNATES, ALL OF WHOM SHALL ALSO BE MEMBERS OF THE NEWTON PLANNING COMMISSION AND SHALL BE PERSONS OF RECOGNIZED EXPERIENCE AND QUALIFICATIONS.

(b) Four members and one alternate shall be residents of the city and shall be appointed by the council FROM THE THEN EXISTING MEMBERSHIP OF THE NEWTON PLANNING COMMISSION.

(c) One member and one alternate shall be appointed from the extraterritorial planning jurisdiction as provided in G.S. 160A-362 FROM THE THEN EXISTING MEMBERSHIP OF THE NEWTON PLANNING COMMISSION.

Sec. 102-93. – Tenure.

(a) The terms of office of the members and alternates shall be for three years AND SHALL
COINCIDE WITH THEIR APPOINTED PLANNING COMMISSION TERMS, except that no member
or alternate may serve more than two FOUR consecutive three-year terms. The terms of
office shall be staggered so as to ensure continuity of experience on the board.

(b) Terms of office for five members and one alternate of the board of adjustment serving at
the time of adoption of this chapter expire on December 31, 1992, but have been extended
by other provisions of this Code until March 31, 1993. The council shall appoint from the
vacancies thus created two members and one alternate member from the city. From the
five terms and one alternate which expire on December 31, 1993, and extended until March
31, 1994, the council shall appoint two members from the city, and one member and one
alternate shall be appointed as provided in G.S. 160A-362. RESERVED
Section 102.97 – Quorum and vote required.

(a) A quorum of the board, necessary to conduct any business of the board, shall consist of eight members. A MAJORITY OF THE TOTAL MEMBERS OF THE BOARD.

(b) The concurring vote of eight THREE members of the board, present for the hearing, shall be necessary in order to:
   (1) Reverse any order, requirement, decision or determination of the planning director.
   (2) Decide in favor of the applicant any matter upon which it is required to pass by this chapter.
   (3) Approve any application for a variance.

(c) A simple majority vote of the quorum shall be necessary to conduct routine business of the board and to deny applications and appeals.

(D) THE CONCURRING VOTE OF FOUR-FIFTHS OF THE MEMBERS OF THE BOARD SHALL BE NECESSARY TO APPROVE ANY APPLICATION FOR A VARIANCE OF THE ORDINANCE.
DIVISION 3. – PLANNING COMMISSION

Sec. 2-232. – Composition; term; compensation.

The Planning Commission shall consist of seven members, who shall be persons of recognized experience and qualifications and who shall hold no other official position. Five members shall be residents of the city and two members shall be residents of the ETJ and appointed as provided in G. S. 160A-362. The terms of office of the members shall be for three years, except that no member may serve more than four consecutive three-year terms. The members shall be appointed by the mayor with approval of the council and shall receive such compensation as shall be determined by the council.

Sec. 102-129. – Protest petition.

(a) In case of a protest petition against an amendment to the zoning atlas, signed by the owners of 20 percent or more either of the area of the lots included in a proposed amendment, or of those immediately adjacent thereto either in the rear thereof or on either side thereof, extending 100 feet therefrom, or of those directly opposite thereto, extending 100 feet from the street frontage of the opposite lots, an amendment shall not become effective except by favorable vote of three-fourths of all the members of the council. The foregoing provisions concerning protests shall not be applicable to any amendment which initially zones property added to the territorial coverage of the chapter as a result of annexation or otherwise, or to an amendment to an adopted special-use district or conditional-use district if the amendment does not change the types of uses that are permitted within the district or increase the approved density for residential development, or increase the total approved size of nonresidential development, or reduce the size of any buffers or screening approved for the special-use or conditional-use district.

(b) No protest against any change in or amendment to this chapter or to the official zoning atlas shall be valid or effective for the purposes of this section unless it be in the form of a written petition actually bearing the signatures of the requisite number of property owners and stating that the signers do protest the proposed amendment, and unless it shall have been received by the city clerk in sufficient time to allow the city at least two normal work days, excluding Saturdays, Sundays and legal holidays, before the date established for a public hearing on the proposed amendment to determine the sufficiency and accuracy of the petition.

(c) The petition shall be on a form provided by the planning director, such form to require disclosure of sufficient information to assure compliance with this section.

