

1. Agenda Packet

Documents:

[FEBRUARY 20, 2018 AGENDA PACKET.PDF](#)

2. Meeting Materials



Photos will be [POSTED ON FLICKR](#).

Documents:

[AFTER ACTION MEMORANDUM.PDF](#)

AGENDA



**CITY OF LENOIR
CITY COUNCIL MEETING
CITY/COUNTY CHAMBERS
905 WEST AVENUE
TUESDAY, FEBRUARY 20, 2018
6:00 P.M.**



I. CALL TO ORDER

- A. Moment of Silence & Pledge of Allegiance
- B. Special Recognition; Boy Scout Troop #254: Mayor Gibbons will recognize Amy Green and members of the Boy Scout Troop #254 who will be in attendance at the meeting.
- C. Presentation; The Jarheads, Envirothon Team: The Jarheads, Envirothon Team, which consists of five students from Caldwell Early College, will present their Service Learning Project to City Council. The project is geared toward Tuttle Educational State Forest. Envirothon is an Environmental Knowledge Competition and this team competes under the 4-H umbrella since the Early College does not recognize this program. They won the state competition in 2017.

II. MATTERS SCHEDULED FOR PUBLIC HEARINGS

- A. Amendment; Non-Conforming Single Family Structures: A public hearing will be held to consider amending the City's Code of Ordinances, Appendix A, Section 704.1, of the Lenoir Zoning Ordinance as related to Non-Conforming Single Family Structures. City Staff recommends approval of the submitted ordinance.

III. CONSENT AGENDA ITEMS

- A. Minutes: Approval of the minutes of the City Council Meeting of Tuesday, February 6, 2018 as submitted.
- B. Speed Limit Request; Fairlane Drive: City Staff recommends that Council call for a public hearing to be held on Tuesday, March 6, 2018 to consider adoption of a 20 MPH speed limit for the entire length of Fairlane Drive, allowing for posting at the discretion of the Public Works Director. **Note:** The City's Code of Ordinances, Appendix A, Traffic, Section 114, Twenty mile per hour speed limit on the following streets, will be amended to reflect this change.

IV. REQUESTS AND PETITIONS OF CITIZENS

V. REPORTS OF BOARDS AND COMMISSIONS

VI. REPORT AND RECOMMENDATIONS OF THE CITY MANAGER

- A. Items of Information

1. City Council will conduct a Strategic Planning Retreat on Friday, February 23 from 8:30 a.m. – 2:00 p.m. at the Blue Ridge Energy Membership Corporation (BREMCO) corporate office located at 1216 Blowing Rock Boulevard.
2. The Planning Board will meet on Monday, February 26 at 5:30 p.m.
3. The Committee of the Whole will meet on Tuesday, February 27 at 8:30 a.m. at City Hall, Third Floor, former Council Chambers.
4. The Foothills Regional Airport Authority will meet on Wednesday, February 28 at noon.
5. A joint reception honoring Charles Beck, Director of Public Works, and Ken Briscoe, Fire Chief, will be held on Tuesday, March 6 from 3:30 p.m. – 5:30 p.m. at the City/County Chambers located at 905 West Avenue, Lower Level.

B. Items for Council Action

1. Skate Park Ordinance Amendment: City Staff recommends Council approve amending the City's Code of Ordinances, Chapter 13, Section 13-18, Skate Park, to read as follows: It shall be unlawful within the corporate limits of the City of Lenoir for any person riding a skateboard or similar device at or within any municipal skate park or facility unless such person is wearing appropriate protective gear including a helmet, elbow pads, and kneepads. **Appropriate signs notifying the public of this section and requirement shall be posted appropriately at the entrance(s) to such skateboard park.** Amendment is in bold. **Note:** The purpose of the proposed amendment is to allow citizens to use the City's Skate Park at their own risk and without supervision by City Staff.

VII. REPORT AND RECOMMENDATIONS OF THE CITY ATTORNEY

VIII. REPORT AND RECOMMENDATIONS OF THE MAYOR

- A. Notification of Board Appointments/Reappointments: Mayor Gibbons will announce the following upcoming Board Appointments and/or Re-appointments for consideration of approval at the March 20, 2018 City Council Meeting.

Planning Board – Tim Scobie

Lenoir Tourism Development Authority – Dana Clark and Glenda Wilson

Lenoir Business Advisory Board – Terese Almquist

Recreation Advisory Board – Scott Barnett and Erik Rabinowitz

IX. REPORT AND RECOMMENDATIONS OF COUNCILMEMBERS

- A. Closed Session: Pursuant to N.C.G.S. §143-318.11(a), (4), (5), City Council will enter into closed session to discuss economic development and a property acquisition.

X. ADJOURNMENT

**CITY OF LENOIR
COUNCIL ACTION FORM: February 20, 2018**

I. Agenda Item:

Approval of an ordinance amending the Lenoir Zoning Ordinance related to non-conforming single family structures.

II. Background Information:

See the attached memo to City Manager Scott Hildebran for additional information/justification for the proposed changes. The attached ordinance will allow for the “by right” of reconstruction and/or repair of non-conforming single family homes that are damaged beyond 50% of their tax value within their existing non-conforming footprints.

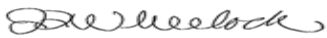
III. Staff and Planning Board Recommendation:

Adoption of the attached ordinance.

IV. Reviewed by:

City Attorney: _____

Finance Director: _____

Planning Director:  _____

PLANNING DEPARTMENT MEMORANDUM

CITY OF LENOIR, 801 WEST AVENUE, LENOIR, NC 28645

TO: Scott Hildebran, City Manager
FROM: Jenny Wheelock, AICP, Planning Director
DATE: January 12, 2018
SUBJECT: Proposed Ordinance Amendments Relating To Non-Conforming Single Family Homes
CC: Planning Board
Ed Blair, City Attorney

As you're aware, for the past several years the Planning Department has been strategically targeting vacant, substandard, and dilapidated housing throughout the residential neighborhoods in Lenoir. Many of these homes are located in areas that were developed prior to the adoption of the Lenoir Zoning Ordinance, which wasn't adopted in its current form until 1978. Because much of Lenoir's residential areas were platted and developed prior the adoption of the zoning code, lots and development patterns in our older neighborhoods are often non-conforming to the district standards in place today for minimum lot sizes and minimum building setbacks.

One of the major community development goals of the Planning Department is to limit the number of "tear downs" due to code enforcement and/or demolition by neglect, by intervening sooner when a property becomes damaged or distressed, and by working with community partners and using non-traditional tools (like tax foreclosure) to put houses back into the hands of private owners that can maintain them. However, there are some provisions in the existing zoning ordinance that conflict with our current policy of encouraging repairs over demolition.

Legally Non-Conforming Structures and "Grandfathering"

The Lenoir Zoning Ordinance addresses all non-conforming uses and structures in Sec. 704, and specifically allows for the continued use and general maintenance/upkeep/repair of non-conforming properties (commonly referred to as "grandfathering"). This allowance is to "avoid undue hardship" that could otherwise have been created by the adoption of the Zoning Ordinance, or by subsequent amendments that change the standards. However, Sec. 704 does not allow for the "by right" re-construction or repair of non-conforming structures. Non-conforming structures lose their "grandfathered" status (and therefore must be brought into compliance with current code) in the following circumstances:

- If the non-conforming structure is physically removed or relocated from the site upon which it was located which it became non-conforming, it is not allowed to be replaced (either by moving the building back onto the site or re-building a similar building), except in accordance with the current ordinances.

