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Vice Chairman

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CUMBERLAND ★ COUNTY ★ NORTH CAROLINA

BOARD OF COMMISSIONERS

CANDICE WHITE
Clerk to the Board

KELLIE BEAM
Deputy Clerk

MEMORANDUM

TO: Policy Committee Members (Commissioners Boose, Evans and Lancaster)

FROM: Kellie Beam, Deputy Clerk to the Board *KB*

DATE: February 19, 2018

SUBJECT: Policy Committee Meeting – Thursday, March 1, 2018

There will be a regular meeting of the Board of Commissioners' committees (Finance, Policy and Facilities Committees) on Thursday, March 1, 2018 beginning at 8:30 a.m. in room 564 of the Judge E. Maurice Braswell Cumberland County Courthouse. All committee meetings will start as soon as the previous committee adjourns.

AGENDA

1. Approval of Minutes
 - A. February 1, 2018 Regular Meeting (Pg. 2)
 - B. February 15, 2018 Special Meeting (Pg. 8)
2. Consideration of Nuisance Action Against Hotels on Highway 301 (Pg. 20)
3. Public Information and Governmental Affairs Monthly Update (Pg. 41)
4. Other Items of Business (NO MATERIALS)

CUMBERLAND COUNTY POLICY COMMITTEE
JUDGE E. MAURICE BRASWELL CUMBERLAND COUNTY COURTHOUSE
117 DICK STREET, 5TH FLOOR, ROOM 564
FEBRUARY 1, 2018
MINUTES

MEMBERS PRESENT: Commissioner Michael Boose
Commissioner Charles Evans
Commissioner Larry Lancaster

OTHER COMMISSIONERS
PRESENT: Commissioner Glenn Adams
Commissioner Jeannette Council
Commissioner Marshall Faircloth
Commissioner Jimmy Keefe

OTHERS PRESENT: Amy Cannon, County Manager
Tracy Jackson, Assistant County Manager
Sally Shutt, Assistant County Manager
Melissa Cardinali, Assistant County Manager
Duane Holder, Assistant County Manager
Rick Moorefield, County Attorney
Brenda Jackson, Social Services Director
Vicki Evans, Finance Director
Ivonne Mendez, Financial Specialist
Deborah Shaw, Budget Analyst
Heather Harris, Budget Analyst
Sheriff Ennis Wright, Sheriff's Office
Chief Deputy Richard Jenkins, Sheriff's Office
Ronnie Mitchell, Sheriff's Office Attorney
Jon Soles, Public Information Specialist
Mike Nagowski, Cape Fear Valley CEO
Rod Jenkins, Interim Public Health Director
Margaret Covington, Stedman-Wade Health Services
Candice White, Clerk to the Board
Kellie Beam, Deputy Clerk to the Board
Press

Commissioner Evans called the meeting to order.

1. ELECTION OF 2018 POLICY COMMITTEE CHAIR

MOTION: Commissioner Evans moved to nominate Commissioner Lancaster as the
Policy Committee Chairman.

SECOND: Commissioner Boose

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VOTE: UNANIMOUS (3-0)

2. APPROVAL OF MINUTES – NOVEMBER 2, 2017 REGULAR MEETING

MOTION: Commissioner Evans moved to approve the November 2, 2017 minutes as presented.

SECOND: Commissioner Boose

VOTE: UNANIMOUS (3-0)

3. CONSIDERATION OF CHANGES TO THE CUMBERLAND COUNTY HOSPITAL SYSTEM INC. ARTICLES OF INCORPORATION

BACKGROUND

The Board of Trustees for the Cumberland County Hospital System, Inc. d/b/a Cape Fear Valley Health updated and approved their Articles of Incorporation for the Cumberland Hospital System at their full Board meeting on December 6, 2017.

The Board of County Commissioners considered approval of said Articles during its regular meeting on December 18, 2017. As a result of that consideration and discussion, it was requested that this item be referred to the Policy Committee for further deliberation.

RECOMMENDED/PROPOSED ACTION

Consider a request for the Board of Trustees for the Cumberland County Hospital System for approval of changes to the Articles of Incorporation.

Rick Moorefield, County Attorney, reviewed the background information and recommendation as recorded above.

MOTION: Commissioner Boose moved to recommend to the full board approval of the proposed changes to the Cumberland County Hospital System, Inc. Articles of Incorporation.

SECOND: Commissioner Evans

VOTE: UNANIMOUS (3-0)

4. UPDATE AND DISCUSSION ON ENFORCEMENT MATTERS ON US 301 BUSINESS NEAR THE CUMBERLAND COUNTY COLISEUM COMPLEX

BACKGROUND

Commissioner Evans requested an update and discussion on enforcement matters on US 301 Business near the Cumberland County Coliseum Complex. In addition, he is

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requesting background information from the County Attorney on Nuisance and Abatement as prescribed in the County Ordinance.

RECOMMENDATION/PROPOSED ACTION

For information and discussion only.

Sheriff Ennis Wright stated there are two hotels in the US 301 Business area that cause the main problems which are the Coliseum Inn and the Carolina Inn. Sheriff Wright handed out a call log of all Sheriff's Office activity that had been made at the two hotels in the past six months. Sheriff Wright stated there are families with children living in these hotels.

Commissioner Lancaster asked what the law enforcement officials could do regarding this issue. Ronnie Mitchell, Sheriff's Office Attorney, stated the preference of the Sheriff's Office would be to shut the places down because it takes so much time and energy of the Sheriff's Office. Mr. Mitchell stated he recommends the Sheriff's Office work as hard as they can with the County to bring some sort of action. Brenda Jackson, Department of Social Services Director, stated her department would join efforts with the Sheriff's Office and the County to help the children living in these hotels if the families meet certain criteria.

Commissioner Evans stated he would like to see movement towards nuisance/abatement because this has been an ongoing issue since he started on the Board of Commissioners. Commissioner Boose suggested the county attorney and the Sheriff's Office attorney get together to come up with a plan. The consensus of the Policy Committee was for the county attorney and Sheriff's Office attorney get together and bring back an action plan to the March 2018 Policy Committee meeting.

5. PUBLIC HEALTH ITEMS

A. UPDATE ON PUBLIC HEALTH INTERNAL AUDIT NOTIFICATION PROGRESS

BACKGROUND

As was last reported to the Board, the Public Health Department, to date, has confirmed contact and response from 129 of the 159 women affected by the failed notifications in the Breast & Cervical Cancer Program (BCCCP). While we are pleased to have achieved more than an 81% success rate, it has been several weeks since we have had a patient to make contact with us in response to our efforts.

The Health Department continues to utilize and exhaust internal resources for locating and receiving a response from the remaining 30 women. In addition to another round of certified letters, staff will utilize available media resources in an effort to reach out to those affected. The following remaining steps will be taken:

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1. Executing another round of certified letters for the remaining patients,
2. An assertive outreach to the media to update them on our notification progress, and articulation of internal process changes that have occurred as a result of the internal audit,
3. Utilization of internal County resources (e.g., County website) in coordination with PIO to provide information/outreach to remaining women.

Additionally, Health Department staff will continue to monitor for returned letters, research and track through utilization of the enhanced tracking software system, and receive phone call inquiries. Staff remain committed to successful contact of all remaining patients.

RECOMMENDATION/PROPOSED ACTION

This is for information only.

Duane Holder, Assistant County Manager, reviewed the background information and recommendation as recorded above. Mr. Holder stated through the notification process the Health Department has successfully received response from 129 out of the 159 women which is an 81% contact and response rate. Mr. Holder further stated the Health Department has exhausted all internal resources but will continue to monitor return mail. Mr. Holder stated they plan to reach out to the media so that people that may read the paper will know they are trying to reach women that received screenings between 2011-2015. Mr. Holder stated he would like direction if the board wants to think about using outside resources to contact the remaining women which could cost thousands of dollars.

Commissioner Lancaster stated he would like further information about what the cost may be to use outside resources. Commissioner Boose stated he thinks the response rate is good and he would not want to see the County spend thousands of dollars on top of all the efforts the Health Department has already made.

Commissioner Faircloth stated this issue initially came to the Audit Committee and he would like to see any further information brought back to the Audit Committee to bring closure to this matter. The consensus of the committee was for further information to be brought back to the Audit Committee. No action taken.

B. UPDATE ON ADULT HEALTH CLINIC SERVICES

BACKGROUND

The Health Department partnered with Stedman Wade Health Services, Inc. to provide Adult Health primary care services to uninsured and underserved Cumberland County citizens beginning October 2, 2017. An update on the partnership was provided to the Board of Health during their regular meeting held on December 19, 2017. The Interim

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Health Director will provide the same update to the Board of County Commissioner's Policy Committee.

RECOMMENDATION/PROPOSED ACTION

No action needed – for information only.

Mr. Holder reviewed the background information and recommendation as recorded above. Rod Jenkins, Interim Health Director, discussed the how patients are handled at Stedman Wade Health Services. Margaret Covington, Stedman Wade Health Services, stated they are excited about this collaboration and she hopes to see constant improvement in time. Commissioner Council stated she appreciated the update and asked the County Manager to update the committee on any new services or new times. No action taken.

C. DISCUSSION OF HEALTH DEPARTMENT QUALITY ASSURANCE REVIEW

BACKGROUND:

During the October 16, 2017, regular meeting of the Board of County Commissioners, Commissioner Evans expressed his desire for the Public Health Department to undergo an external quality assurance review. He requested Management to bring to the Policy Committee examples of other counties in the state that have undergone such reviews and to provide the names of the entities that conducted the reviews.

A statewide inquiry was made to all Local Health Directors to determine whether their agencies had undergone such a review and if so, to provide the organization(s) that conducted the reviews. Several Directors responded that their agencies had undergone the regular and routine external audits and reviews conducted by the State of North Carolina and/or the US Food & Drug Administration. For purposes of information, attached you will find a summary of the various audits and reviews that are currently conducted at the Cumberland County Department of Public Health.

There were three agencies that had external reviews conducted by entities other than the State or federal government. Those entities included:

- Rutherford-Polk-McDowell Health District: Dixon Hughes Goodman
- Guilford County Department of Health: Institute for Public Health
- Mecklenburg County Health Department
 - Clinical services review: Navigant
 - Organizational Structure & Organizational Culture: Praxis Partners

RECOMMENDATION/PROPOSED ACTION:

This is for information only.

Mr. Holder reviewed the background information and recommendation as recorded above. Mr. Holder stated Commissioner Evans requested a Health Department quality assurance review. Commissioner Keefe stated he thinks the Board of Health should make a recommendation to the Board of Commissioners. Mr. Jenkins stated he has provided the Board of Health specific updates.