AN ORDINANCE AMENDING CHAPTER 102 – ZONING AND Chapter 2 – ADMINISTRATION OF THE CITY CODE OF THE CITY OF NEWTON, NORTH CAROLINA

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

Section 1:

Chapter 102, Section 102-92 of the Code of Ordinances City of Newton, North Carolina is amended as follows:

Sec. 102-92. - Composition.

(a) The board shall be phased down to consist of five members and two alternates, all of whom shall be persons of recognized experience and qualifications, and who shall hold no other official position. Effective October 1, 2019, the sitting memberships of the Board of Adjustment are hereby abolished. Effective October 1, 2019, the Board of Adjustment shall consist of five members and two alternates, all of whom shall also be members of the Newton Planning Commission and shall be persons of recognized experience and qualifications.

(b) Four members and one alternate shall be residents of the city and shall be appointed by the council from the then existing membership of the Newton Planning Commission.

(c) One member and one alternate shall be appointed from the extraterritorial planning jurisdiction as provided in G.S. 160A-362 from the then existing membership of the Newton Planning Commission.

Section 2:

Chapter 102, Section 102-93 of the Code of Ordinances City of Newton, North Carolina is amended as follows:

Sec. 102-93. - Tenure.

(a) The terms of office of the members and alternates shall be for three years and shall coincide with their appointed Planning Commission Terms, except that no member or alternate may serve more than two four consecutive three-year terms. The terms of office shall be staggered so as to ensure continuity of experience on the board.

(b) Terms of office for five members and one alternate of the board of adjustment serving at the time of adoption of this chapter expire on December 31, 1992, but have been extended by other provisions of this Code until March 31, 1993. The council shall appoint from the vacancies thus created two members and one alternate member from the city. From the five terms and one alternate which expire on December 31, 1993, and extended until March 31, 1994, the council shall appoint two members from the city, and one member and one alternate shall be appointed as provided in G.S. 160A-362. Reserved.

(c) Vacancies shall be filled for the unexpired terms only. Members may be removed for cause by the council, upon written charges after a public hearing.

Section 3:
Chapter 102, Section 102-97 of the Code of Ordinances City of Newton, North Carolina is amended as follows:

Sec. 102-97. - Quorum and vote required.

(a) A quorum of the board, necessary to conduct any business of the board, shall consist of eight members a majority of the total members of the board.

(b) The concurring vote of eight three members of the board, present for the hearing, shall be necessary in order to:

1. Reverse any order, requirement, decision or determination of the planning director.
2. Decide in favor of the applicant any matter upon which it is required to pass by this chapter.
3. Approve any application for a variance.

(c) A simple majority vote of the quorum shall be necessary to conduct routine business of the board and to deny applications and appeals.

(d) The concurring vote of four-fifths of the members of the board shall be necessary to approve any application for a variance of the ordinance.

Section 4:

Chapter 2, Section 2-332 of the Code of Ordinances City of Newton, North Carolina is amended as follows:

Sec. 2-232. - Composition; term; compensation.

The planning commission shall consist of seven members, who shall be persons of recognized experience and qualifications and who shall hold no other official position. Five members shall be residents of the city and two members shall be residents of the ETJ and appointed as provided in G.S. 160A-362. The terms of office of the members shall be for three years, except that no member may serve more than four consecutive three-year terms. The members shall be appointed by the mayor with approval of the council and shall receive such compensation as shall be determined by the council.

Section 5:

Chapter 102, Section 102-129 of the Code of Ordinances City of Newton, North Carolina is amended as follows:

Sec. 102-129. - Protest petition Reserved.

(a) In case of a protest petition against an amendment to the zoning atlas, signed by the owners of 20 percent or more either of the area of the lots included in a proposed amendment, or of those immediately adjacent thereto either in the rear thereof or on either side thereof, extending 100 feet therefrom, or of those directly opposite thereto, extending 100 feet from the street frontage of the opposite lots, an amendment shall not become effective except by favorable vote of three-fourths of all the members of the council. The foregoing provisions concerning protests shall not be applicable to any amendment which initially zones property added to the territorial coverage of the chapter as a result of annexation or otherwise, or to an amendment to an adopted special use district or conditional use district if the amendment does not change the types of uses that are permitted within the district or increase the approved density for residential development, or increase the total approved size of nonresidential development, or reduce the size of any buffers or screening approved for the special use or conditional use district.