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- If the structure is damaged more than 50% of its tax value at the time of the damage, it is not allowed to be repaired or rebuilt, except in accordance with the current ordinances.

This makes sense in most situations, because as properties are redeveloped and changed, development patterns over time become more and more conforming to the adopted zoning ordinances. (For example, if a commercial site was developed in 1960 with a 0-ft. building setback where 10 ft. is required, and that property is redeveloped or sustains substantial damage, the site isn't indefinitely "grandfathered" to have a 0-ft. setback.) In this way, over time, the provisions of the Zoning Ordinance are applied and the purpose/intent of the regulations is realized.

(A quick note on hardships/variances – in some circumstances, repair or redevelopment of a site may be impractical or infeasible, except in a way that maintains some of the non-conforming aspects. The code recognizes that these situations may arise, and provides a "relief valve" for these properties to legally redevelop. This is the purpose of the Board of Adjustment, which is appointed by the City Council to hear and make decisions on variances, when the application of the ordinance creates undue hardship upon a property owner. Those cases are decided based on the specific merits of the situation, and all decisions of the BOA are quasi-judicial, public, and must be based on substantial, competent evidence.)

Single Family Homes

The regulatory framework described above is a very commonly accepted zoning practice. However, many zoning codes seek to create some automatic, "by right" allowances for the rebuilding of single family homes. Single family neighborhoods tend to be the most stable land use (as in, they don't change much over time – once a large tract of land is subdivided and ownership becomes fragmented, the re-assembly of property into larger tracts of land for redevelopment can be difficult and/or impossible). When a buyer purchases a home in an older neighborhood, most don't purchase with the expectation that over time the structures on their street will become more conforming to the zoning ordinance. Most residents assume that "grandfathering" applies indefinitely. Additionally, many lenders and insurance companies look for reassurances from the City that a non-conforming home may be re-built – under the current ordinance, the legal answer provided by Planning Staff is, at best, "it depends." This can create challenges for financing and insuring homes, adversely impacting the value of properties with non-conforming setbacks.

Under the existing Sec. 704, single family homes are specifically exempted from the damage threshold, and are allowed to be repaired *"regardless of the extent of damage, provided that the square-footage of the structure is not increased and that the dwelling complies with the setback distances of the zoning district in which it is located."* It appears that this rule intends to carve out an exception for single family homes that would make it easier to repair/reconstruct homes that are damaged, but the requirement that they comply with the current setbacks (the most common way that single family homes are non-conforming) makes the rule ineffective at providing any real relief for more home owners.

¶ There is another provision in Sec. 704 that states, “*Nothing in this section shall be deemed to prevent the strengthening or restoring to a safe condition of any building or part thereof declared to be unsafe by any official charged with protecting the public safety, upon order of such official.*” This is the provision we use when allowing for a non-conforming home that’s under code enforcement to be repaired. Historically, it’s been applied broadly to allow for the repair of non-conforming homes. However, it doesn’t give adequate reassurance to lenders and potential purchasers who are asking questions about “what if” scenarios.

Proposed Changes

The proposed surgical code amendment would allow for the “by right” reconstruction or repair of single family homes that are damaged, without the need to seek a variance or special approval. In the event of total, voluntary removal of a single family structure, new construction (or the placement of a modular or manufactured home on the resulting vacant lot, where permitted) would still have to meet code (or, receive a variance). But for properties that are damaged, it will guarantee the ability of the owner to make all necessary repairs, without having to seek any special approvals. This should satisfy the greatest fear of lenders and purchasers, who typically maintain insurance coverage to cover the cost of replacing the building if it’s damaged.

In Conclusion

Our practice of requiring non-conforming elements to be brought into compliance with current code upon substantial damage or removal makes sense in most applications, especially with the ability to receive a variance for instances where this rule creates a hardship. However, the application of the current rules to single family homes that are damaged seems to create potential hardships in all or most cases. While I believe that the *current* zoning administrators and the *current* Board of Adjustment would never prevent the repair of a damaged non-conforming single home, and would use either the variance procedure or the provision that homes may be repaired for public safety when ordered by a public safety official in order to allow the legal reconstruction/repair of a damaged home, this is not sufficient for a lender or purchaser looking for a written verification that a property can be re-built. The proposed ordinance amendment removes the unknowns from the equation, by clearly defining an exception for single family homes.

The continued existence of non-conforming building footprints in existing single family neighborhoods will have minimal, if any, negative impacts on the quality of life in these neighborhoods. In fact, in many historic neighborhoods, the traditional neighborhood charm comes in part from the close knit, traditional development pattern that tends to have smaller lots with smaller homes built with less building separation than is typical of newer neighborhoods. As such, planning staff is recommending the attached ordinance amendments, as a way to continue to promote and protect the unique character of our residential areas and eliminate barriers to the purchase, repair, renovation, improvement, and investment in existing, non-conforming single family homes.

**AN ORDINANCE OF THE CITY COUNCIL OF LENOIR,
NORTH CAROLINA, AMENDING APPENDIX A SECTION 704.1
OF THE LENOIR CITY CODE RELATED TO NON-
CONFORMING STRUCTURES, PROVIDING FOR
SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.**

Whereas, the Lenoir Zoning Ordinance was adopted in 1978, and has been amended from time-to-time to reflect the changing needs of the community, and the adoption of these ordinances can create non-conforming structures; and

Whereas, Section 704 of the Lenoir Zoning Ordinance contains provisions to allow for the continued use of non-conforming structures, in order the limit any hardship created through the application of the zoning ordinance; and

Whereas, Section 704 establishes a threshold whereby if a non-conforming structure is damaged beyond 50% of its tax value, the non-conforming aspects of the structure are no longer “grandfathered” and any repair or reconstruction must conform to the currently adopted code of ordinances, but specifically exempts single family dwellings from this threshold; and

Whereas, the exemption for single family dwellings contains the condition that such non-conforming dwellings can only be repaired or rebuilt if their setbacks conform to the zoning district standards; and

Whereas, the vast majority of non-conforming single family dwellings are non-conforming for building setbacks, but the general development pattern of single family neighborhoods in Lenoir does not seem to be negatively impacted by the continued existence of setback encroachments; and

Whereas, a prohibition on re-building within existing building footprints when non-conforming single family homes are damaged negatively impacts neighborhoods by creating barriers to repair and renovation, potentially increasing the number of vacant and/or substandard houses and adding to the burden of minimum housing code enforcement; and

Whereas, the Lenoir Planning Board finds and declares that this ordinance and these amendments consistent with the City’s adopted Comprehensive Plan, which calls for sensible and straightforward zoning practices and the protection of the existing character of established residential areas; and

Whereas, the Lenoir City Council hereby finds and declares that this ordinance and these amendments are in the best interest of the public health, safety, and welfare; and

NOW, THEREFORE, LET IT BE ENACTED BY THE CITY COUNCIL OF THE CITY OF LENOIR, NORTH CAROLINA, AS FOLLOWS:

SECTION 1. Appendix A, Article VII, Section 704.1 of the Code of Ordinances, City of Lenoir, North Carolina, “Nonconforming Structures” is hereby amended to read as follows:

704.1 Nonconforming Structures - Nonconforming buildings or structures are declared by this ordinance to be incompatible with permitted uses in the districts involved. However, to avoid undue hardship, the lawful use of any building or structures at the time of the enactment of this ordinance or any applicable amendment thereof may be continued even though such structures does not conform with the provisions of this ordinance except that the nonconforming building or structure shall not be:

704.11 Replaced with the same or a similar building, after physical removal or relocation from the site upon which it was located when it became nonconforming;

704.12 Repaired, rebuilt, or altered after damage exceeding fifty (50%) percent of its tax value at the time of such damage. A permit for construction or repair, when legal, shall be issued no later than four (4) months after such damage occurred. However, existing single-family dwellings (excluding manufactured homes) may be repaired or rebuilt regardless of the extent of damage provided that the square-footage of the structure is not increased and the repaired/rebuilt structure maintains or reduces any encroachments into required building setbacks of the zoning district in which it is located. ~~that the dwelling complies with the setback distances of the zoning district in which it is located.~~ Permits for repair or reconstruction of a non-conforming single-family dwelling shall be issued no later than one year after damage occurred.

704.13 Enlarge or altered in a way which increases nonconformity.

Nothing in this section shall be deemed to prevent the strengthening or restoring to a safe condition of any building or part thereof declared to be unsafe by any official charged with protecting the public safety, upon order of such official. In addition, nothing in this ordinance shall prevent the owner from lawful occupancy or use of a nonconforming building which existed at the time of the adoption of this ordinance, or any applicable amendment thereof.

SECTION 2. SEVERABILITY. If any provision of this ordinance or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable.

SECTION 3. CODIFICATION. The City Clerk shall cause the Code of Ordinances of Lenoir, North Carolina to be amended as provided by this ordinance and may renumber, re-letter, and rearrange the codified parts of this ordinance if necessary to facilitate the finding of the law.

SECTION 4. EFFECTIVE DATE. This ordinance takes effect upon adoption.

DONE, THE PUBLIC NOTICE, in a newspaper of general circulation in the City of Lenoir, North Carolina, by the City Clerk of the City of Lenoir, North Carolina, this _____ day of _____ and this _____ day of _____, 2018.

DONE, THE PUBLIC HEARING, AND ENACTED ON FINAL PASSAGE, by an affirmative vote of the a majority of a quorum present of the City Council of the City of Lenoir, North Carolina, at a regular meeting, this _____ day of _____, 2018.

BY THE MAYOR/MAYOR PRO TEMPORE OF THE CITY OF LENOIR, NORTH CAROLINA:

Mayor/Mayor Pro Tempore

ATTEST, BY THE CLERK OF THE CITY COUNCIL OF THE CITY OF LENOIR, NORTH CAROLINA:

City Clerk

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**LENOIR CITY COUNCIL
TUESDAY, FEBRUARY 6, 2018
5:00 P.M.**

PRESENT: Mayor Gibbons presiding. Councilmembers present were Beal, Perdue, Perkins, Rohr, Stevens, Thomas and Willis. Also in attendance were City Manager Hildebran, City Attorney Blair and City Clerk Cannon.

I. CALL TO ORDER

- A. The meeting was opened by a moment of silence followed by the Pledge of Allegiance led by Mayor Gibbons.

II. MATTERS SCHEDULED FOR PUBLIC HEARINGS

III. CONSENT AGENDA ITEMS

- A. Upon a recommendation by City Manager Hildebran, the following Consent Agenda items were submitted for approval:
1. Minutes: Approval of minutes of the City Council Meeting of Tuesday, January 16, 2018 as submitted.
 2. Minutes: Approval of minutes of the Committee of the Whole Meeting of Tuesday, January 23, 2018 as submitted.
 3. Wastewater Sales Agreement; Town of Sawmills: City Staff recommends approval of the proposed Wastewater Sales Agreement between the Town of Sawmills and the City of Lenoir to provide up to 250,000 gallons of wastewater treatment per day at the applicable wholesale wastewater rate. (A copy of the agreement is hereby incorporated into these minutes by reference. Refer to pages 43-50).

Upon a motion by Councilmember Stevens, Council voted 7 to 0 to approve the above listed items on the Consent Agenda as recommended by City Manager Hildebran.

IV. REQUESTS AND PETITIONS OF CITIZENS

PROPOSAL; TWO-WAY

STREETS: A. Mr. Charles Hathcock, Taylor Drive, addressed City Council regarding the recent article in the *News-Topic* about the City possibly changing a portion of Harper Avenue and West Avenue and Mulberry Street and Main Street to two-way streets.

Mayor Gibbons confirmed the City has directed an engineer to review the City's options including a cost estimate for the project. Mayor Gibbons informed Mr. Hathcock the City would notify him, along with Silvio Martinat and Bill Tysinger who were also in the audience, when this item was coming up for discussion again by City Council.

V. REPORTS OF BOARDS AND COMMISSIONS

VI. REPORT AND RECOMMENDATIONS OF THE CITY MANAGER

A. Items of Information

ABC BOARD: 1. The ABC Board will meet on Thursday, February 8 at 2:00 p.m. at Lenoir Store #1 located at 115 ABC Court.

CANCELLED; LENOIR BUSINESS ADVISORY

BOARD: 2. The Lenoir Business Advisory Board cancelled its meeting of Thursday, February 8 at 6:00 p.m. The next meeting will be held on Thursday, March 8 at 6:00 p.m. at City Hall, Third Floor, former Council Chambers.

CITY/COUNTY SERVICES

COMMITTEE: 3. The City/County Services Committee will meet on Monday, February 12 at 11:45 a.m.

CALDWELL COUNTY ECONOMIC DEVELOPMENT

COMMISSION: 4. The Caldwell County Economic Development Commission will meet on Tuesday, February 13 at 8:00 a.m.

PARKS & RECREATION ADVISORY

BOARD: 5. The Parks and Recreation Advisory Board will meet on Monday, February 19 at 6:00 p.m. at the Martin Luther King, Jr. Center.

PLANNING

RETREAT: 6. The City Council Planning Retreat will be held on Friday, February 23 from 8:00 a.m. – 2:00 p.m. at the Blue Ridge Energy Membership Corporation (BREMCO) corporate office located at 1216 Blowing Rock Boulevard.

B. ITEMS FOR COUNCIL ACTION

VII. REPORT AND RECOMMENDATIONS OF THE CITY ATTORNEY

VIII. REPORT AND RECOMMENDATIONS OF THE MAYOR

IX. REPORT AND RECOMMENDATIONS OF COUNCILMEMBERS

SENIOR TALENT

SHOW/BLACK HISTORY EVENTS:

- A. Councilmember Crissy Thomas announced for the general public the second annual Senior Talent Show will be held on Friday, March 16 beginning at 7:00 p.m. at the Freedman Cultural Center Gymnasium located at 332 Greenhaven Drive NW. Ms. Thomas also reminded everyone of the remaining events scheduled at the Martin Luther King, Jr., Center in honor of Black History Month.

X. ADJOURNMENT

A. There being no further business, the meeting was adjourned at 5:12 p.m.

Shirley M. Cannon, City Clerk

Joseph L. Gibbons, Mayor

STATE OF NORTH CAROLINA
COUNTY OF CALDWELL

AGREEMENT TO PURCHASE WASTEWATER TREATMENT SERVICE

THIS CONTRACT is made and entered into this ____ day of _____, 20__ by and between the City of Lenoir, a North Carolina Municipal Corporation hereinafter referred to as "Lenoir" and the Town of Sawmills, a North Carolina Municipal Corporation hereinafter referred to as "Sawmills".