Ms. Cannon stated Management would work with the Public Health Director and the Board of Health to bring a detailed plan with options back to the Audit Committee.

6. UPDATE FROM PUBLIC INFORMATION AND GOVERNMENTAL AFFAIRS

Sally Shutt, Assistant County Manager, stated PIO purchased a new camcorder. Ms. Shutt further stated Citizen's Academy starts back on February 20, 2018. Ms. Shutt stated they have been busy with ongoing radio activities and the Fort Bragg community exchange. Ms. Shutt stated the recent inclement weather increased the County's Facebook posts and feedback. Ms. Shutt stated next month she would bring analytics from the new website.

Ms. Shutt stated she would come back to the February 15, 2018 Policy Committee with a detailed agenda and background information regarding Cumberland County's Goals and Action Plan and the State Legislative Agenda.

7. OTHER ITEMS OF BUSINESS

No other items of business.

MEETING ADJOURNED AT 11:19 AM

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CUMBERLAND COUNTY POLICY COMMITTEE
JUDGE E. MAURICE BRASWELL CUMBERLAND COUNTY COURTHOUSE
117 DICK STREET, 5TH FLOOR, ROOM 564
FEBRUARY 15, 2018
SPECIAL MEETING MINUTES

MEMBERS PRESENT: Commissioner Michael Boose
Commissioner Larry Lancaster

MEMBERS ABSENT: Commissioner Charles Evans

OTHER COMMISSIONERS
PRESENT: Commissioner Jeannette Council
Commissioner Glenn Adams

OTHERS PRESENT: Amy Cannon, County Manager
Tracy Jackson, Assistant County Manager
Sally Shutt, Assistant County Manager
Melissa Cardinali, Assistant County Manager
Duane Holder, Assistant County Manager
Rick Moorefield, County Attorney
Vicki Evans, Finance Director
Heather Harris, Budget Analyst
Jeffery Brown, Engineering
Candice White, Clerk to the Board
Press

Commissioner Lancaster called the meeting to order.

1. APPROVAL OF AGENDA

MOTION: Commissioner Boose moved to approve the agenda as presented.
SECOND: Commissioner Lancaster
VOTE: UNANIMOUS (2-0)

2. CONSIDERATION OF THE DRAFT 2018 CUMBERLAND COUNTY GOALS AND ACTION PLAN

BACKGROUND

The Cumberland County Board of Commissioners agreed on six major goals for 2018 during a planning session on January 26, 2018 at Cape Fear Valley Medical Center.

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The board agreed to focus on capital projects; public water expansion; economic development; financial strength; performance and efficiencies, which includes reviewing the structure of County human services; and completing negotiations on several projects, including sales tax, baseball and school funding agreements among others.

Management has drafted the action plan recorded below based on the six goal areas outlined by the commissioners during the retreat and is seeking feedback and recommendations from the Policy Committee.

RECOMMENDED/PROPOSED ACTION

Consider the attached DRAFT 2018 Cumberland County Goals and Action Plan and provide feedback before sending the plan to the full Board of Commissioners.

Capital Projects

Use the Capital Planning Model as a tool to assist in funding capital and large recurring expenses such as repairs/maintenance and information technology.

- Review and approve the DRAFT Capital Planning Model policy
- Establish the annual funding commitment for the specific capital projects and recurring expenses
- Incorporate the Capital Planning Model into the annual budget process with more detailed discussion on project specifics

Public Water Expansion

Create a plan and identify funding sources for countywide water, starting with areas contaminated by GenX.

- Partner with the Public Works Commission to complete a preliminary engineering study and environmental assessment for the GenX contaminated areas
- Stay engaged with state agencies
 - Participate in weekly conference calls
 - Attend Science Advisory Board meetings
- Engage with state legislators about funding needs and public health concerns in contaminated areas
 - Request funding for extending water lines
 - Maintain awareness of the impact on our citizens
 - Stress importance of holding Chemours accountable
- Identify funding sources; seek grants and state and federal legislative actions and assistance
- Continue to provide information to citizens about GenX contamination through website and other platforms
- See attached detailed plan

Economic Development

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Promote economic development, job retention and growth.

- Work with the Fayetteville Cumberland Economic Development Corporation to develop and establish goals and strategies for economic development
 - Strategy should include working with municipalities on initiatives
- Streamline regulatory, permitting processes
 - Acquire new software solution for central permits, inspections, code enforcement, land use, parcel/address management and environmental health
- Consider pursuing legislative action allowing the County to have a small business enterprise program to promote the development of small businesses in the county

Maintaining the County's Financial Strength

Maintain the County's strong financial position by pursuing initiatives that advance long-term sustainability.

- Capital Planning Model
- Business Intelligence
- Continued involvement in Government Finance Officers Association Excellence in Financial Reporting Program (Comprehensive Annual Financial Report)

Performance and efficiencies, including review of human services governance structure

Optimize service delivery through staff development, business process review and innovation.

- Human Resources projects
 - Performance Development and Management System through NeoGov
 - Salary review
 - Leadership Academy
- Prioritize business process review/improvement
- Explore the merger of county functions (technology, human resources, public information, facilities maintenance)
- Continue investment in technology
- Human Services Governance Review
 - Department of Public Health
 - School of Government presentation on Feb. 27
 - Develop next steps

Completing project negotiations

Pursue discussions with appropriate entities and reach decisions related to projects that have been under long-term consideration.

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- 911 Center
- Sales Tax Distribution
- School Funding
- Shaw Heights
- Baseball Funding/Parking Deck (City and County approved agreements Feb. 5, 2018)

A proactive plan for working with local, state, Chemours and the citizens affected by the contamination.

Local

- PWC partnership – assess the area and determine cost of running water lines. The utility is willing to pay half the cost of hiring an engineering firm to review the earlier feasibility study and determine the engineering requirements and cost of extending water lines into the Gray's Creek Water and Sewer District.
- Complete a preliminary engineering study and environmental assessment
- Communicate with Bladen and other counties in the river basin to compare and share information about activities to assist and inform citizens and collectively work with state and federal authorities to hold Chemours accountable and ensure safe water and air quality

State

- County Management and Health Department continue to participate in weekly conference calls with NCDHHS (DEQ and DPH) and stay updated on:
 - Ground and surface water testing
 - Discharge and other regulatory issues
 - Air quality
 - Health impact
- Health Department officials attend Science Advisory Board meetings (NC Division of Public Health) to stay updated on the health effects findings
- State Legislature (County delegation, House and Senate select committees on water quality)
 - request funding for extending water lines
 - maintain awareness of the impact on our citizens
 - stress importance of holding Chemours accountable
- Seek grant and loan funding for projects

Federal

- Seek federal support for water infrastructure

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- Involve federal delegation in seeking EPA assistance on testing and setting regulatory standards

Chemours

- Set up meetings between the company and the commissioners and management to learn about the company's action plan and share citizen concerns

Citizens

- Provide information and facilitate communication with state officials
- Serve as a link to state resources
- Communicate appeals process currently in place to address possible tax relief for contaminated properties
- Use various platforms to provide information to citizens, including County's GenX webpage, social media and press releases

Sally Shutt, Assistant County Manager, reviewed the background information, recommendation and proposed Draft 2018 Cumberland County Goals and Action Plan as recorded above.

MOTION: Commissioner Boose moved to recommend to the full board approval of the Draft 2018 Cumberland County Goals and Action Plan with the following language added under Economic Development "Invite municipalities to attend meetings where items in or near their towns are discussed" and to Consider pursuing legislative action allowing the County to have a small business enterprise program to promote the development of small businesses in the county and "that mirrors legislation passed for the City of Fayetteville".

SECOND: Commissioner Lancaster

VOTE: UNANIMOUS (2-0)

3. CONSIDERATION OF THE DRAFT 2018 CUMBERLAND COUNTY STATE LEGISLATIVE AGENDA

BACKGROUND

The Board of Commissioners will meet with the N.C. Legislative Delegation on March 9, 2018 at 8:30 a.m. in Room 119 of the Judge E. Maurice Braswell Courthouse. Commissioners were asked to send items they wanted included on the state agenda. The draft 2018 State Legislative Agenda which is recorded below has been prepared for your consideration in preparation for that meeting and helps outline the County's legislative priorities.

RECOMMENDATION/PROPOSED ACTION

DRAFT

Consider the Draft 2018 State Legislative Agenda that is recorded below and provide feedback to staff before the agenda is sent to the full board for consideration and approval.

GENX Contamination

- Funding and support for extending public water lines in contaminated areas
- Determining health impact and holding Chemours accountable

Background:

The General Assembly approved HB56 in October that included allocating **\$435,000**.

- **\$185,000** to the Cape Fear Public Utility Authority to study methods to remove GenX from the water supply and to pay for ongoing monitoring
- **\$250,000** to UNC-Wilmington to study GenX and prepare a final report on findings and recommendations for legislative action by April 1 to the Environmental Review Commission.

House Bill 189 - An Act to Implement Measures to Address "Genx" and Other Emerging Contaminants

- House approved. Senate made changes. Bill will go back to the House.
- Directs the NCDEQ to review historical discharge permits and coordinate with other state and federal agencies to share water quality information.
- Sets up a process for the North Carolina Policy Collaboratory at UNC-Chapel Hill to coordinate efforts using technology and instrumentation to measure discharge and emerging contaminants in the event the U.S. Environmental Protection Agency no longer provides free access to its analytical instrumentation and technology (often referred to as mass spectrometers).
- The bill authorizes the collaboratory to use \$1 million in funds each year over the next two years for this purpose and appropriates \$2.4 million in additional funds to DEQ to implement the bill.

Cumberland County is asking for funding to extend water lines in the contaminated areas.

Tax and Finance

• **Food & Beverage Tax**

- Amend the Prepared Food and Beverage Tax (Session Law 1993-413) to repeal the sunset provision. Request the removal of the provision that the tax be repealed when the debt service on the Crown Coliseum Complex is paid in 2024. (See attached bill and copy of letter that was sent to the delegation in September.)

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Expand the permitted uses of the tax proceeds to allow greater flexibility.

Background:

Food and Beverage tax proceeds are now restricted to capital needs and operating, marketing and promoting the Crown Complex. The existing debt service will be paid in 2024 and the current tax will be repealed; however, the County will need to continue to maintain the Crown's facilities and subsidize the operations.

Request that Session Law 1993-414 be amended by removing the sunset requirement and expand the permitted uses of the tax proceeds to any purpose that will promote or enhance tourism, travel, arts, entertainment and sports venues and activities within Cumberland County.

- **Local Occupancy Tax**

- Be allowed to operate under House Finance Committee guidelines for the Local Occupancy Tax

Background:

Please see attached copies of [Session Law 2001-484/SB348](#) and [House Finance Committee's Guidelines for Occupancy Tax Legislation](#).