(b) No protest against any change in or amendment to this chapter or to the official zoning atlas shall be valid or effective for the purposes of this section unless it be in the form of a written petition actually bearing the signatures of the requisite number of property owners and stating that the signers do
protest the proposed amendment, and unless it shall have been received by the city clerk in sufficient time to allow the city at least two normal work days, excluding Saturdays, Sundays and legal holidays, before the date established for a public hearing on the proposed amendment to determine the sufficiency and accuracy of the pattern.

(c) The petition shall be on a form provided by the planning director, such form to require disclosure of sufficient information to assure compliance with this section.

Section 6:

This Ordinance shall become effective from and after the date of its adoption.

Adopted this the 6th day of August, 2019

____________________________________________
Anne P. Jordan, Mayor

_________________________________________
Amy Falowski, City Clerk
DATE: July 31, 2019

TO: E. Todd Clark, City Manager

FROM: Alex Fulbright, Assistant Planning Director

CONSIDERATION OF: Text amendment #2019-02 to rescind the City’s Erosion Control Ordinance

Approved for Council Consideration

Background:

Catawba County has approached the City about letting the County administer the Soil Erosion and Sedimentation Control (SESC) Program inside the City of Newton City Limits and its Extraterritorial Jurisdiction. The County is currently delegated the authority by the State to administer the SESC Program within the entire County and the municipalities in the County with the exception of the City of Newton. The City was delegated authority by the State in 2001 prior to the County starting their program in 2005. At the time that Catawba County began their program, the City evaluated relinquishing its authority and requested that the State allow the County to administer the SESC Program within the City. At that time, there was not a compelling reason to do so. However, the State recently made some changes that have the potential to significantly increase the amount of monthly inspections that the City would have to perform. Catawba County has the staff available to meet the increased demands. In addition, this change would make it easier on developers and contractors as the SESC program would be the same agency throughout the entire County. The City would not incur any cost as result of this change and the State would still issue SESC permits to the City, as is currently the case. Staff has been in contact with the State Department of Environmental Quality and they would be willing to relinquish the City’s authority to administer the SESC program and delegate that authority to the County.

Recommendation:

It is the recommendation of staff that Council relinquish its authority to administer the State’s SESC program and they allow the County to administer the State’s SESC program within the City’s Jurisdiction by taking the following actions:

1. Adoption of an ordinance to rescind the City’s Soil Erosion Ordinance.

2. Authorize the City Manager to sign the memo of agreement between the North Carolina Sedimentation Control Commission and City of Newton for the purpose of rescinding the Commission’s delegation of authority to enforce the Sedimentation Pollution Control Act.

3. Authorize the City Manager to sign the contract between Catawba County and City Newton for enforcement services of Catawba County Soil Erosion and Sediment Control Ordinance within the City Limits and It’s Extraterritorial Jurisdiction.
ORDINANCE

AN ORDINANCE RESCINDING CHAPTER 82
“SOIL EROSION AND SEDIMENTATION CONTROL”
OF THE CITY CODE OF THE CITY OF NEWTON, NORTH CAROLINA
BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NEWTON, NORTH
CAROLINA THAT:

Section 1:

Chapter 82, “Soil Erosion and Sedimentation Control” of the City Code of the City of Newton shall be amended by deleting the chapter in its entirety.

Section 2:

This Ordinance shall become effective from and after the 31st day of August, 2019.

Adopted on the ___ day of _______, 2019.

____________________________________________
Anne P. Jordan, Mayor

ATTEST:

_________________________________________
Amy Falowski, City Clerk        (SEAL)
MEMORANDUM OF AGREEMENT

THE NORTH CAROLINA SEDIMENTATION CONTROL COMMISSION

City of Newton

This MEMORANDUM OF AGREEMENT is entered into between the North Carolina Sedimentation Control Commission (hereinafter, "Commission") and the City of Newton (collectively, "Parties") for the purpose of rescinding the Commission's delegation of authority to enforce the Sedimentation Pollution Control Act of 1973, N.C. Gen. Stat. Ch. 113A Art. 4 and any rules adopted pursuant to the Act (hereinafter collectively, "SPCA.")