WITNESSETH

WHEREAS, Lenoir and Sawmills are political subdivisions of the State of North Carolina, both having the power and authority to enter into this agreement, and the signatories hereto have been authorized to execute this document on behalf of the Lenoir City Council and the Sawmills; and

WHEREAS, Lenoir currently owns and operates a wastewater treatment plant (Gunpowder Creek WWTP) and collection system, and is engaged in the enterprise of managing, operating, and maintaining said system and selling wastewater treatment service to the public within its service area; and

WHEREAS, Sawmills owns and operates a wastewater collection system, and is also engaged in the enterprise of managing, operating, and maintaining the system and selling wastewater service to the public within its service area; and

WHEREAS, Lenoir and Sawmills mutually desire to enter into an agreement to sell and purchase wastewater treatment services in accordance with the terms and provisions contained herein; and

WHEREAS, Lenoir has determined that it has the capability to sell wastewater treatment services to Sawmills throughout the term of this agreement without impairing services to the users connected to its wastewater system; and

WHEREAS, Lenoir and Sawmills each has or holds and will continue to have or hold throughout the term of this agreement, all appropriate permits necessary to effectuate their respective responsibilities under this agreement or will use their best efforts to obtain such permits;

NOW THEREFORE, in consideration of the mutual covenants, conditions and terms contained herein, the parties hereto, intending to be legally bound hereby, agree as follows:

1. This agreement shall commence on the ____ day of _____, 2018, and unless earlier terminated in accordance with the terms herein, shall expire on

the ____ day of _____, ____ (Hereinafter referred to as the
"Wastewater Service Period".)

2. Lenoir agrees to provide and sell to Sawmills wastewater treatment for up to 250,000 GALLONS (TWO HUNDRED AND FIFTY THOUSAND GALLONS) of wastewater maximum daily flow, measured through metered connections which are located, prescribed and maintained by Lenoir, at or above minimum State of North Carolina and Federal Standards for public wastewater facilities. Such maximum daily flow shall be based on a thirty (30) day average daily flow. Such maximum daily flow to be reviewed every five (5) years.
3. Sawmills agrees to use best efforts not to exceed the above maximum daily flow provided for in Section 2 of this agreement, unless Lenoir expressly agrees that said maximum daily purchase(s) may exceed 250,000 gallons for a specified period of time.
4. The wastewater treatment services purchased by Sawmills from Lenoir shall be available on a continuous basis unless there is an unforeseen break, outage or interruption of Lenoir's wastewater collection or treatment system. In which case, Lenoir shall notify Sawmills of the circumstances and provide timely updates so as to keep Sawmills informed of the status of repairs or remedy(ies) for any such interruption.
5. Sawmills agrees to timely pay Lenoir for wastewater purchased on a monthly basis, in accordance with invoices, which shall be based upon meter readings conducted by Lenoir at all metered connections between the Lenoir and Sawmills wastewater systems. Lenoir agrees to read said wastewater meters monthly and deliver to Sawmills a written report summarizing said meter readings within fifteen (15) working days after each monthly meter reading. Lenoir will submit to Sawmills a written invoice based on such meter readings by the 20th day of the following month. Sawmills agrees to pay Lenoir the amounts of each such monthly invoice within thirty (30) calendar days of the date of each invoice.
6. The initial Base Wastewater Rate charged to Sawmills for wastewater treatment services shall be \$3.78 per one thousand gallons of metered wastewater service provided by Lenoir to Sawmills. In the event the average daily flow during any monthly billing period exceeds the maximum daily flow of 250,000 gallons, the following surcharges (The "Surcharge Rate") will apply to the overage:

(250,001) to (300,000) gallons – \$4.16/1000 gallons
(300,001) to (350,000) gallons – \$4.57/1000 gallons
(350,001) gallons or more – \$5.03/1000 gallons

Over the term of this agreement or any extension thereof, Lenoir may, at its sole discretion, increase the Base Wastewater Rate and /or the Surcharge Rate as it deems necessary. Lenoir shall not increase said rates to Sawmills more than one time during any fiscal year of twelve (12) months ending on June 30 of each year. Lenoir agrees to notify Sawmills in writing of planned increases with an explanation of the factors used to determine set increase in rates at least ninety (90) days prior to June 30 of any fiscal year, with rate increases that are to become effective on July 1 of that same year.

7. Lenoir agrees to maintain /repair /replace existing Lenoir wastewater meters at the connection point(s) between the Lenoir and the Sawmills wastewater system as may be necessary to accurately measure the flow of wastewater through the meter(s) to Sawmills under this agreement.
8. Sawmills shall provide a minimum of six-months (6) advance written notice to Lenoir prior to the expiration of this agreement or subsequent extensions of this agreement if Sawmills desires to cancel the terms of this agreement. Upon timely receipt of such notice of Sawmills desire to cancel this agreement, Lenoir shall, within sixty (60) days after having received such notification, notify Sawmills in writing of its agreement to such cancellation of this agreement.
9. In the event that Lenoir elects not to extend this agreement, Lenoir shall continue to provide and sell wastewater treatment services to Sawmills, under the same terms of the agreement, until Sawmills has had sufficient opportunity to secure an alternate source(s) of wastewater treatment service; however, Lenoir shall not be bound to continue to provide and sell wastewater treatment services to Sawmills beyond a period of twenty-four (24) months past the date of its written notification to Sawmills of its intention not to extend this agreement.
10. Sawmills agrees that the Town and its wastewater customers shall, during the period of this agreement, abide by and adhere to all wastewater use policies, restrictions, sewer use ordinances and other ordinances adopted now or subsequently adopted by Lenoir, of which they are subsequently notified, which impose wastewater use restrictions, moratoriums, and other such limitations on the use of wastewater treatment services during times of emergency or during other situations which for public health or financial reasons justify said policies, restrictions, and ordinances.

Sawmills shall establish, conduct and maintain an industrial pre-treatment program in accordance with the State of North Carolina regulations (15A NCAC 2H .0900) and Federal pre-treatment regulations 40 CFR 403, and 400-471. Sawmills shall adopt necessary ordinances, policies, and programs to ensure that wastewater received from Sawmills meets the standards set forth in Lenoir's Sewer Use Ordinance. Sawmills shall be responsible for the reporting and record-keeping of the pre-treatment program. Lenoir shall have the right to audit Sawmill's pre-treatment program at any time upon 30 days

written notification and Sawmills shall supply all information necessary for the audit.

Prior to the issuance of any pre-treatment permit, Sawmills shall submit application information to Lenoir for review and approval and shall not issue any pre-treatment permits without Lenoir's prior approval.

Sawmills shall use any and all means necessary to enforce compliance with the applicable standards of the industrial wastewater pre-treatment program, and Lenoir shall have the authority to immediately terminate the service contemplated under this agreement with no prior notice, if Sawmills fails to do so.

Lenoir reserves the right to bill Sawmills for pollutant loadings above those domestic loadings contained in the Lenoir Sewer Use Ordinance. Based upon information provided, Lenoir shall bill Sawmills on a monthly basis for any applicable surcharges after 30 days written notice at Lenoir's prevailing rates. Sawmills agrees to assess and collect all surcharges from its customers or otherwise to pay said charges, regardless of whether the customer pays.