The County is seeking changes in the local occupancy tax legislation to allow it to comply with the [House Finance Committee's guidelines](#). This change is being requested after reviewing disbursement methods, oversight and protocols for ensuring funding is spent in accordance with the original intent of the legislation.

The County wants to operate under the same rules as other counties that collect local occupancy tax. This change will allow for a more inclusive and representative Tourism and Development Authority Board and allow for funding to go toward capital projects related to tourism.

Cumberland County's local occupancy legislation ([Session Law 2001-484](#)) dictates the makeup of the Tourism Development Authority and limits the number of eligible individuals to:

The Authority shall be composed of the following members: (1) Two representatives nominated by hotels and motels within the county which have in excess of 100 rooms subject to this occupancy tax and appointed by the county board of commissioners. (2) Two representatives nominated by hotels and motels within the county

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which have fewer than 100 rooms subject to this occupancy tax and appointed by the county board of commissioners. (3) The President of the Fayetteville Area Chamber of Commerce, in an ex officio capacity. (4) The County Manager of Cumberland County, in an ex officio capacity. (5) One member of the public who is not affiliated with travel and tourism and who reflects the cultural diversity of the county.

The House Finance Committee guidelines provide that “at least ½ of the members must be currently members active in the promotion of travel and tourism in the taxing district and 1/3 of the members must be affiliated with organizations that collect the tax.”

House guidelines allow for 1/3 of funding to be used for tourism-related capital expenditures.

The Crown facilities have ongoing capital needs, including updating and retrofitting. In addition, the Board of Commissioners has established capital planning priorities that include renovating the Crown Theater or constructing a performing arts center and supporting a Civil War History and Reconstruction Center. These priorities could benefit from local occupancy taxes if the legislation were changed to allow for tourism-related capital expenditures.

- **Sales Taxes**

- Discuss the potential for Article 43 sales tax as an option for public safety funding.

Background:

The Public Safety Tax Force is exploring options for funding of fire service. Volunteer fire departments are facing decreasing numbers of volunteers and increasing demands such as medical calls. Cumberland County is at the maximum for Article 46 and would like the flexibility to use Article 43 (transit) for public safety.

[H333](#) An Act to Give Counties Additional Flexibility with Regard to the Local Option Sales and Use Tax Without Increasing the Existing Maximum Tax Rate was introduced in the long session and approved in the House. It was sent to a Senate Committee. It calls for using “Article 43A” for public education and general purposes “as provided in Article 46.”

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- Discuss changes in sales tax collections (taxes on services and remote sales) and their impact on Cumberland County.

Background:

Online sales – Counties are losing millions of dollars in sales tax revenue due to online sales. Vendors who have a physical location in North Carolina are required to send in tax payments, which include both over-the-counter and online sales. Vendors who do not have a physical presence in North Carolina are not required to send these in and if they do, they are doing so on the honor system.

The Supreme Court will hear a case to determine if states and local governments can require retailers to collect sales tax even if they don't have a physical location in the state. This is a NACO legislative priority.

The County does not have access to sales information by type of sale. The tax dollars come in as one bucket of money, with a breakdown by Article of Sales Tax only. There is no distinction between goods and services in the reports, therefore, no way to determine how collections are going related to services.

Schools

- Support the legislation to repeal the statutory authority under N.C. Gen. Stat. 115C-4319(c) that allows a local school board to file suit against a county board of commissioners over county appropriations for education.

Background:

This is one of the top legislative priorities for the North Carolina Association of County Commissioners. This statutory authorization creates an adversarial relationship between the school boards and the boards of county commissioners and has cost taxpayers millions of dollars in legal fees and litigation expenses.

S531/H305 amends the statute that establishes the dispute resolution process for boards of county commissioners and boards of education. The proposed legislation was held up in the House during the long session and is eligible for the short session.

- Lottery Funds for School Construction: The biennium budget passed in 2017 created the Needs-Based Public School Capital Fund, which provides targeted grants to counties in Tiers 1 and 2 using lottery funds. However, as a Tier 2 county, Cumberland County will not be eligible for grant funds until 2020-21.

Human Services

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- **Social Services:** Continue support of county administered social services system as the Social Services Regional Supervision and Collaboration Working Group (established pursuant to Session Law 2017-41) holds ongoing meetings and explores a “vision” for county social services that may include a state administered system in the future.

Background:

The County has concerns about moving to a full state-administered social services system but supports the state establishing regional offices to provide oversight and assistance to local county-administered agencies.

- **Public Health:** Approve funding for Communicable Disease Nurse positions in county public health departments.

Background:

The Cumberland County Department of Public Health supports the request from the N.C. Association of Local Health Directors in asking the General Assembly for \$8 million to be spread among all 100 counties to fund a Communicable Disease Nurse position. For Cumberland County, that would be about \$80,000. The increased funding to Local Public Health will help address rapidly emerging infectious disease (e.g. ZIKA, Hepatitis C, Escherichia coli (E. coli) O121 or E. coli O26, Antibiotic Resistant Infections, Coronavirus (MERS), Meningitis, Drug Resistant Tuberculosis, Influenza, etc.) Considering recent national and international concern around communicable disease outbreaks, it is imperative that local health departments have a minimum set of resources available to perform local communicable disease control and community and public health surveillance activities, and to communicate clearly about disease threats within their jurisdictions.

Support for the basic core functions of local public health departments is waning, along with infrastructure funding, impacting local public health ability to accomplish mandated services. Local control of communicable diseases is a well-recognized core public health function here in N.C. and nationally, a role comparable to the public safety mission of law enforcement.

- **Mental Health:** Support increased state funding for mental health services and support public managed care for the mental health, substance use and intellectually/developmentally disabled population.

Background:

For FY18 and FY19, the General Assembly ([Session Law 2017-206](#)) has cut funding to the statewide mental health system by more than \$67 million in recurring funds and \$110 million in non-recurring funds. For Alliance Behavioral Healthcare, of which Cumberland County is a member county,

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reductions have totaled more than \$17.7 million in recurring funds and \$17.8 million in non-recurring, for a total of more than \$35.5 million.

The LME/MCOs were required to utilize their fund balance reserves to maintain service levels to the uninsured/indigent population. As fund balance levels continue to dwindle, services to this most vulnerable segment of our population will be drastically reduced. Support for ceasing all further reductions to state appropriations for mental health funding is requested. Increased state appropriation to match service demands is also requested. Additionally, as Medicaid reform continues to be implemented in the state, support for publicly operated managed care organizations is also requested. The LME/MCOs have unique experience and expertise in managing the needs of this special population in the State of North Carolina.

Libraries

- **Increase State Aid to Libraries** – The Cumberland County Public Library & Information Center Board of Trustees supports increased state funding for the important services provided through the library system.

Other topics:

- Seek legislation to allow Cumberland County the flexibility to participate with local companies and vendors through a small business enterprise program like the legislative action approved last year for the City of Fayetteville. ([Session Law 2017-81](#))
- Seek update on the status of the N.C. Military Hall of Fame project and site selection. The N.C. Department of Military and Veterans Affairs recommended the N.C. Museum of Natural History. Consider endorsing Cumberland County as the location.
- Discuss the General Assembly's position on funding for 911 services and the responsibilities of counties to provide this service to municipalities and unincorporated areas. In 2015, there was proposed legislation to require counties to provide 911 services if requested by municipalities.

Sally Shutt, Assistant County Manager, reviewed the background information, recommendation and Draft 2018 Cumberland County State Legislative Agenda as recorded above.

DRAFT

MOTION: Commissioner Boose moved to recommend to the full board approval of the Draft 2018 Cumberland County State Legislative Agenda as presented.

SECOND: Commissioner Lancaster

VOTE: UNANIMOUS (2-0)

MEETING ADJOURNED AT 3:50 PM

RICKEY L. MOOREFIELD
County Attorney



ITEM NO. 2

PHYLLIS P. JONES
Assistant County Attorney

ROBERT A. HASTY, JR.
Assistant County Attorney

OFFICE OF THE COUNTY ATTORNEY

5th Floor, New Courthouse • P.O. Box 1829 • Suite 551 • Fayetteville, North Carolina 28302-1829
(910) 678-7762

**MEMO FOR THE AGENDA OF THE MARCH 1, 2018,
MEETING OF THE POLICY COMMITTEE**

TO: Sally Shutt
FROM: County Attorney R. Moorefield
DATE: February 22, 2018
SUBJECT: Consideration of Nuisance Action against Carolina Motor Inn and Coliseum Inn

COPIED TO: Sheriff's Attorney

Requested by Policy Committee at its February 15, 2018, meeting
Estimate of Time Needed: 15 minutes

BACKGROUND:

At its February 15, 2108, the Policy Committee received a report from Sheriff Wright on the number of calls his officers were dispatched to the Carolina Motor Inn and the Coliseum Inn during the last six months of 2017. The Committee directed the county attorney to work with the sheriff's attorney to develop a plan of action for addressing these two properties in close proximity to the Crown Coliseum as nuisances. The county attorney requested the sheriff's attorney to obtain more detailed information on the number and nature of these dispatches. The sheriff's attorney provided that information for the period from January 1, 2015, through February 12, 2018. The county attorney's office has summarized those dispatches and categorized each as to whether the event could be a chargeable criminal offense in Exhibit 1 attached. The characterization of these calls as to chargeable criminal offenses is an important element of the way the County might pursue nuisance actions against these properties.

As to the Carolina Motor Inn, Exhibit 1 shows there were 732 total calls dispatched with 223 of those being for events that may have been chargeable criminal offenses. These resulted in 36 incident reports made by the investigating officers and 11 arrests for criminal charges. None of these arrests resulted in a conviction or guilty plea.

As to the Coliseum Inn, Exhibit 1 shows there were 1,081 total calls dispatched with 297 of those being for events that may have been chargeable criminal offenses. These resulted in 62 incident reports made by the investigating officers and 12 arrests for criminal charges. Of these 12 arrests, one defendant pled guilty to injury to real property and ethnic intimidation. Six of these 12 cases are still pending in court.

There are only two methods the county may use to pursue nuisance abatement under these circumstances. Each is discussed separately as follows:

G. S. 153A-140. Abatement of public health nuisance:

This is a very straightforward, short statute that authorizes the county "to remove, abate or remedy everything that is dangerous or prejudicial to the public health or safety." The county attorney is not aware of any cases that have been brought under this statute for activities conducted on a property. It is

typically used for conditions located upon a property. If, however, the evidence supports proceeding under this statute, the action could be undertaken this way. This process begins with the Board of Commissioners declaring the existence of a public nuisance. The Board must give notice to the owner and conduct a hearing for the owner to present evidence and be heard. The Board makes findings of fact based on the evidence submitted at the hearing and enters an order appropriate to those findings of fact. The owner may appeal the Board's order to the Superior Court, at which point the process becomes a judicial process. If the court rules that the conditions do not constitute a public nuisance, the county may be held liable for the owner's attorney's fees and litigation costs. A copy of this statute is attached.