Part I. Existing Delegation

The City of Newton has an existing delegated local erosion and sedimentation control program (hereinafter, "local program") and an existing local sedimentation control ordinance that was approved by the Commission.

The Parties agree that under the existing delegated local program,

1. The Commission maintained concurrent jurisdiction with the City of Newton for land disturbing activities.

2. The Commission maintained exclusive jurisdiction to administer the SPCA for all land disturbing activities that are outlined in North Carolina General Statute § 113A-56.

3. The City of Newton is required to provide the following reports/information:
   a. Monthly activity reports to the Commission in the form adopted by the Commission.
   b. Copy of Notices of Violation to the appropriate regional office of the Division of Energy, Mineral, and Land Resources.
c. Current contact information for their local program to the Division of Energy, Mineral, and Land Resources.

4. The City of Newton is required to undertake appropriate enforcement actions, including injunctive relief, or assessment of civil penalties for an initial penalty or a daily penalty for continuing violations.

Part II. Rescission of Delegation

By execution of this agreement, the City of Newton requests, and the Commission accepts, the rescission of the delegation of authority to the City of Newton under N.C. Gen. Stat. § 113A-60. The Commission and the City of Newton, hereby jointly acknowledge the rescission of the Commission's delegation of authority to administer the Sedimentation Pollution Control Act (SPCA), Chapter 113A, Article 4, within the jurisdiction of the City of Newton.

Upon repeal of its local sedimentation control ordinance, the City of Newton shall be divested of its authority to enforce its Sedimentation and Erosion Control Ordinance. All portions of the City of Newton lying within the territorial jurisdiction of another local erosion and sedimentation control program under N.C. Gen. Stat. § 113A-60 shall be subject to the jurisdiction of that local program. All portions of the City of Newton lying outside the jurisdiction of another local program shall be subject to the jurisdiction of the Division of Energy, Mineral, and Land Resources ("DEMLR") of the Department of Environmental Quality.

In order to effectuate the rescission, the Parties agree that the City of Newton shall:

1. Repeal its local sedimentation control ordinance and send a certified copy of the resolution repealing said ordinance to the Commission within 90 days of execution of this agreement.

2. At least thirty (30) days prior to the effective date of the repeal, notify in writing the DEMLR regional office and Catawba County of the effective date of the repeal.

3. Cooperate with Catawba County to transfer any approved erosion and sedimentation control plans and make available any information necessary for Catawba County’s future enforcement of the SPCA within the City of Newton.
4. Report to the Commission on the completion of the repeal of its local ordinance and transition of enforcement of the SPCA from the City of Newton to Catawba County.

IN WITNESS HEREOF, the Parties enter into this Memorandum of Agreement, this the day of 2019.

SEDIMENTATION CONTROL COMMISSION

By: Susan N. White
Chair
Dated:

LOCAL PROGRAM

By: E. Todd Clark
City Manager
Dated:

By: Alex Fulbright
Assistant Planning Director
Dated:

Approved as to Form

Mary S. Crawley
Counsel to the Commission
Dated:

Approved as to Form

John H. Cilley
City Attorney
Dated:
This Agreement made and entered into on the 6th day of August, 2019, by and between Catawba County a corporate and political body and a subdivision of the State of North Carolina, hereafter referred to as "County", and the City of Newton, a municipal corporation having a charter granted by the State of North Carolina, hereinafter referred to as "Municipality".

WITNESSETH:

WHEREAS, Article 20 of Chapter 160A of the North Carolina General Statutes authorizes the contractual exercise by one unit of local government for one or more other units of any administrative or governmental power, function, public enterprise, right, privilege, or immunity of local government; and,

WHEREAS, the Municipality has requested that the County provide enforcement services within the corporate boundaries of the Municipality for Catawba County Soil Erosion and Sedimentation Control Ordinance; and,

WHEREAS, pursuant to N.C. Gen Stat. Chapter 160A, Article 20 upon official request of the governing body of any municipality within the County, the Catawba County Board of Commissioners may by agreement exercise enforcement powers within said municipality and upon such direction may do so until such time as the Municipal governing body officially withdraws its request; and,

WHEREAS, the Catawba County Board of Commissioners upon approval of a resolution, and with written notice, may withdraw the offering of the service to the Municipality.