11. Lenoir shall promptly notify Sawmills upon becoming aware of any activity, problem or circumstance within the Lenoir system that might present a danger to the health, safety and welfare of Sawmills wastewater users. Further, Lenoir shall take appropriate action to remedy such activity, problem or circumstance within the Lenoir system and to avoid or minimize disruptions in service. Likewise, Sawmills shall promptly notify Lenoir upon becoming aware of any activity, problem or circumstances within Sawmills system that might negatively impact, cause harm to Lenoir's wastewater collection and treatment system or present a danger to the public health, safety and welfare. Sawmills shall take appropriate action to police against and to remedy such activities.
12. In the event of damage or destruction of Lenoir's key wastewater facilities or any emergency which, in the reasonable judgment of Lenoir, is likely to result in material loss or damage to the system or constitute a material threat to human health or safety, Lenoir may take necessary actions to mitigate the threat to human health and safety, after thirty (30) days written notice to Sawmills of such actions unless in the event of an emergency. Lenoir's response to emergencies and other such unusual circumstances shall be in accordance with applicable policies, regulations, laws and requirements and with such personnel and equipment as necessary to maintain or restore the operations of its wastewater system in a timely manner with the least possible disruption or inconvenience to the users connected to both the Lenoir and Sawmills wastewater systems.
13. Sawmills shall not resell, give away, transfer or otherwise dispose of wastewater treatment services purchased from Lenoir to third-party wastewater systems without the prior written permission of Lenoir.

14. Sawmills agrees to permit Lenoir to pass wastewater through Sawmills wastewater collection system to destinations and/or to other third-party wastewater systems beyond Sawmills system, provided that Lenoir:
- a) Submits a written notice to Sawmills outlining the agreed-upon purposes, quantities and conditions of said pass through of wastewater.
 - b) That said request does not materially or significantly diminish Sawmills capacity now or in the future to provide services to its wastewater customers and it's anticipated customers bases on its most recent 10 year projections.
 - c) Lenoir subsequently pays to Sawmills a Pass Through charge of \$0.03 per 1000 gallons of pass through wastewater. Sawmills may request a modification of such charge with a ninety (90) days advance written notice during the period of this agreement.
 - d) Lenoir agrees to install metering equipment to measure and determine the quantities or such Pass Through wastewater passing through Sawmills wastewater system and report monthly to Sawmills such amounts and meter readings.

15. Lenoir and Sawmills both represent that no litigation is pending or threatened against either party which would impair their ability to perform their respective duties and obligations under the terms, covenants and provisions of this agreement.

16. Resolution of Disputes

The Parties agree that should any disputes arise under this agreement, including but not limited to disputes pertaining to services, rates, or invoices, said disputes shall be resolved, if at all possible, through good faith negotiations between the parties. It is the intent of Lenoir and Sawmills that pursuit of legal action shall be a remedy of last resort and that a negotiated resolution, including the use of outside experts or mediators, shall be the preferred means of resolving disputes hereunder.

17. Default and Termination

This agreement may be terminated prior to its stated expiration date by Lenoir or Sawmills in accordance with the terms and conditions set forth below.

- A. Termination for cause by Lenoir. Upon the happening of any of the following events of default by Sawmills, Lenoir shall have the right to terminate this agreement:
- a) The failure of Sawmills to perform or observe and initiate a cure after thirty (30) days advance written notice any of its material covenants, agreements, obligations and/or duties created by this agreement.

- b) The failure of Sawmills to make any payment required pursuant to the terms of this agreement within sixty (60) days of its receipt of notice from Lenoir that any such payment is overdue.
- B. Termination for cause by Sawmills. Upon the happening of any of the following events of default by Lenoir, Sawmills shall have the right to terminate this agreement:
 - a) The failure of Lenoir to perform or observe any of its material covenants, agreements, obligations and/or duties created by this agreement.
 - b) The failure of Lenoir to provide Sawmills with the amounts of wastewater treatment service in accordance with the terms of this agreement..
- 18. Upon the happening of any event which may constitute good cause for termination of this agreement as stated above, the aggrieved party shall provide written notice to the party committing the alleged violation setting forth in detail the alleged failure and/or deficiency. Thereafter, within thirty (30) days of receipt of notice of the alleged default, the parties to this agreement shall meet to discuss the circumstances and attempt to reach a resolution.
- 19. **NOTICES:** For the purposes of this agreement, all notices required shall be deemed to have been properly served and shall be only served when posted by Certified United States Mail, Postage Prepaid, Return Receipt Requested, Addressed to the Party to whom directed at the address herein set forth or at such other address as may from time to time be designated in writing by either party:

To Lenoir:

City of Lenoir
Scott E. Hildebran, City Manager
PO Box 958
Lenoir, North Carolina 28645

To Sawmills:

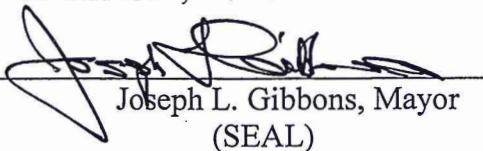
Town of Sawmills
Attn: Town Administrator
4076 US Hwy 321-A
Sawmills, NC 28630
CC: Terry Taylor, Town Attorney
P.O. Drawer 2428
Hickory, NC 28603

- 20. This agreement embodies the entire agreement between the parties in connection with this transaction, and there are no oral or parole agreements, representations or inducements existing between the parties relating to this transaction, which are not expressly set forth herein. This agreement may not be modified except by a written agreement signed by all parties to this agreement. Neither party shall be entitled to sell, convey or otherwise alienate the rights and obligations created herein without the prior written permission of the other party to this agreement. This agreement is non-assignable.

21. Nothing contained herein shall be construed to place the parties in the relationship of partners or joint venturers, and neither party shall have the power to obligate or bind the other party in any manner whatsoever. No joint agency is established by this Agreement pursuant to Article 20, Part 1 of Chapter 160A of the North Carolina General Statutes, by other similar statutory authority authorizing interlocal cooperation between units of local government, or otherwise.
22. No written waiver by any party to this agreement at any time of any breach of any other provision of this agreement shall be deemed a waiver of a breach of any provision herein or consent to any subsequent breach of the same or any other provision.
23. The captions and article numbers appearing in this agreement are inserted only as a matter of convenience and do not define, limit, construe or describe the scope of such paragraphs or articles of this agreement or in any way affect this agreement.
24. This agreement shall be governed by and interpreted in accordance with the laws of the State of North Carolina.
25. Words of any gender used in this agreement shall be held to include any other gender, and words in the singular number shall be held to include the plural, when the sense requires.
26. If any provision under this agreement or its application to any person or circumstance is held invalid by any court of competent jurisdiction, such invalidity does not affect any other provision of this agreement or its application that can be given effect without the invalid provision or application.
27. This agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, and it shall not be necessary in making proof of this agreement to produce or account for more than one such fully executed counterpart.
28. Except as provided herein, the rights and remedies provided for in this agreement are cumulative and are not exclusive of any rights or remedies that any party may otherwise have at law or in equity.

IN WITNESS WHEREOF, the parties have executed this agreement on the day and year first above written.