Chapter 19. Offenses Against Public Morals:

This is very detailed group of statutes contained in Chapter 19 of the General Statutes which authorizes counties to pursue nuisance actions against properties on which specified sorts of criminal activity is regularly occurring. When there is evidence to support the existence of the specified criminal activity, this is the most appropriate process to use. The Board of Commissioners is only involved in declaring the nuisance. It then proceeds as a civil court action brought in the name of the State of North Carolina, typically by a request to the District Attorney. A very significant aspect of this process is that an admission or finding of guilt against any person under the criminal laws against lewdness, assignation, prostitution, gambling, breaches of the peace, illegal possession or sale of alcoholic beverages or controlled substances is admissible for proving the existence of the nuisance. This is the evidence that is typically used to pursue these actions. Like the other statutory nuisance abatement process, if the court rules the activity does not constitute a public nuisance, the county may be liable for the owner's attorney's fees and litigation costs. A copy of these statutes is attached.

Currently there is no admission or finding of guilt in any criminal case arising out of activity occurring on either of these properties that meets the evidentiary standards set out in G.S. § 19-3. That may occur in any of the pending six criminal cases involving activity on the Coliseum Inn. There are no pending cases involving activities occurring at the Carolina Motor Inn.

The county attorney and sheriff's attorney have discussed the evidence needed to pursue nuisance actions against these properties. The sheriff's attorney is confident that the sheriff's office can produce sufficient evidence through testimony or affidavits based on direct observations made by the sheriff and/or his deputies to proceed with nuisance abatement under one of these statutes.

RECOMMENDATION/PROPOSED ACTION:

The county attorney recommends that he continue to work with the sheriff's attorney to gather sufficient admissible evidence to proceed with an appropriate nuisance abatement action against these motel properties and prepare a declaration of public nuisance for the Board of Commissioners to consider at its April 2, 2018, meeting to commence those actions.

EXHIBIT 1**NUISANCE ABATEMENT RESEARCH**

The incident events shaded light green are referenced numerically by statute and type of incident, while the events shaded dark green were listed without a statute reference but are consistent with the numerically-listed charges. The blue shaded events are items such as 911 hang-ups, area checks, community policing, and traffic stops that were not assigned a numerical categorization.

The time period encompasses January 1, 2015 through February 12, 2018.

CAROLINA MOTOR INN

Carolina Motor Inn Event	Frequency	Totals
25A1 PSYCH NON SUICIDAL	1	223
25B6 PSYCHIATRIC UNK STAT	1	
29B1 ACCIDENT WITH INJURI	1	
113C1 LOUD PARTY/MUSIC	1	
113B2 PAST VERBAL DISTURB	1	
106B1 PAST SEXUAL ASLT AD (S) (N)	1	
106D4 ASLT INDIV/SMALL GR	2	
107B1 NON URGENT ASSIT	1	
107D1 ASSIST URGENT REQUE	2	
110D1 HOME INVASION	1	
111D2 DAMAGE/VANDALISM SM	2	
113 DISTURBANCE / NUISANC	8	
113B3 OTHER NOISE COMPLAI	2	
113B4 NUISANCE	1	
113D2 PHYSICAL DIST SMALL	10	
113D2 VERBAL DIST	5	
113D3 VERBAL DIST LARGE G	1	
113D4 VERBAL DIST SMALL G	32	
114B1 PAST DOMESTIC PHYSI	1	
114 DOMESTIC DIST / VIOLE	3	
114D1 DOMESTIC DIST PHYSI	6	
114D2 DOMESTIC DIST VERBA	6	
115D1 DUI (IMPAIRED DRIVI	1	
116D1 DRUG USE OR POSSESS	6	
116D2 DRUG SALE	4	
118B2 PAST FRAUD/FORGERY	1	
119 HARASSMENT/ STALK	1	

EXHIBIT 1

Carolina Motor Inn Event	Frequency	Totals
120C1 PROSTITUTION	5	
120D1 INDECENCY/LEWDNESS	1	
122 MISCELLANEOUS PD	1	
123B1 MISSING PERSON	1	
125 PR/STANDBY/WELLBECHK	3	
125C1 STANDBY	8	
125D1 URGENT WELL BE CHEC	3	
126B1 PAST PERSONAL ROBBERY	1	
128 SUPPLEMENTAL / FOLLOW	1	
128A2 VEHICLE SUPPLEMENTAL	1	
128B2 EVIDENCE SUPPLEMENT	2	
129 SUSPICIOUS/WANTED PER	1	
129B1 PAST SUSPICIOUS PER	1	
129C1 SUSPICIOUS PERSON	9	
129C2 WANTED PERSON	3	
129C3 SUSPICIOUS VEHICLE	2	
129C5 SUSPICIOUS CIRCUMST	3	
130 THEFT / LARCENY	1	
130B1 PAST THEFT (LARCENY)	6	
130B2 PAST VEHICLE THEFT	2	
130B3 PAST THEFT FROM VEH	1	
130D1 THEFT (LARCENY)	5	
130D2 VEHICLE THEFT	1	
130D3 THEFT FROM VEHICLE	1	
131B1 ACCIDENT PROPERTY	2	
131B2 HIT AND RUN PROP DA	3	
131B3 HIT AND RUN NO INJ	1	
131D1 ACCIDENT WITH INJUR	1	
133D2 TRESPASSING/UNWANTED	3	
135 WEAPONS / FIREARMS	1	
135C1 SHOT FIRED (HEARD)	3	
135D1 WEAPONS ASSIST	1	
SEXUAL ASSAULT	1	
ASSAULT BY MOTOR VEHICLE	1	
INCIDENT	3	
DOMESTIC DISTURBANCE	1	

EXHIBIT 1

Carolina Motor Inn Event	Frequency	Totals
INVESTIGATING SUSPICIOUS	4	509
INVESTIGATE SUSPICIOUS SU	4	
NUISANCE ABATEMENT (CHRON	1	
DOMESTIC VIOLENCE ORDER	1	
SOLICITORS	1	
WANTED SUBJECT	15	
SEARCH WARRANT	1	
ASSIST	10	
AREA CHECK	220	732
SECURITY CHECK	33	
FOLLOW UP	36	
INFORMATION	33	
COMMUNITY POLICING	3	
EXTRA PATROL REQUEST	2	
PUBLIC RELATIONS COMMUNIC	4	
TRAFFIC STOP	32	
ID CALL	4	
TRANSFERRED CALLER	10	
911 HANG UP CALL ABANDONE	73	
911 ABANDONED CALL	22	
911 HANG UP CALL NO VOICE	10	
SERVE PAPERS (WARRANTS, E	12	
CMF WRECKER CALL	1	
BOLO / ATTEMPT TO LOCATE	1	
NONURGENT WELL BE	1	
FLAGGED DOWN	5	
FLAG DOWN (S)WATE	1	
CK ON SEX OFFENDER	3	
ANIMAL CONTROL CALL	1	
REPO VEHICLE	2	
		732

Out of **732** total calls over a 3-year period, **223 (30%)** were statutorily referenced or consistent with statutorily referenced incidents.

There were **36 incident reports**.

EXHIBIT 1

From the incident reports, there were **11 arrests/criminal cases**, of which **1 is pending**.

Of the criminal cases, there were **0 GUILTY convictions** from charges that occurred at the Motel.

EXHIBIT 1

COLISEUM INN

Coliseum Inn Event	Frequency-	Totals
23C7 OVERDOSE UNKNOWN STATUS	1	297
25A2 SUICIDAL NOT THREATENING	1	
29B4 ACCIDENT UNKNOWN STATUS	1	
102B2 PAST NEGLECT	1	
106B1 PAST SEXUAL ASLT ADULT	1	
106B3 PAST ASSAULT	2	
106C5 ASSAULT JUST OCCUR	1	
106D4 ASLT INDIV/SMALL GROUP	3	
107D1 ASSIST URGENT REQUEST	2	
107 ASSIST OTHER AGENCIES	2	
107B1 NON URGENT ASSIST REQ	2	
111B1 PAST DAMAGE/VANDALISM	2	
111D2 DAMAGE/VANDALISM SML GRP	1	
112B1 EXPECTED DEATH	1	
113D2 VERBAL DIST	2	
113 DISTURBANCE / NUISANCE	2	
11301 PHYSICAL DIST	1	
113B2 PAST VERBAL DISTURBANCE	1	
113B3 OTHER NOISE COMPLAINT	2	
113B4 NUISANCE	3	
113C1 LOUD PARTY/MUSIC	2	
113C2 NUISANCE INTOX/IMPAIRED	2	
113D1 PHYSICAL DIST LARGE GRP	3	
113D2 PHYSICAL DIST SMALL GRP	7	
113D3 VERBAL DIST LARGE GRP	2	
113D4 VERBAL DIST SMALL GRP	29	
114 DOMESTIC DIST / VIOLENCE	2	
114B1 PAST DOMESTIC PHYSICAL	2	
114D1 DOMESTIC DIST PHYSICAL	16	
114D2 DOMESTIC DIST VERBAL	5	
116 DRUGS / NARCOTIC ACTIVITY	1	
116D1 DRUG USE OR POSSESSION	1	
116D2 DRUG SALE	8	
118D2 FRAUD/FORGERY	1	

EXHIBIT 1

Coliseum Inn Event	Frequency-	Totals
119 HARASSMENT/ STALK / THREAT	2	
119D3 THREAT	1	
120B2 URINATING / DEFECATING	1	
120D1 INDECENCY/LEWDNESS	1	
120C1 PROSTITUTION	10	
123B1 MISSING PERSON	2	
125A1 PREARRANGED STANDBY	1	
125B1 NONURGENT WELL BE CHECK	4	
125C1 STANDBY	6	
125D1 URGENT WELL BE CHECK	2	
126D1 PERSONAL ROBBERY	2	
128A2 VEHICLE SUPPLEMENTAL	1	
128A4 OTHER INFO SUPPLEMENTAL	2	
128B2 EVIDENCE SUPPLEMENTAL	1	
129 SUSPICIOUS/WANTED PERSON	4	
129B3 PAST SUSP CIRCUMSTANCE	1	
129C1 SUSPICIOUS PERSON	19	
129C2 WANTED PERSON	5	
129C3 SUSPICIOUS VEHICLE	3	
129C4 WANTED VEHICLE	1	
129C5 SUSPICIOUS CIRCUMSTANCES	4	
130 THEFT / COUNTED	3	
130D1 THEFT (LARCENY)	6	
130D2 VEHICLE THEFT	1	
130B1 PAST THEFT (LARCENY)	8	
130B2 PAST VEHICLE THEFT	4	
130B3 PAST THEFT FROM VEHICLE	1	
131A2 PAST HIT AND RUN	1	
131B1 ACCIDENT PROPERTY DAMAGE	2	
132B2 PARKING NOT IN TRAFFIC	1	
132C1 HAZARD HIGH DANGER AREA	1	
133B1 PAST TRESPASSING	1	
133D1 TRESPASS/UNWANTED	1	
133D2 TRESPASSING/UNWANTED	5	
135 WEAPONS / FIREARMS	1	
135C1 SHOT FIRED (HEARD ONLY)	2	