NOW, THEREFORE, it is agreed by the parties hereto that the County through the Catawba County Department of Utilities and Engineering will provide enforcement services for Catawba County Soil Erosion and Sedimentation Control Ordinance in the corporate limits of the Municipality on the terms and conditions set forth below:

1. **Purpose.** The purpose of this Agreement is to set forth the terms and conditions for the Municipality to contract with the County for enforcement services for Catawba County Soil Erosion and Sedimentation Control Ordinance inside its corporate limits and to confer to the County the necessary geographical and subject matter jurisdiction to carry out the intent of this Agreement.
2. **Term.** The term of this Agreement is September 1, 2019 through August 31, 2020. This Agreement shall automatically renew each year hereafter for successive one year terms unless terminated as provided herein.

3. **Responsibilities.**

   A. **Municipality.** The Municipality agrees to:

      (1) allow the County to retain any fees or fines collected in accordance with the law;

      (2) defend all claims against it and its employees for incidents that occur prior to the date of this Agreement and indemnify and hold the County harmless from any judgments against it and said employees. The County agrees to defend all claims against the Municipality arising out of like incidents that occur from and after the date of this Agreement, and further agrees to indemnify and hold the Municipality harmless from any judgments against the Municipality resulting therefrom, unless the County is not at fault.

   B. **County.** The County through the County Department of Utilities and Engineering agrees to:

      (1) provide adequate personnel and other resources for enforcement services of the Catawba County Soil Erosion and Sedimentation Control Ordinance;

      (2) seek civil and criminal enforcement of the law when necessary in the County's discretion;

4. **Geographic And Subject Matter Jurisdiction.**

   To the fullest extent permitted by the laws of the State of North Carolina and the United States, the Municipality hereby grants to the County the authority to enforce the Catawba County Soil Erosion and Sedimentation Control Ordinance as adopted by Catawba County Board of Commissioners and approved by the State of North Carolina Sedimentation Control Commission, and the County accepts the authority herein granted and agrees fully and faithfully to perform the duties and responsibilities implied by the acceptance of this grant subject to the terms and conditions of this Agreement.

5. **Amendment.** This Agreement may only be amended in writing upon the signature of both parties. No oral agreements or resolutions shall have any effect.

6. **Entire Agreement.** This Agreement is the only agreement between the parties and contains all the terms agreed upon, and replaces any previous agreements regarding the subject matter. This Agreement has no effect upon enforcement of codes or ordinances not specifically mentioned. If any part of this Agreement is held invalid such decision shall not render the document invalid.
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate for themselves for their duly authorized officers of the day and year first above written.

CATAWBA COUNTY

________________________________________
Mick Berry, County Manager

________________________________________
County Clerk

CITY OF NEWTON

________________________________________
Todd Clark, City Manager

________________________________________
City Clerk

APPROVED AS TO FORM:

________________________________________
Attorney for the County

APPROVED AS TO FORM:

________________________________________
Attorney for the City
THIS INSTRUMENT has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act as amended.

Date: __________________ ____________________________________________________________________

Director of Finance
DATE: July 30, 2019

TO: Todd Clark, City Manager

FROM: Anne P. Jordan, Mayor

CONSIDERATION OF: Approval of Public Art Commission Bylaws

Background:

The Newton Public Art Commission adopted bylaws shortly after it was founded in 2017. Modifications of such bylaws have been made over the past two years. The commission proposes the attached bylaws for the transaction of business subject to the approval of city council.

Requested Action:

Approve the attached proposed Newton Public Art Commission bylaws.
ARTICLE I. - IN GENERAL

Purpose and intent.
The City of Newton recognizes the importance of facilitating the creation and installation of art for public spaces that evokes social and aesthetic interaction. It is intended that works of public art will enliven public space, promote community identity and sense of place, and contribute to a vibrant and engaging city. The goal for the public art program is a transparent and directed public process for commissioning and acquiring art for public spaces that will contribute to the city's cultural and economic vitality.

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

Annual public art plan. An annual plan that prioritizes new public art projects and reports on the status of all works in planning, development, design, and installation.

Commission. The term "commission" is the City of Newton Public Art Commission.