CITY OF LENOIR, NORTH CAROLINA

By: 
Joseph L. Gibbons, Mayor
(SEAL)

Attest:

By: Shirley M. Cannon
Shirley M. Cannon, City Clerk

TOWN OF SAWMILLS, NORTH CAROLINA

By: _____
_____, Mayor

(SEAL)

Attest:

By: _____
_____, Town Clerk

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

By: _____

Donna Bean, Finance
Director
City of Lenoir, North Carolina

By: _____

_____, Finance Director
Town of Sawmills, North Carolina

Approved as to form:

By: Edward H. Blair, Jr.

Edward H. Blair, Jr., City Attorney
City of Lenoir, North Carolina

Approved as to form:

By: _____

_____, Town Attorney
Town of Sawmills, North Carolina



Lenoir Police Department

1035 West Avenue NW
 Lenoir, North Carolina 28645
 (828) 757-2121 • Fax (828) 757-2103



Council Action Form

I. Agenda Item:

This agenda item calls for the reduction of the speed limit on Fairlane Drive from the default 35 MPH to a more safe and suitable 20 MPH. This will involve amendment to the Charter Code of Ordinances, Appendix B –Traffic, Section 114.

II. Background Information:

As a result of citizen requests, the LPD Traffic Unit conducted a study (attached) of Fairlane Drive in regards to the speed limit. Currently, speed for this street is not posted or listed in city ordinance, which means it defaults to 35 MPH. The Traffic Unit has determined that 35 MPH is too fast for this residential street and requests a 20 MPH speed limit be adopted and signage posted.

****NOTE** – This matter was heard by City Council during a Public Hearing on April 4, 2017. The measure was defeated 2 to 4. Although no additional data has been obtained, we join the original complainant in respectfully asking that the matter be re-considered.

III. Staff Recommendation:

Staff recommends that City Council call for a Public Hearing on this matter to be held Tuesday, March 6, 2018 and adopt a 20 MPH speed limit for the entire length of Fairlane Drive, allowing for posting at the discretion of the Public Works Director.

IV. Reviewed by:

City Attorney: _____ Date: _____

Assistant City Manager: _____ Date: _____

Police Chief:  Date: 02-15-18



Lenoir Police Department

1035 West Avenue NW
 Lenoir, North Carolina 28645
 (828) 757-2121 • Fax (828) 757-2103



TRAFFIC ENFORCEMENT UNIT

TRAFFIC PROJECT

LOCATION	PURPOSE	ORIGIN	DATE COMPLETED
Fairlane Drive	Speeding complaints from residents Speed limit	Paul Propst 324 Fairlane Drive	03/15/2017



Illustration I

TRAFFIC PROJECT COMPLETED BY:

Sergeant James Moore
 Lenoir Police Department
 Traffic Enforcement Unit
 828-757-3640

This request was made by Paul Propst who lives at 324 Fairlane Drive. This request was made due to motorists using this street as a cut through between Blowing Rock Boulevard and Meadowood Drive.

The traffic unit observed vehicles traveling on Fairlane Drive on two occasions, once in April 2016 and in December 2016. Vehicles did not appear to be speeding based on current speed limit laws of 35 MPH, however, were travelling higher than the suggested speed limit of 20 MPH.

LOCATION / DESCRIPTION

An aerial photograph of a residential neighborhood with dense green trees. Several streets are labeled in white text: Fairlane Dr NE, Robinwood Cir NE, Marcelle St NE, Stanley St NE, and Oakwood St NE. A red location pin is placed on Fairlane Dr NE. Four black arrows point from the text labels to specific locations on the map: one from Fairlane Dr NE to the red pin, one from Robinwood Cir NE to a road intersection, one from Stanley St NE to a road intersection, and one from Oakwood St NE to a road intersection.

Illustration II

A

B

C

D

Road width measurements are indicated below:
A-22'2" B-16'6" C-18'3" D-16'6"

Additional photos of Fairlane Drive are shown in Illustrations III, IV, and V.



Illustration III



Illustration IV



Illustration V

EVALUATION

- The Lenoir Police Department Traffic Unit spoke with Mr. Propst in early April 2016 regarding motorists speeding in the area due to no speed limit signs being posted.
- The Traffic Unit spoke with other residents who share the same concerns.
- The Traffic Unit observed traffic on Fairlane Drive in April and December 2016 and noted that speeding beyond 35 MPH was not taking place. However, the speed was estimated above the 20 MPH limit being requested by residents in the area. Based on North Carolina State Law and City of Lenoir Ordinance the speed limit is 35 MPH in the city unless otherwise posted. This speed is too fast for Fairlane Drive due to the narrow roadways, unmarked pavement, steep drop-offs on the shoulders immediately on the edge of the roadway in some areas, and contains blind curves.
- The Lenoir Police Department Traffic Unit deployed the StealthStat (Stealth Radar) on Fairlane Drive to obtain data on traffic speeds in the area. Below are the results of the Stealth Radar evaluation:

To determine the number of vehicles and their speeds, we deployed the StealthStat, which is an inconspicuous pole mounted traffic statistic device. Unlike the Smart Radar that causes many drivers to slow down, the StealthStat is nearly un-noticeable and therefore renders more accurate speeds.

The StealthStat was deployed on Wednesday, January 4, 2017, with this date being the start of the speed evaluation process. This process was ended on Monday, January 9, 2017. The data below describes, in detail, the results of this 120-hour study.

❖ ***What is the average speed of vehicles traveling on Fairlane Drive?*** **21 mph**

The city's Municode system did not have Fairlane Drive listed in their system for speed limit purposes. Since there is no posted speed limit, it is assumed the speed limit is 35 MPH. Fairlane Drive is approximately 2,300 feet long stretching from Seehorn Street NE to Meadowood Drive NE.

Speed Study Results – Fairlane Drive (2017)	
MINIMUM SPEED	10 MPH
MAXIMUM SPEED	39 MPH
AVERAGE SPEED	21.00 MPH
85th PERCENTILE	27 MPH

The call history relating to vehicle crashes for Fairlane Drive was obtained. As far back as two (2) years prior to this date, no vehicle crashes have occurred.

CONCLUSION / RECOMMENDATION

Based on the request of citizens and the information obtained from this study, the Lenoir Police Department Traffic Unit offers the following conclusions and recommendation:

- Based on characteristics, i.e. street width, curvature, sight distance, etc., Fairlane Drive is not suitable for a 35 MPH speed zone.
- Although no motor vehicle crashes have occurred on Fairlane Drive in the last two years, there is cause for concern and preventive measures should be taken to prevent future crashes.
- During two observation periods in the last year, no incidents of speeding above 35 MPH were observed by officers, however speeds slightly above the “recommended” speed limit of 20 MPH were observed.
- **We recommend that City Council adopt a speed limit of 20 MPH for the entire length of Fairlane Drive and allow for posting at the discretion of the Public Works Director.**

CITY OF LENOIR
COUNCIL ACTION FORM

- I. Agenda Item:**
Amendments to Chapter 13 of Sec. 13-18 of Code of Ordinances Regarding Skate Park at Mulberry Recreation Center.
- II. Background Information:**
Make Amendments to Code of Ordinances so the skate park does not have to be personally supervised by City employees on a regular basis. (See attached forms).
- III. Staff Recommendation:**
Staff recommends approving the amendments to Chapter 13 of Sec. 13-18 of Code of ordinances.
- IV. Reviewed by:**

City Attorney:

Finance Director:

Public Works/Public Utilities Director:

Planning Director:

Recreation Director: Kenny Story



Recreation Administrative Offices (828)757-2165 - Fax (828)758-1315
 W.B. Stronach Lenoir Aquatic & Fitness Center (828)757-2196
 Mulberry Recreation Center (828)757-2165
 Martin Luther King Center (828)757-2170
www.cityoflenoir.com



2-14-2018

Recently, City Council requested the Parks and Recreation Department to review the rules/regulations concerning our skate park located at Mulberry Recreation Center that may impact facility usage.