EXHIBIT 1

Coliseum Inn Event	Frequency-	Totals
135D1 WEAPONS INCIDENT	3	784
13502 SHOTS FIRED SUSPECT SEEN	1	
ASSIST	6	
DOMESTIC ASSIST	1	
DOMESTIC DISTURBANCE	1	
DOMESTIC VIOLENCE ORDER	2	
SEXUAL ASSAULT	1	
CHILD NEGLECT/ABUSE	1	
LARCENY	5	
REPO VEHICLE	6	
UNAUTHORIZED USE OF MOTOR VEH	2	
FAIL TO REG SEX OFFENDER	1	
CK ON SEX OFFENDER	1	
WANTED SUBJECT	22	
INVESTIGATING SUSPICIOUS VEHIC	6	
INVESTIGATING SUSPICIOUS ACTIV	7	
INVESTIGATE SUSPICIOUS SUBJECT	7	
AREA CHECK	317	784
SECURITY CHECK	49	
COMMUNITY POLICING	8	
INFORMATION	99	
FOLLOW UP	62	
TRAFFIC STOP	32	
ACCIDENT	1	
FLAG DOWN	2	
FLAGGED DOWN	4	
BOLO / ATTEMPT TO LOCATE	2	
EXTRA PATROL REQUEST	1	
SERVE PAPERS (WARRANTS, ETC)	18	
CRIMINAL PAPERS	1	
ID CALL	14	
PUBLIC RELATIONS COMMUNICATION	3	
CONVOY/ESCORT	1	
PROJECT LIFESAVER/MAINTENANCE	1	
911 HANG UP CALL ABANDONED	119	
911 ABANDONED CALL	30	

EXHIBIT 1

Coliseum Inn Event	Frequency-	Totals
911 HANG UP CALL NO VOICE	8	
TRANSFERRED CALLER	7	
911 WIRELESS PHONE	3	
ANIMAL CONTROL CALL	2	
		1081

Out of **1081** total calls over a 3-year period, **297** calls (**27%**) were statutorily referenced or consistent with statutorily referenced incidents.

There were **61 incident reports**.

Of the incident reports, there were **12 arrests/criminal cases**, of which **6** are **pending**.

Of the criminal cases, there was **1 person with GUILTY convictions** from charges that occurred at the Motel.

Dustin Charles Taylor Page 16CR059493

Injury to Real Property Disposed 10/3/16 GUILTY

Ethnic Intimidation Disposed 10/3/16 GUILTY

§ 153A-140. Abatement of public health nuisances.

A county shall have authority, subject to the provisions of Article 57 of Chapter 106 of the General Statutes, to remove, abate, or remedy everything that is dangerous or prejudicial to the public health or safety. Pursuant to this section, a board of commissioners may order the removal of a swimming pool and its appurtenances upon a finding that the swimming pool or its appurtenances is dangerous or prejudicial to public health or safety. The expense of the action shall be paid by the person in default, and, if not paid, shall be a lien upon the land or premises where the nuisance arose, and shall be collected as unpaid taxes. The authority granted by this section may only be exercised upon adequate notice, the right to a hearing, and the right to appeal to the General Court of Justice. Nothing in this section shall be deemed to restrict or repeal the authority of any municipality to abate or remedy health nuisances pursuant to G.S. 160A-174, 160A-193, or any other general or local law. This section shall not affect bona fide farms, but any use of farm property for nonfarm purposes is subject to this section. (1981 (Reg. Sess., 1982), c. 1314, s. 1; 2002-116, s. 2.)

Chapter 19.
Offenses Against Public Morals.

Article 1.

Abatement of Nuisances.

§ 19-1. What are nuisances under this Chapter.

(a) The erection, establishment, continuance, maintenance, use, ownership or leasing of any building or place for the purpose of assignation, prostitution, gambling, illegal possession or sale of alcoholic beverages, illegal possession or sale of controlled substances as defined in the North Carolina Controlled Substances Act, or illegal possession or sale of obscene or lewd matter, as defined in this Chapter, shall constitute a nuisance. The activity sought to be abated need not be the sole purpose of the building or place in order for it to constitute a nuisance under this Chapter.

(b) The erection, establishment, continuance, maintenance, use, ownership or leasing of any building or place wherein or whereon are carried on, conducted, or permitted repeated acts which create and constitute a breach of the peace shall constitute a nuisance.

(b1) The erection, establishment, continuance, maintenance, use, ownership or leasing of any building or place wherein or whereon are carried on, conducted, or permitted repeated activities or conditions which violate a local ordinance regulating sexually oriented businesses so as to contribute to adverse secondary impacts shall constitute a nuisance.

(b2) The erection, establishment, continuance, maintenance, use, ownership, or leasing of any building or place for the purpose of carrying on, conducting, or engaging in any activities in violation of G.S. 14-72.7.

(c) The building, place, vehicle, or the ground itself, in or upon which a nuisance as defined in subsection (a), (b), or (b1) of this section is carried on, and the furniture, fixtures, and contents, are also declared a nuisance, and shall be enjoined and abated as hereinafter provided.

(d) No nuisance action under this Article may be brought against a place or business which is subject to regulation under Chapter 18B of the General Statutes when the basis for the action constitutes a violation of laws or regulations under that Chapter pertaining to the possession or sale of alcoholic beverages. (Pub. Loc. 1913, c. 761, s. 25; 1919, c. 288; C.S., s. 3180; 1949, c. 1164; 1967, c. 142; 1971, c. 655; 1977, c. 819, ss. 1, 2; 1981, c. 412, s. 4; c. 747, s. 66; 1998-46, s. 7; 1999-371, s. 1; 2007-178, s. 3; 2013-229, s. 1.)

§ 19-1.1. Definitions.

As used in this Chapter relating to illegal possession or sale of obscene matter or to the other conduct prohibited in G.S. 19-1(a), the following definitions shall apply:

(1) "Breach of the peace" means repeated acts that disturb the public order including, but not limited to, homicide, assault, affray, communicating threats, unlawful possession of dangerous or deadly weapons, and discharging firearms.

(1a) "Knowledge" or "knowledge of such nuisance" means having knowledge of the contents and character of the patently offensive sexual conduct which appears in the lewd matter, or knowledge of the acts of lewdness. With regard to nuisances involving assignation, prostitution, gambling, the illegal possession or sale of alcoholic beverages, the illegal possession or sale of controlled substances as defined in the North Carolina Controlled Substances

Act, or repeated acts which create and constitute a breach of the peace, evidence that the defendant knew or by the exercise of due diligence should have known of the acts or conduct constitutes proof of knowledge.

- (2) "Lewd matter" is synonymous with "obscene matter" and means any matter:
 - a. Which the average person, applying contemporary community standards, would find, when considered as a whole, appeals to the prurient interest; and
 - b. Which depicts patently offensive representations of:
 - 1. Ultimate sexual acts, normal or perverted, actual or simulated;
 - 2. Masturbation, excretory functions, or lewd exhibition of the genitals or genital area;
 - 3. Masochism or sadism; or
 - 4. Sexual acts with a child or animal.

Nothing herein contained is intended to include or proscribe any writing or written material, nor to include or proscribe any matter which, when considered as a whole, and in the context in which it is used, possesses serious literary, artistic, political, educational, or scientific value.

- (3) "Lewdness" is synonymous with obscenity and shall mean the act of selling, exhibiting or possessing for sale or exhibition lewd matter.
- (4) "Matter" means a motion picture film or a publication or both.
- (5) "Motion picture film" shall include any:
 - a. Film or plate negative;
 - b. Film or plate positive;
 - c. Film designed to be projected on a screen for exhibition;
 - d. Films, glass slides or transparencies, either in negative or positive form, designed for exhibition by projection on a screen;
 - e. Video tape, compact disc, digital video disc, or any other medium used to electronically reproduce images on a screen.
- (6) "Person" means any individual, partnership, firm, association, corporation, or other legal entity.
- (7) "Place" includes, but is not limited to, any building, structure or places, or any separate part or portion thereof, whether permanent or not, or the ground itself.
- (7a) "Preserving the status quo" as used in G.S. 19-2.3 means returning conditions to the last actual, peaceable, lawful, and noncontested status which preceded the pending controversy and not allow the nuisance to continue.
- (7b) "Prostitution" means offering in any manner or receiving of the body in return for a fee, for acts of vaginal intercourse, anal intercourse, fellatio, cunnilingus, masturbation, or physical contact with a person's genitals, pubic area, buttocks, or breasts, or other acts of sexual conduct offered or received for pay and sexual gratification.
- (8) "Publication" shall include any book, magazine, pamphlet, illustration, photograph, picture, sound recording, or a motion picture film which is offered for sale or exhibited in a coin-operated machine.
- (9) "Sale of obscene or lewd matter" means a passing of title or right of possession from a seller to a buyer for valuable consideration, and shall

include, but is not limited to, any lease or rental arrangement or other transaction wherein or whereby any valuable consideration is received for the use of, or transfer or possession of, lewd matter.

- (10) "Sale" as the term relates to proscribed acts other than sale of obscene or lewd matter shall have the same meaning as the term is defined in Chapter 18B and Chapter 90 of the General Statutes prohibiting the illegal sale of alcoholic beverages and controlled substances respectively.
- (11) "Used for profit" shall mean any use of real or personal property to produce income in any manner, including, but not limited to, any commercial or business activities, or selling, leasing, or otherwise providing goods and services for profit. (1977, c. 819, s. 3; 1981, c. 412, s. 4; c. 747, s. 66; 1999-371, s. 2.)

§ 19-1.2. Types of nuisances.