Public art. The term "public art" means any work of art acquired by the city and integrated into the design of, or placed or performed in, on or about a place generally accessible or visible to the general public.

Staff. The term "staff" shall refer to that employee of the city designated by the city manager to administer the day-to-day operations of the public art program. This position resides within city government, where it can facilitate planning, communications, and projects across municipal departments to achieve design coherence.

City. The term "city" shall mean the City of Newton unless otherwise stated.

Work of art. The term "work of art" means any application of skill and taste to the production of tangible objects according to aesthetic principles, including but not limited to paintings, sculptures, engravings, carvings, frescoes, mobiles, murals, collages, mosaics, statues, bas-reliefs, tapestries, photographs, drawings and ceramics, but excluding purely structural or supportive elements, advertising, or those required by applicable law, code, rule or regulation.

ARTICLE II. - PUBLIC ART COMMISSION

Membership; terms of office; ex-officio members; compensation.
The commission shall consist of eleven members. The city council shall appoint members from a list of qualified applicants who have submitted an advisory board application. Members shall be residents of the city with the exception of a minimum of one member and a maximum of three members residing outside the corporate limits. Members shall serve three-year staggered terms with three members to be appointed or reappointed each year. No member shall serve more than two full three-year consecutive terms. Once a member has served two full consecutive terms, the member must be off the public arts commission for a minimum of one year before being eligible to serve again. If any member shall fail to attend three consecutive meetings or more than half of the meetings in one calendar year without just cause, then that member shall be replaced by the city council. Any vacancy that occurs during a term shall be filled for the unexpired term by the city council. An unexpired term or term of less than three years shall not count towards the term limit provision. Notwithstanding any provision of this section, all members shall serve at the pleasure of the city council. The city council shall appoint one elected official as a member. The city manager shall appoint one member of the city staff as an ex-officio member. Members shall receive no compensation for their services.

Organization; meetings; quorum; votes.
(a) The public art commission shall meet for the purpose of organization as soon as reasonably possible after January 1 of each year. The public art commission shall elect its own officers who shall include a chairman and vice-chairman. The role of secretary shall be filled by the city staff member appointed as ex-officio. The members shall propose bylaws for the transaction of business subject to the approval of such bylaws by the city council. A copy of the bylaws shall be filed with the city clerk and shall constitute a public record.

(b) The public art commission is a public body and shall meet on a regular basis but not less than quarterly. A special meeting may be called by the chairman, vice-chairman or three members of the public art commission. Minutes shall be kept by the secretary and filed with the city clerk.
(c) A quorum shall consist of a majority of the members currently appointed. No proxies shall be allowed.

**Duties**

(a) The commission advises city residents and its elected officials about public art projects, planning, and program management. Commission members are expected to provide leadership to enhance the experience of public space, be an effective decision-making body to recommend and implement approved public art policy and procedures, and to maintain thoughtful public participation, outreach, and communications concerning public art.

(b) The commission is charged with creating public art guidelines and annually submitting the annual public art plan to the city council. Additionally, the commission may prepare a proposed public art plan for review and consideration by the city council during the city council’s annual budget review and deliberations.

(c) Specifications, procedures, standard forms and guidelines for implementation of the public art program may hereafter be developed and adopted by the commission, taking into consideration the advice and recommendations of the city manager and finance director. The Public art program will follow national standards of best practice for all artist selection processes for projects under consideration, if such practices are permitted by applicable law.

(d) The commission shall have the authority to solicit gifts of art on behalf of the city and to encourage public-spirited citizens to contribute funds, as well as permanent works of art, to the city and thereby help to beautify the city and the public buildings and grounds situated therein.

(e) The commission may designate liaisons from the commission to relevant city advisory boards, including but not limited to Recreation, Tree Board, DNDA and Appearance Commission.

(f) At a regularly scheduled meeting of the city council, staff or a commission designated representative will present a report outlining the commission’s accomplishments after the close of each fiscal year.

**Conflicts of interests.**

Any conduct that creates an appearance of impropriety or may otherwise impair a commission member’s or artist selection committee member’s judgment in the selection of a project site, finalist, or artist is prohibited. It is understood that the city council requires anyone in a position to receive financial gain from the selection of works of arts or artists to be ineligible to serve on the artist selection committee. Furthermore, artist selection committee members and participating panelists must declare any conflict of interest and recuse themselves if a conflict of interest arises.