Currently, the skate park is staffed when patrons request to use the park during operating hours. Patrons are reluctant to use the skate park due to the skate park being locked until a request is made and the current hours of operation.

Article 3 of Chapter 99E of the North Carolina General Statutes provides that governmental entities which own or operate skate parks are relieved of liability for personal injury or property damage to those who ride skateboards in such parks, if the government has adopted an ordinance requiring such riders to wear helmets, elbow pads and knee pads, and has properly posted notice of such requirements at the facility. While the City certainly hopes and expects that all persons will use the park safely and without injury, accidents may well happen.

Under this code revision, the skate park will not be personally supervised by City employees on a regular basis, and the statute is intended to protect municipalities against liability in just such circumstances. Enclosed is an example of similar signage from Morganton that we will install at our facility.

Other municipalities that operate skate parks that are not supervised include: Asheville, Marion, Durham, Boone, and Morganton.

Proposed Revisions of Code of Ordinances Chapter 13 Sec. 13-18 (2) to read:

It shall be unlawful within the corporate limits of the City of Lenoir for any person riding a skateboard or similar device at or within any municipal skate park or facility unless such person is wearing appropriate protective gear including a helmet, elbow pads, and kneepads. Appropriate signs notifying the public of this section and requirement shall be posted appropriately at the entrance(s) to such skateboard park(s).

Sec. 13-18. - Skate park.

CURRENT

(a) *Prohibited acts.*

(1) It shall be unlawful within the corporate limits of the City of Lenoir for any person to engage in skateboarding, inline skating or freestyle bicycling at or in any municipal park other than within a fenced-in area(s) specifically designated by the City of Lenoir for such activity(ies) and only if such activity(ies) is/are done in accordance with the rules and regulations adopted by the City of Lenoir Parks and Recreation Department.

(2) It shall be unlawful within the corporate limits of the City of Lenoir for any person to engage in skateboarding at or within any municipal skate park or facility unless such person is wearing appropriate protective gear including a helmet, elbow pads on each elbow and kneepads on each knee.

(b) *Penalty.* This section is adopted with reference to G.S. Ch. 99E, Art. 3, Hazardous Recreation Parks Safety and Liability. Violation of this section shall subject the offender to a civil penalty as provided in section 1-15 or chapter 1 of this Code.

(Ord. of 6-20-2006)

Mulberry Recreation Center

Skate Park Hours of Operation When School Is In

Monday-Thursday 3:00 PM-8:00 PM

Friday Closed

Saturday 11:00 AM-5:00 PM

Skate Park Hours of Operation When School Is Out

Monday-Thursday 12:00 PM-8:00 PM

Friday 12:00 PM-5:00 PM

Saturday 11:00 AM-5:00 PM

Welcome to the **MORGANTON SKATE PARK**

Park Hours: Daylight to 10pm

This is your park. Preserving it will insure many years of enjoyment and recreation for everyone.

HAVE FUN, BE SAFE, AND RESPECT THE PARK AND ITS USERS.

Park Rules: USE THIS FACILITY AT YOUR OWN RISK

- **SAFETY FIRST!** Helmets, elbow and knee pads are required per City Ordinance Section 8- 10012. Anyone failing to comply may be cited for violation.
 - This park is not supervised by City staff. Know your limits and abilities. You are responsible for your own safety.
 - Respect others. Look before you ride. No inappropriate language or behavior.
 - Adult supervision is recommended for users under the age of 13.
 - Respect the park. No graffiti, tagging, or stickers on the park.
 - No wax.
 - No alcohol, tobacco, vaping, or drugs allowed.
 - No littering. Be good stewards and pick up your trash.
 - No gum, food, or drinks on the skate surface.
 - No exposed metal handles and pegs. We do not want gashes in the concrete. Plastic pegs are ok.
 - No homemade ramps, handrails, or other props.
 - Competitive or demonstration events are not allowed without prior approval from the City of Morganton.
 - All other City of Morganton rules apply.
-

The City reserves the right to remove anyone from the park for violation of these rules or other misbehavior.
To report damage or misuse of the park, please call the Parks and Recreation Department at 828-438-5350.

For Emergencies, call 911!

Article 3.

Hazardous Recreation Parks Safety and Liability.

§ 99E-21. Purpose.

The purpose of this Article is to encourage governmental owners or lessees of property to make land available to a governmental entity for skateboarding, inline skating, or freestyle bicycling. It is recognized that governmental owners or lessees of property have failed to make property available for such activities because of the exposure to liability from lawsuits and the prohibitive cost of insurance, if insurance can be obtained for such activities. It is also recognized that risks and dangers are inherent in these activities, which risks and dangers should be assumed by those participating in the activities. (2003-334, s. 1.)

§ 99E-22. Definitions.

The following definitions apply in this Article:

- (1) Governmental entity. –
 - a. The State, any county or municipality, or any department, agency, or other instrumentality thereof.
 - b. Any school board, special district, authority, or other entity exercising governmental authority.
- (2) Hazardous recreational activity. – Skateboarding, inline skating, or freestyle bicycling.
- (3) Inherent risk. – Those dangers or conditions that are characteristic of, intrinsic to, or an integral part of skateboarding, inline skating, and freestyle bicycling. (2003-334, s. 1.)

§ 99E-23. Duties of operators of skateboard parks.

(a) No operator of a skateboard park shall permit any person to ride a skateboard therein, unless that person is wearing a helmet, elbow pads, and kneepads.

(b) For any facility owned or operated by a governmental entity that is designed and maintained for the purpose of recreational skateboard use, and that is not supervised on a regular basis, the requirements under subsection (a) of this section are satisfied when all of the following occur:

- (1) The governmental entity adopted an ordinance requiring any person riding a skateboard at the facility to wear a helmet, elbow pads, and kneepads.
- (2) Signs are posted at the facility affording reasonable notice that any person riding a skateboard in the facility must wear a helmet, elbow pads, and kneepads and that any person failing to do so will be subject to citation under the ordinance under subdivision (1) of this subsection. (2003-334, s. 1.)

§ 99E-24. Duties of persons engaged in hazardous recreational activities.

(a) Any person who participates in or assists in hazardous recreational activities assumes the known and unknown inherent risks in these activities, irrespective of age, and is legally responsible for all damages, injury, or death to himself or herself or other persons or property that result from these activities. Any person who observes hazardous recreational activities assumes the known and unknown inherent risks in these activities, irrespective of age, and is legally responsible for all damages, injury, or death to himself or herself that result from these activities. No public entity that sponsors, allows, or permits skateboarding, inline skating, or

freestyle bicycling on its property is required to eliminate, alter, or control the inherent risks in these activities.