The following are declared to be nuisances wherein obscene or lewd matter or other conduct prohibited in G.S. 19-1(a) is involved:

- (1) Any and every place in the State where lewd films are publicly exhibited as a predominant and regular course of business, or possessed for the purpose of such exhibition;
- (2) Any and every place in the State where a lewd film is publicly and repeatedly exhibited, or possessed for the purpose of such exhibition;
- (3) Any and every lewd film which is publicly exhibited, or possessed for such purpose at a place which is a nuisance under this Article;
- (4) Any and every place of business in the State in which lewd publications constitute a principal or substantial part of the stock in trade;
- (5) Any and every lewd publication possessed at a place which is a nuisance under this Article;
- (6) Every place which, as a regular course of business, is used for the purposes of lewdness, assignation, gambling, the illegal possession or sale of alcoholic beverages, the illegal possession or sale of controlled substances as defined in the North Carolina Controlled Substances Act, or prostitution, and every such place in or upon which acts of lewdness, assignation, gambling, the illegal possession or sale of alcoholic beverages, the illegal possession or sale of controlled substances as defined in the North Carolina Controlled Substances Act, or prostitution, are held or occur. (1977, c. 819, s. 3; 1981, c. 412, s. 4; c. 747, s. 66; 1999-371, s. 3.)

§ 19-1.3. Personal property as a nuisance; knowledge of nuisance.

The following are also declared to be nuisances, as personal property used in conducting and maintaining a nuisance under this Chapter:

- (1) All moneys paid as admission price to the exhibition of any lewd film found to be a nuisance;
- (2) All valuable consideration received for the sale of any lewd publication which is found to be a nuisance;
- (3) All money or other valuable consideration, vehicles, conveyances, or other property received or used in gambling, prostitution, the illegal sale of

alcoholic beverages or the illegal sale of substances proscribed under the North Carolina Controlled Substances Act, as well as the furniture and movable contents of a place used in connection with such prohibited conduct.

From and after service of a copy of the notice of hearing of the application for a preliminary injunction, provided for in G.S. 19-2.4 upon the place, or its manager, or acting manager, or person then in charge, all such parties are deemed to have knowledge of the contents of the restraining order and the use of the place occurring thereafter. Where the circumstantial proof warrants a determination that a person had knowledge of the nuisance prior to such service of process, the court may make such finding. (1977, c. 819, s. 3; 1981, c. 412, s. 4; c. 747, s. 66; 1999-371, s. 4.)

§ 19-1.4. Liability of successive owners for continuing nuisance.

After notice of a temporary restraining order, preliminary injunction, or permanent injunction, every successive owner of property who neglects to abate a continuing nuisance upon, or in the use of such property, created by a former owner, is liable therefor in the same manner as the one who first created it. (1977, c. 819, s. 3.)

§ 19-1.5. Abatement does not preclude action.

The abatement of a nuisance does not prejudice the right of any person to recover damages for its past existence. (1977, c. 819, s. 3.)

§ 19-2. Repealed by Session Laws 1977, c. 819, s. 4.

§ 19-2.1. Action for abatement; injunction.

Wherever a nuisance is kept, maintained, or exists, as defined in this Article, the Attorney General, district attorney, county, municipality, or any private citizen of the county may maintain a civil action in the name of the State of North Carolina to abate a nuisance under this Chapter, perpetually to enjoin all persons from maintaining the same, and to enjoin the use of any structure or thing adjudged to be a nuisance under this Chapter; provided, however, that no private citizen may maintain such action where the alleged nuisance involves the illegal possession or sale of obscene or lewd matter.

Upon request from the Attorney General, district attorney, county or municipality, including the sheriff or chief of police of any county or municipality, the Alcohol Law Enforcement Branch of the Department of Public Safety or any other law enforcement agency with jurisdiction may investigate alleged public nuisances and make recommendations regarding actions to abate the public nuisances.

If an action is instituted by a private person, the complainant shall execute a bond prior to the issuance of a restraining order or a temporary injunction, with good and sufficient surety to be approved by the court or clerk thereof, in the sum of not less than one thousand dollars (\$1,000), to secure to the party enjoined the damages he may sustain if such action is wrongfully brought, not prosecuted to final judgment, or is dismissed, or is not maintained, or if it is finally decided that the temporary restraining order or preliminary injunction ought not to have been granted. The party enjoined shall have recourse against said bond for all damages suffered, including damages to his property, person, or character and including reasonable attorney's fees incurred by him in making defense to said action. No bond shall be required of the prosecuting attorney, the Attorney General, county, or municipality, and no action shall be maintained against any

public official or public entity, their employees, or agents for investigating or maintaining an action for abatement of a nuisance under the provisions of this Chapter. (1977, c. 819, s. 4; 1995, c. 528, s. 1; 1999-371, s. 5; 2011-145, s. 19.1(g), (n); 2014-100, s. 17.1(xxx).)

§ 19-2.2. Pleadings; jurisdiction; venue; application for preliminary injunction.

The action, provided for in this Chapter, shall be brought in the superior court of the county in which the property is located. Such action shall be commenced by the filing of a verified complaint alleging the facts constituting the nuisance. After the filing of said complaint, application for a preliminary injunction may be made to the court in which the action is filed which court shall grant a hearing within 10 days after the filing of said application. (1977, c. 819, s. 4.)

§ 19-2.3. Temporary order restraining removal of personal property from premises; service; punishment.

Where such application for a preliminary injunction is made, the court may, on application of the complainant showing good cause, issue an ex parte temporary restraining order in accordance with G.S. 1A-1, Rule 65(b), preserving the status quo and restraining the defendant and all other persons from removing or in any manner interfering with any evidence specifically described, or in any manner removing or interfering with the personal property and contents of the place where such nuisance is alleged to exist, until the decision of the court granting or refusing such preliminary injunction and until further order of the court thereon. Nothing herein shall be interpreted to allow the prior restraint of the distribution of any matter or the sale of the stock in trade, but an inventory and full accounting of all business transactions involving alleged obscene or lewd matter thereafter shall be required. The inventory provisions provided by this section shall not apply to nuisances occurring at a private dwelling place unless the court finds the private dwelling place is used for profit.

Any person, firm, or corporation enjoined pursuant to this section may file with the court a motion to dissolve any temporary restraining order. Such a motion shall be heard within 24 hours of the time a copy of the motion is served on the complaining party, or on the next day the superior courts are open in the district, whichever is later. At such hearing the complaining party shall have the burden of showing why the restraining order should be continued.

In the event a temporary restraining order is issued, it may be served in accordance with the provisions of G.S. 1A-1, Rule 4, or may be served by handing to and leaving a copy of such order with any person in charge of such place or residing therein, or by posting a copy thereof in a conspicuous place at or upon one or more of the principal doors or entrances to such place, or by such service under said Rule 4, delivery and posting. The officer serving such temporary restraining order shall forthwith enter upon the property and make and return into court an inventory of the personal property and contents situated in and used in conducting or maintaining such nuisance.

Any violation of such temporary restraining order is a contempt of court, and where such order is posted, mutilation or removal thereof, while the same remains in force, is a contempt of court, provided such posted order contains therein a notice to that effect. (1977, c. 819, s. 4; 1999-371, s. 6.)

§ 19-2.4. Notice of hearing on preliminary injunction; consolidation.

A copy of the complaint, together with a notice of the time and place of the hearing of the application for a preliminary injunction, shall be served upon the defendant at least five days before such hearing. The place may also be served by posting such papers in the same manner as is provided for in G.S. 19-2.3 in the case of a temporary restraining order. If the hearing is then continued at the instance of any defendant, the temporary restraining order may be continued as a matter of course until the hearing.

Before or after the commencement of the hearing of an application for a preliminary injunction, the court, on application of either of the parties or on its own motion, may order the trial of the action on the merits to be advanced and consolidated with the hearing on the application for the preliminary injunction; provided, however, the defendant shall be entitled to a jury trial if requested. (1977, c. 819, s. 4.)

§ 19-2.5. Hearing on the preliminary injunction; issuance.

If upon hearing, the allegations of the complaint are sustained to the satisfaction of the court, the court shall issue a preliminary injunction restraining the defendant and any other person from continuing the nuisance and effectually enjoining its use thereafter for the purpose of conducting any such nuisance. The court may, in its discretion, order the closure of the property pending trial on the merits. (1977, c. 819, s. 4; 1999-371, s. 7.)

§ 19-3. Priority of action; evidence.

(a) The action provided for in this Chapter shall be set down for trial at the first term of the court and shall have precedence over all other cases except crimes, election contests, or injunctions.

(b) In such action, an admission or finding of guilt of any person under the criminal laws against lewdness, assignation, prostitution, gambling, breaches of the peace, the illegal possession or sale of alcoholic beverages, or the illegal possession or sale of substances proscribed by the North Carolina Controlled Substances Act, at any such place, is admissible for the purpose of proving the existence of said nuisance, and is evidence of such nuisance and of knowledge of, and of acquiescence and participation therein, on the part of the person charged with maintaining said nuisance.

(c) At all hearings upon the merits, evidence of the general reputation of the building or place constituting the alleged nuisance, of the inmates thereof, and of those resorting thereto, is admissible for the purpose of proving the existence of such nuisance. (Pub. Loc. 1913, c. 761, s. 27; 1919, c. 288; C.S., s. 3182; 1971, c. 528, s. 6; 1973, c. 47, s. 2; 1977, c. 819, s. 5; 1981, c. 412, s. 4; c. 747, s. 66; 1999-371, s. 8.)

§ 19-4. Violation of injunction; punishment.

In case of the violation of any injunction granted under the provisions of this Chapter, the court, or, in vacation, a judge thereof, may summarily try and punish the offender. A party found guilty of contempt under the provisions of this section shall be punished by a fine of not less than two hundred (\$200.00) or more than one thousand dollars (\$1,000), or by imprisonment in the county jail not less than three or more than six months, or by both fine and imprisonment. (Pub. Loc. 1913, c. 761, s. 28; 1919, c. 288; C.S., s. 3183.)

§ 19-5. Content of final judgment and order.

If the existence of a nuisance is admitted or established in an action as provided for in this Chapter an order of abatement shall be entered as a part of the judgment in the case, which judgment and order shall perpetually enjoin the defendant and any other person from further maintaining the nuisance at the place complained of, and the defendant from maintaining such nuisance elsewhere within the jurisdiction of this State. Lewd matter, illegal alcoholic beverages, gambling paraphernalia, or substances proscribed under the North Carolina Controlled Substances Act shall be destroyed and not be sold.

Such order may also require the effectual closing of the place against its use thereafter for the purpose of conducting any such nuisance.