**ARTICLE III. - ACQUISITION OF PUBLIC ART**

**Artist selection committee.**

(a) With respect to any proposed public art project, the commission may designate an artist selection committee to evaluate potential artists or acquisitions. Arts professionals who have knowledge of the visual arts and/or design (public art administrators, artists, architects, landscape architects, art historians, museum and exhibition curators, art critics, educators) should be considered by the commission for service on the artist selection committee.

(b) The commission may invite, or instruct the artist selection committee to invite, arts professionals to provide input with respect to each phase of public art project identification, artist selection, design reviews, and interim approvals of project deliverables from conceptual design through fabrication and installation.

(c) The artist selection committee, utilizing professional consultants when necessary, will review materials submitted by the artist to determine the technical feasibility and needs of the work. The artist selection committee will prepare and submit to the commission a written report to include at a minimum: technical feasibility, projected budget, maintenance needs, durability and anticipated life span of the work of art, safety hazards and potential for vandalism, artistic quality, proposed site, context within the town’s collection, professional credentials of the artist, and the impact on collection diversity.

**Siting public art.**
(a) Proposals for the siting of public art are reviewed and considered by the commission.

(b) Site selection for public art will be reviewed with the following criteria, which may include, but are not limited to: the safety and security of the proposed site; ease of access for routine maintenance using standard city equipment; visibility and accessibility by a broad public audience; the context of the proposed work of art at the proposed site (taking into account social, cultural, historical, ecological, physical and functional context); the support of the city agencies and departments responsible for operating and maintaining the site; the support of officially recognized advisory bodies that are responsible for making recommendations concerning the use of city-owned property; and community support for the proposed site.

(c) The commission may elect to site works of art in public space on public easements should the commission determine that the site is of significant public benefit and visibility.

Commission review of capital projects incorporating public art.
The city's approval of site and building plans for capital projects incorporating public art shall be conditioned upon the commission's prior approval of the artistic and aesthetic components of the public art to be incorporated.

Ownership; documentation of public art.
(a) All works of art commissioned or purchased by the city shall be owned by and vested in the name of the city, and title therein shall be and remain vested in the city. Notwithstanding the foregoing, all copyrights to the work of art shall be retained by the artist of the work of art unless specifically acquired by the city.

(b) Staff will provide complete records of accession, deaccession, loan, or donation including, but not limited to, a signed bill of sale, deed of gift, acknowledgment of receipt, registration information, location card, exhibition record, photographs or slides, and independent appraisal; verification that the work of art is unique and an edition of one (unless stated to the contrary in the contract and accepted by the city); and whether there is an endowment fund for the work of art's maintenance.

Deaccession of public art.
(a) The commission shall review all proposals for deaccession, which should be a seldom-used action that operates with a presumption against removing works from the collection. Adverse public reaction should be carefully weighed and, in general, not be the cause for deaccession of public art. Review for deaccessioning purposes shall include consideration of the following: condition or security of the work of art, need for excessive and cost-prohibitive maintenance or repair, flaws in design or construction making repair unfeasible, or whether the work of art's physical or structural condition endangers public safety.

(b) If deaccession of a work of art is recommended by the commission, options for its disposition must be considered, including: sale, trade, transfer to another suitable institution, or destruction. Destruction should be recommended only when the work of art is so compromised as to no longer represent its original state. The commission shall include its recommendation for disposition (and the basis therefor) when it recommends deaccession to the city council. The commission may adopt additional procedures regarding deaccession and disposition. Any disposition of public art will be conducted in compliance with applicable law, including the provisions of Chapter 160A, Article 12 of the North Carolina General Statutes.

ARTICLE IV. - PUBLIC ART AND PRIVATE PROPERTY OWNERS; ART ON LOAN

Public art and private property owners.
Private development projects requiring city approval and/or planning review will be encouraged to include either an artist on the design team or works of art with public access within the development. The commission will be available to assist private interests with such projects.

Art on loan.
Works of art loaned to the town will be covered by the town's fine arts insurance for the duration of the loan. Each donor of a work of art (by loan or by gift) should be encouraged to provide funding for the ongoing maintenance costs of their gift and be encouraged to make their gift without restrictions or stipulations.