(b) While engaged in hazardous recreational activities, irrespective of where such activities occur, a participant is responsible for doing all of the following:

- (1) Acting within the limits of his or her ability and the purpose and design of the equipment used.
- (2) Maintaining control of his or her person and the equipment used.
- (3) Refraining from acting in any manner that may cause or contribute to death or injury of himself or herself or other persons.

(c) Failure to comply with the requirement of subsection (b) of this section constitutes negligence. (2003-334, s. 1.)

§ 99E-25. Liability of governmental entities.

(a) This section does not grant authority or permission for a person to engage in hazardous recreational activities on property owned or controlled by a governmental entity unless such governmental entity has specifically designated such area for these activities.

(b) No governmental entity or public employee who has complied with G.S. 99E-23 shall be liable to any person who voluntarily participates in hazardous recreation activities for any damage or injury to property or persons that arises out of a person's participation in the activity and that takes place in an area designated for the activity.

(c) This section does not limit liability that would otherwise exist for any of the following:

- (1) The failure of the governmental entity or public employee to guard against or warn of a dangerous condition of which a participant does not have and cannot reasonably be expected to have had notice.
- (2) An act of gross negligence by the governmental entity or public employee that is the proximate cause of the injury.

(d) Nothing in this section creates a duty of care or basis of liability for death, personal injury, or damage to personal property. Nothing in this section shall be deemed to be a waiver of sovereign immunity under any circumstances.

(e) Nothing in this section limits the liability of an independent concessionaire or any person or organization other than a governmental entity or public employee, whether or not the person or organization has a contractual relationship with a governmental entity to use the public property, for injuries or damages suffered in any case as a result of the operation of equipment for hazardous recreational activities on public property by the concessionaire, person, or organization.

(f) The fact that a governmental entity carries insurance that covers any activity subject to this Article does not constitute a waiver of the liability limits under this section, regardless of the existence or limits of the coverage. (2003-334, s. 1.)

§ 99E-26. Reserved for future codification purposes.

§ 99E-27. Reserved for future codification purposes.

§ 99E-28. Reserved for future codification purposes.

City of Lenoir Authorities/Boards/Commissions

List of Individuals for consideration of upcoming Board Appointments/Re-Appointments at the March 20, City Council Meeting.

Planning Board	Tim Scobie 4-year term
Lenoir Tourism Development Board	Dana Clark and Glenda Wilson 4-year terms
Lenoir Business Advisory Board	Terese Almquist 2-year term
Recreation Advisory Board	Scott Barnett and Erik Rabinowitz 2-year terms

CITY OF LENOIR

AFTER ACTION MEMO

To: Department Heads/Division Superintendents

From: Scott Hildebran, City Manager

Date: Thursday, February 22, 2018

Subject: Action taken by City Council on Tuesday, February 20, 2018.
Review all information to ensure that your department maintains
action taken by City Council.

- ✓ On behalf of City Council, Mayor Gibbons recognized and welcomed Assistant Scoutmaster Amy Green, Charles Stevenson and members of Boy Scout Troop #254 who were in attendance at the meeting as part of their requirements to earn a merit badge. Prior to the meeting, Councilman Jonathan Beal along with Mayor Joe Gibbons explained the proceedings of a City Council meeting and reviewed the function of each City Department.
- ✓ The Jarheads, Envirothon Team, comprised of Renae Austin, Griffin Dilsaver, Deanna Kilby, Bailey McLean, Zachary Mclean and Sam Miller, students from Caldwell Early College, presented their Service Learning Project to City Council which is part of their requirements for competition. The project is geared toward Tuttle Educational State Forest. Envirothon is an Environmental Knowledge Competition and this team competes under the 4-H umbrella since the Early College does not recognize this program. The Team won the state competition in 2017. During their presentation, each student emphasized his/her goal was to serve and give back to the community. On behalf of City Council, Mayor Gibbons thanked the students and commented the City was proud of all their accomplishments.
- ✓ City Council approved the minutes of the City Council Meeting of Tuesday, February 6, 2018 as submitted.
- ✓ City Council approved an ordinance amending the City's Code of Ordinances, Appendix A, Section 704.1, of the Lenoir Zoning Ordinance as related to Non-Conforming Single Family Structures.
- ✓ City Council called for a public hearing to be held on Tuesday, March 6 to consider adoption of a 20 mph speed limit for the entire length of Fairlane Drive, allowing for posting at the discretion of the Public Works Director. The City's Code of Ordinances, Appendix A, Traffic, Section 114, Twenty mile per hour speed limit on the following streets, will be amended to reflect this change.
- ✓ City Council approved amending the City's Code of Ordinances, Chapter 13, Section 13, Skate Park, to read as follows: It shall be unlawful within the corporate limits of the City of Lenoir for any person riding a skateboard or similar device at or within any municipal skate park or facility unless such person is wearing appropriate protective gear including a helmet, elbow pads, and kneepads. Appropriate signs notifying the public of this section and requirement shall be posted appropriately at the entrance(s) to

such skateboard park. It was noted the general purpose of the amendment is to increase usage of the City's skate park and to allow citizens to use the skate park at their own risk and without supervision by City Staff.

City Council directed Mr. Story to report back to Council on the usage of the skate park prior to their seeking a cost estimate to install lighting at the park. Appropriate signage will be installed at the park upon finalization of the park's hours of operation.

- ✓ Mayor Gibbons announced the following list of individuals to be re-appointed to the City's Authorities/Boards/Commissions at the March 20 City Council meeting. They are as follows: Tim Scobie, Planning Board, Dana Clark & Glenda Wilson, Lenoir Tourism Development Authority, Terese Almquist, Lenoir Business Advisory Board and Scott Barnett & Erik Rabionwitz, Recreation Advisory Board.
- ✓ Councilmember Ike Perkins along with City Council commended Joshua Harris, Public Information Officer, for doing a great job in notifying citizens of upcoming events and/or projects. He also thanked City Clerk Shirley Cannon for always keeping Councilmembers informed of upcoming activities.
- ✓ On behalf of City Council, Mayor Joe Gibbons welcomed Jared Wright, who is replacing Charles Beck as the City's new Director of Public Works.
- ✓ On behalf of City Council, Mayor Gibbons commended Charles Beck, Public Works Director, and Ken Briscoe, Fire Chief, upon their upcoming retirement on February 28. Mayor Gibbons expressed appreciation for all they have done for the citizens of Lenoir.
- ✓ Pursuant to N.C.G.S. §143-318.1(a), (4), (5), City Council entered into closed session to discuss economic development and a property acquisition.
- ✓ The following events for the month of February were highlighted:
 - The City Council Planning Retreat will be held on Friday, February 23 from 8:30 a.m. – 2:00 p.m. at the Blue Ridge Energy Membership (BREMCO) corporate office located at 1216 Blowing Rock Boulevard.
 - The Planning Board will meet on Monday, February 26 at 5:30 p.m.
 - The Committee of the Whole will meet on Tuesday, February 27 at 8:30 a.m. at City Hall, Third Floor, former Council Chambers.
 - The Foothills Regional Airport Authority will meet on Wednesday, February 28 at noon.
 - A joint reception honoring Charles Beck, Director of Public Works, and Ken Briscoe, Fire Chief, will be held on Tuesday, March 6 from 3:30 p.m. – 5:30 p.m. at the City/County Chambers located at 905 West Avenue, Lower Level.