The provisions of this Article, relating to the closing of a place with respect to obscene or lewd matter, shall not apply in any order of the court to any theatre or motion picture establishment which does not, in the regular, predominant, and ordinary course of its business, show or demonstrate lewd films or motion pictures, as defined in this Article, but any such establishment may be permanently enjoined from showing such film judicially determined to be obscene hereunder and such film or motion picture shall be destroyed and all proceeds and moneys received therefrom, after the issuance of a preliminary injunction, forfeited. (Pub. Loc. 1913, c. 761, s. 29; 1919, c. 288; C.S., s. 3184; 1977, c. 819, s. 6; 1981, c. 412, s. 4; c. 747, s. 66.)

§ 19-6. Civil penalty; forfeiture; accounting; lien as to expenses of abatement; invalidation of lease.

Lewd matter is contraband, and there are no property rights therein. All personal property, including all money and other considerations, declared to be a nuisance under the provisions of G.S. 19-1.3 and other sections of this Article, are subject to forfeiture to the local government and are recoverable as damages in the county wherein such matter is sold, exhibited or otherwise used. Such property including moneys may be traced to and shall be recoverable from persons who, under G.S. 19-2.4, have knowledge of the nuisance at the time such moneys are received by them.

Upon judgment against the defendant or defendants in legal proceedings brought pursuant to this Article, an accounting shall be made by such defendant or defendants of all moneys received by them which have been declared to be a nuisance under this Article. An amount equal to the sum of all moneys estimated to have been taken in as gross income from such unlawful commercial activity shall be forfeited to the general funds of the city and county governments wherein such activity took place, to be shared equally, as a forfeiture of the fruits of an unlawful enterprise, and as partial restitution for damages done to the public welfare; provided, however, that no provision of this Article shall authorize the recovery of any moneys or gross income received from the sale of any book, magazine, or exhibition of any motion picture prior to the issuance of a preliminary injunction. Where the action is brought pursuant to this Article, special injury need not be proven, and the costs of abatement are a lien on both the real and personal property used in maintaining the nuisance. Costs of abatement include, but are not limited to, reasonable attorney's fees and court costs.

Upon the filing of the action, the plaintiff may file a notice of lis pendens in the official records of the county where the property is located.

If it is judicially found after an adversary hearing pursuant to this Article that a tenant or occupant of a building or tenement, under a lawful title, uses such place for the purposes of lewdness, assignation, prostitution, gambling, sale or possession of illegal alcoholic beverages or

substances proscribed under the North Carolina Controlled Substances Act, or repeated acts which create and constitute a breach of the peace, such use makes void the lease or other title under which he holds, at the option of the owner, and, without any act of the owner, causes the right of possession to revert and vest in such owner.

The clear proceeds of civil penalties and forfeitures provided for in this section, except for penalties and properties that accrue to local governments instead of the State, shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. (Pub. Loc. 1913, c. 761, s. 30; 1919, c. 288; C.S., s. 3185; 1977, c. 819, s. 7; 1981, c. 412, s. 4; c. 747, s. 66; 1998-215, s. 106; 1999-371, s. 9.)

§ 19-6.1. Forfeiture of real property.

In all actions where a preliminary injunction, permanent injunction, or an order of abatement is issued pursuant to this Article in which the nuisance consists of or includes at least two prior occurrences within five years of the manufacture, possession with intent to sell, or sale of controlled substances as defined by the North Carolina Controlled Substances Act, two prior occurrences of the possession of any controlled substance included within Schedule I or II of that Act, or two prior convictions within five years of violation of G.S. 14-72.7, the real property on which the nuisance exists or is maintained is subject to forfeiture in accordance with this section. In the case of the two prior convictions of G.S. 14-72.7, the convictions shall not arise out of the same transaction or occurrence.

If all of the owners of the property are defendants in the action, the plaintiff, other than a plaintiff who is a private citizen, may request forfeiture of the real property as part of the relief sought. If forfeiture is requested, and if jurisdiction over all defendant owners is established, upon judgment against the defendant or defendants, the court shall order forfeiture as follows:

- (1) If the court finds by clear and convincing evidence that all the owners either (i) have participated in maintaining the nuisance on the property, or (ii) prior to the action had written notice from the plaintiff, or any governmental agent or entity authorized to bring an action pursuant to this Chapter, that the nuisance existed or was maintained on the property and have not made good faith efforts to stop the nuisance from occurring or recurring, the court shall order that the property be forfeited;
- (2) If the court finds that one or more of the owners did not participate in maintaining the nuisance on the property or did not have written notice from the plaintiff prior to the action that the nuisance existed or was maintained on the property, the court shall not order forfeiture of the property immediately upon judgment. However, if after judgment and an order directing the defendants to abate the nuisance, the nuisance either continues, begins again, or otherwise recurs within five years of the order and the defendants have not made good faith efforts to abate the nuisance, the plaintiff may petition the court for forfeiture. Upon such petition, the defendant owner or owners shall be given notice and an opportunity to appear and be heard at a hearing to determine the continuation or recurrence of the nuisance. If, in this hearing (i) the plaintiff establishes by clear and convincing evidence that the nuisance, with the owner's or owners' knowledge, has either continued, begun again, or otherwise recurred, and (ii) the defendants fail to establish that they have

made and are continuing to make good faith efforts to abate the nuisance, the court shall order that the property be forfeited.

For the purposes of this section, factors which may evidence good faith by the defendant to abate the nuisance include but are not limited to (i) cooperation with law enforcement authorities to abate the nuisance; (ii) lease restrictions prohibiting the illegal possession or sale of narcotic drugs and an action to evict a tenant for any violations of the lease provision; (iii) a criminal record check of prospective tenants; and (iv) reference checks of prior residency of prospective tenants.

Upon an order of forfeiture, title to the property shall vest in the school board of the county in which the property is located. If at the time of forfeiture the property is subject to a lien or security interest of a person not participating in the maintenance of the nuisance, the school board shall either (i) pay an amount to that person satisfying the lien or security interest; or (ii) sell the property and satisfy the lien or security interest from the proceeds of the sale. If the property is not subject to any lien or security interest at the time of forfeiture, the school board may hold, maintain, lease, sell, or otherwise dispose of the property as it sees fit.

Upon the filing of the action, the plaintiff may file a notice of lis pendens in the official records of the county where the property is located. If the plaintiff files a notice of lis pendens, any person purchasing or obtaining an interest in the property thereafter shall be considered to have notice of the alleged nuisance, and shall forfeit his interest in the property upon a judgment of forfeiture in favor of the plaintiff.

If in the same action in which real property is forfeited the court finds that a tenant or occupant of the property participated in or maintained the nuisance, the lease or other title under which the tenant or occupant holds is void, and the right of possession vests in the new owner. Upon forfeiture, the rights of innocent tenants occupying separate units of the property who were not involved in the nuisance at the time the action was filed shall be in accordance with any relevant lease provisions in effect at the time or, in the absence of relevant lease provisions, in accordance with the law applying to other tenants or occupants of property that is sold, foreclosed upon, or otherwise obtained by new owners. (1995, c. 528, s. 2; 1999-371, s. 10; 2007-178, s. 4.)

§ 19-7. How order of abatement may be canceled.

If the owner appears and pays all cost of the proceeding and files a bond, with sureties to be approved by the clerk, in the full value of the property, to be ascertained by the court, or, in vacation, by the clerk of the superior court, conditioned that he will immediately abate said nuisance, and prevent the same from being established or kept within a period of one year thereafter, the court may, if satisfied of his good faith, order the premises closed under the order of abatement to be delivered to said owner, and said order of abatement canceled so far as same may relate to said property; and if the proceeding be a civil action, and said bond be given and costs therein paid before judgment and order of abatement, the action shall be thereby abated as to said building only. The release of the property under the provisions of this section shall not release it from any judgment, lien, penalty, or liability to which it may be subject by law. (Pub. Loc. 1913, c. 761, s. 31; 1919, c. 288; C.S., s. 3186.)

§ 19-8. Costs.

The prevailing party shall be entitled to his costs. The court shall tax as part of the costs in any action brought hereunder such fee for the attorney prosecuting or defending the action or

proceedings as may in the court's discretion be reasonable remuneration for the services performed by such attorney. (Pub. Loc. 1913, c. 761, s. 32; 1919, c. 288; C.S., s. 3187; 1977, c. 819, s. 8.)

§ 19-8.1. Immunity.

The provisions of any criminal statutes with respect to the exhibition of, or the possession with the intent to exhibit, any obscene film shall not apply to a motion picture projectionist, usher, or ticket taker acting within the scope of his employment, provided that such projectionist, usher, or ticket taker: (i) Has no financial interest in the place wherein he is so employed, and (ii) freely and willingly gives testimony regarding such employment in any judicial proceedings brought under this Chapter, including pretrial discovery proceedings incident thereto, when and if such is requested, and upon being granted immunity by the trial judge sitting in such matters. (1977, c. 819, s. 9.)

§ 19-8.2. Right of entry.

Authorized representatives of the Commission for Public Health, any local health department or the Department of Health and Human Services, upon presenting appropriate credentials to the owner, operator, or agent in charge of a place described in G.S. 19-1.2, are authorized to enter without delay and at any reasonable time any such place in order to inspect and investigate during the regular hours of operation of such place. (1977, c. 819, s. 9; 1997-443, s. 11A.118(a); 2007-182, s. 2.)

§ 19-8.3. Severability.

If any section, subsection, sentence, or clause of this Article is adjudged to be unconstitutional or invalid, such adjudication shall not affect the validity of the remaining portion of this Article. It is hereby declared that this Article would have been passed, and each section, sentence, or clause thereof, irrespective of the fact that any one or more sections, subsections, sentences or clauses might be adjudged to be unconstitutional, or for any other reason invalid. (1977, c. 819, s. 10.)

AMY H. CANNON
County Manager

MELISSA C. CARDINALI
Assistant County Manager



ITEM NO. 3

DUANE T. HOLDER
Assistant County Manager

TRACY JACKSON
Assistant County Manager

SALLY S. SHUTT
Assistant County Manager



OFFICE OF THE COUNTY MANAGER

MEMO FOR THE AGENDA OF THE MARCH 1, 2018 REGULAR MEETING OF THE POLICY COMMITTEE

TO: POLICY COMMITTEE MEMBERS
FROM: SALLY SHUTT, ASSISTANT COUNTY MANAGER
THROUGH: AMY CANNON, COUNTY MANAGER
DATE: SEPTEMBER 22, 2018
SUBJECT: PUBLIC INFORMATION & GOVERNMENTAL AFFAIRS
MONTHLY UPDATE

Requested by: Amy Cannon
Presenter(s): Sally Shutt
Estimate of Committee Time Needed: 10 minutes

BACKGROUND: Each month the Policy Committee will receive an update regarding County communications projects and governmental affairs topics. The March update looks at analytics for the redesigned County website; reports from three intergovernmental committees and legislative topics.

Website Analytics

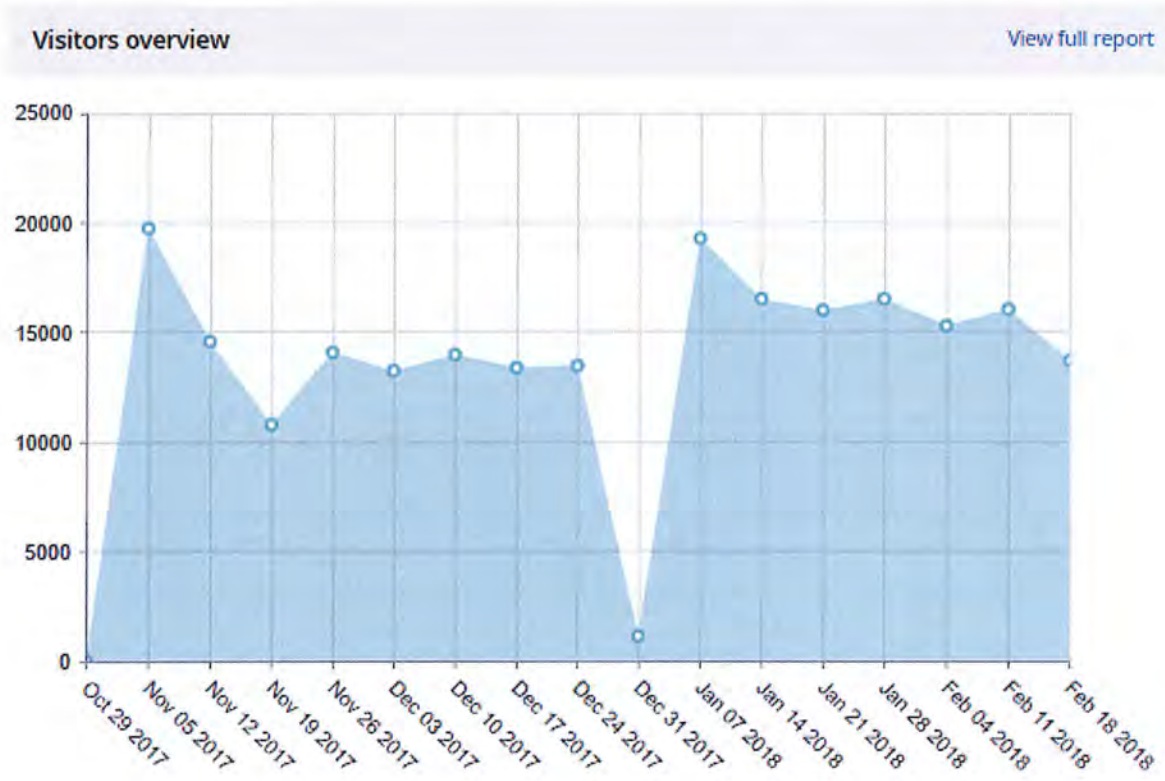
The County launched its redesigned website on Nov. 2, 2017. Since then, there have been 242,864 visits, with users visiting 2.4 pages and spending an average of 2 minutes per visit. More than 50 percent of the visits are "new visits."

Site usage

Visits	Pages / Visit	Average Time on Site	% New Visits
242864	2.44	00:02:16	57.54 %

The six most popular pages are the homepage, Tax Administration homepage, GIS, Tax Administration bill payment options, and Public Health.

The chart below shows weekly visits. The two weeks with the highest traffic coincide with the website municipal elections (19,709) and the property tax deadline for payments and listings (January: 19,234).



Intergovernmental Reports

- *Homeless Committee*

An interlocal agreement between the City of Fayetteville and Cumberland County directed the establishment of a Homeless Committee. The purpose and positions were designated in the interlocal agreement approved by the City on June 26, 2017, and the County on Oct. 16, 2017.

(3) A Homeless Committee consisting of a member of City Council, a member of the County Commissioners, an Assistant County Manager, Governmental Affairs Officer, Deputy City Manager, Chairman of the Cumberland County Continuum of Care (CoC), City and County Community Development Directors, and the Data & Evaluation Analyst will meet regularly to coordinate and develop strategies to address homelessness through community-wide programs and services.

Chairman Larry Lancaster and Councilmember Larry Wright will represent the elected boards on the committee. The first meeting is being scheduled for early March.

- *Fayetteville Cumberland Liaison Committee*

The Fayetteville Cumberland Liaison Committee met Jan. 31 at City Hall. The City is the host for the meetings year. Representatives Billy Richardson and Marvin Lucas; Cumberland County Schools Chairman Carrie Sutton and Deputy Garrison Commander Justin Mitchell attended.

The committee directed City and County staff to study a potential City of Fayetteville Extra-Territorial Jurisdiction agreement for the Shaw Heights area authorized by Cumberland County that would give the City authority to regulate development. A report is expected at the next liaison meeting.

- *Mayor's Coalition*

Robert Van Geons and Teddy Warner from the Fayetteville Cumberland County Economic Development Corporation presented information on the corporation and its activities in the county and the need for "products" – buildings or sites that meet the operational requirements of companies. The FCEDC is seeking help from the mayors in finding property owners in the county who have sites, especially tracts of more than 250 acres.

In addition, Falcon Mayor Clifton Turpin, the Coalition Chairman, has asked the County's Graphic Design Information Specialist to assist in creating a logo for the group.

- *Legislative Topics*

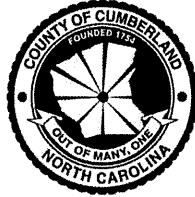
NACo Conference: Appointments are being scheduled during the NACO conference on March 3-7 for commissioners to meet with Representatives Hudson and Pittenger and staff for Senators Tillis and Burr to talk about funding for water lines in the areas affected by GenX contamination.

Agritourism Information: During the public comment portion of the Board of Commissioners meeting on Feb. 19, a citizen expressed concern about a proposed ATV park near Linden. Planning Director Tom Lloyd explained that a permit was not needed for the project because it is considered agritourism.

The attached information from the County Attorney is provided as background should commissioners have questions for the state delegation on March 9 when the board hosts the state legislative delegation.

RECOMMENDATION/PROPOSED ACTION: For information purposes only.

RICKEY L. MOOREFIELD
County Attorney



PHYLLIS P. JONES
Assistant County Attorney

ROBERT A. HASTY, JR.
Assistant County Attorney

OFFICE OF THE COUNTY ATTORNEY

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**MEMO FOR THE AGENDA OF THE MARCH 1, 2018,
MEETING OF THE POLICY COMMITTEE**

TO: Sally Shutt
FROM: County Attorney *R. Moorefield*
DATE: February 22, 2018
SUBJECT: Zoning Issues Arising from Statutory Definition of Agritourism

Requested by Sally Shutt for Information Only

BACKGROUND:

G.S. § 153A-340 is the enabling statute for a county's zoning powers. The enabling statute has always exempted property that was used for bona fide farm purposes from zoning regulation. The statute was amended by S.L. 2017-108 to also exempt buildings or structures that are used for agritourism and defines "agritourism." That session law is attached. The definition is so broad as to include, "to view or enjoy rural activities." The broadness of that definition is further demonstrated by the description of buildings that can be used for agritourism, which is, "A building or structure used for agritourism includes any building or structure used for public or private events . . ." It goes on to identify events such as weddings, receptions, meetings, demonstrations of farm activities, meals, and other events that are taking place on the farm because of its farm or rural setting.

The zoning issue that arises from this definition of "agritourism" is that it is now difficult to identify any activity occurring on, or any use of, land that qualifies as a bona fide farm that would not be agritourism. Any activity done on rural land can be for viewing or enjoying rural activities and any human activity occurring in a building or structure can be characterized as a public or private event.

RECOMMENDATION/PROPOSED ACTION:

No action is requested.

CLARIFY ACTIVITIES INCIDENT TO THE FARM AND AGRITOURISM

SECTION 8.(a) G.S. 153A-340(b), as amended by Section 9 of this act, reads as rewritten:

"§ 153A-340. Grant of power.

...

(b)

Except as provided in G.S. 106-743.4 for farms that are subject to a conservation agreement under G.S. 106-743.2, bona fide farm purposes include the production and activities relating or incidental to the production of crops, grains, fruits, vegetables, ornamental and flowering plants, dairy, livestock, poultry, and all other forms of agriculture, as defined in G.S. 106-581.1. Activities incident to the farm include existing or new residences constructed to the applicable residential building code situated on the farm occupied by the owner, lessee, or operator of the farm and other buildings or structures sheltering or supporting the farm use and operation. For purposes of this subdivision, "when performed on the farm" in G.S. 106-581.1(6) shall include the farm within the jurisdiction of the county and any other farm owned or leased to or from others by the bona fide farm operator, no matter where located. For purposes of this subdivision, the production of a nonfarm product that the Department of Agriculture and Consumer Services recognizes as a "Goodness Grows in North Carolina" product that is produced on a farm subject to a conservation agreement under G.S. 106-743.2 is a bona fide farm purpose. For purposes of determining whether a property is being used for bona fide farm purposes, any of the following shall constitute sufficient evidence that the property is being used for bona fide farm purposes:

- a. A farm sales tax exemption certificate issued by the Department of Revenue.
- b. A copy of the property tax listing showing that the property is eligible for participation in the present use value program pursuant to G.S. 105-277.3.
- c. A copy of the farm owner's or operator's Schedule F from the owner's or operator's most recent federal income tax return.
- d. A forest management plan.
- e. ~~A Farm Identification Number issued by the United States Department of Agriculture Farm Service Agency.~~

- (2a) A building or structure that is used for agritourism is a bona fide farm purpose if the building or structure is located on a property that (i) is owned by a person who holds a qualifying farmer sales tax exemption certificate from the Department of Revenue pursuant to G.S. 105-164.13E(a) or (ii) is enrolled in the present-use value program pursuant to G.S. 105-277.3. Failure to maintain the requirements of this subsection for a period of three years after the date the building or structure was originally classified as a bona fide purpose pursuant to this subdivision shall subject the building or structure to applicable zoning and development regulation ordinances adopted by a county pursuant to subsection (a) of this section in effect on the date the property no longer meets the requirements of this subsection. For purposes of this section, "agritourism" means any activity carried out on a farm or ranch that allows members of the general public, for recreational, entertainment, or educational purposes, to view or enjoy rural activities, including farming, ranching, historic, cultural, harvest-your-own activities, or natural activities and attractions. A building or structure used for agritourism includes any building or structure used for public or private events, including, but not limited to, weddings, receptions,

meetings, demonstrations of farm activities, meals, and other events that are taking place on the farm because of its farm or rural setting.