

AGENDA  
WAYNESVILLE BOARD OF ALDERMEN  
FALL PLANNING RETREAT  
WELLS EVENT CENTER

OCTOBER 6, 2017

- |                                    |                            |            |
|------------------------------------|----------------------------|------------|
| 1. Call to Order                   | Mayor Brown                | 8:30 am    |
| 2. Introductory comments           | Mayor and Board Members    | 8:45 am    |
| 3. Local Preference Purchasing     | Rob Hites & Eddie Caldwell | 9:00 am    |
| <b>Break</b>                       |                            | 10:00 am   |
| 4. Economic Development Incentives | Rob Hites                  | 10:15 am   |
| 5. The value of in-kind services   | Amie Owens                 | 11:00 am   |
| 6. Town schedule of matching funds | Elizabeth Teague           | 11:30 am   |
| 7. Lunch                           | Provided                   | 12:00 noon |
| 8. UP program update               | Amie Owens                 | 12:45 pm   |
| 9. Other business                  |                            | 1:00 pm    |
| 10. Adjourn                        |                            | 1:30 pm    |

## Local Preference Purchasing

### Proposal

Amend the Town's Purchasing Policy to Permit "Local Preference Purchasing" in accordance with School of Government Guidance.

### Background

The Town's current purchasing policy states: "It is the desire of the Town to purchase from vendors located within Waynesville and Haywood County whenever possible. This can be accomplished by ensuring that local vendors who have goods or services available are included in the competitive purchasing process. However the Town has a responsibility to its residents to ensure that the maximum value is obtained for each public dollar spent. **The Town cannot and will not make purchasing decisions solely on the basis of vendor residence**".

The Town's policy has three thresholds for purchases that fall at or below the NC General Statutes formal bid procedures set out in GS 143-129.

- (1) Purchases may be made by "Purchase Card" for items \$500 and below without submitting written quotes or purchase orders.
- (2) Purchases over \$500 and below \$5,000 require written quotes with the successful bid being awarded to the "lowest responsible responsive bidder".
- (3) Purchases of \$5,000 to \$90,000 require a written description or plan for the purchase. Items over \$5,000 must be reflected in the Town's Capital Improvement Plan. (*The State has increased the threshold for informal bids from \$5,000 to \$30,000. The Town's purchasing policy is more conservative setting the threshold for informal bids at \$5,000*).

The Town's Purchasing Policy is similar to most policies one will find in the State. The Policy adheres to the principal of obtaining quotes for all but minor purchases and awarding the bid to the low quotation.

### Local Preference Purchasing

The General Statutes are very clear that for purchases at or above \$30,000 a local government must award the bid to the "lowest responsible responsive bidder". For purchases below this threshold the statutes are silent as to whether local governments must award on this basis. For many years local governments has adhered to the principal of awarding bids based on a strict adherence to principal that the bid is awarded to the business with the lowest responsible responsive bid regardless of the residence of the vendor.

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## Local Preference Purchasing

The School of Government published a “blog” discussing local government purchasing that outlined a narrow procedure where a local government could award a bid to a local vendor even if the vendor’s bid was slightly above that of the low bidder that was not local.

In her blog Eileen Youens states that local governments may develop purchasing procedures that recognize the need to (1) improve their tax bases, (2) encourage local industry, and (3) reduce unemployment. In doing so they may “...come up with a contract award preference that has the best chance of surviving a constitutional challenge.”

She recommends that “The percentage preference should be relatively small. Five percent seems to be acceptable but anything higher than that is likely to be struck down.”

Given that advice several North Carolina local governments developed purchasing policies that encompass her advice.

I am attaching a resolution based on Greenville NC Local Preference Policy for your perusal. The resolution includes the definition of “local business” found in the Town of Waynesville’s current purchasing policy: a local business is one that resides in Waynesville or Haywood County. This is a definition that the Board should consider. They may define “local business” in any manner they choose. Burlington defines local vendors as residing in Burlington and Alamance County. Greenville states that a local vendor must reside in the city limits of Greenville or its extra-territorial area. Both local governments define a vendor as having a physical, taxable, brick and mortar presence in the geographic area. In a phone conversation with Burlington’s purchasing agent he said that the Burlington Council had more trouble defining “local” than any other element of the policy.

### **How Local Preference Purchasing Works**

Based on Ms. Youen’s advice the local government would follow its normal procedure of obtaining quotes for purchases up to \$30,000. Should a local vendor’s quote fall within five percent (5%) of the low quote from a non local vendor the purchasing agent would either award the bid to the local bidder at the quoted amount or give the local vendor the opportunity to match the quote of the non local vendor depending on which option the Town Board chooses.

Burlington and Greenville adopted policies that require the local vendor to match the low bid of the non local vendor.

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Local Preference Purchasing

### **Sample Resolution Adopting Local Preference Purchasing**

I am attaching a sample resolution that I have modeled from the Greenville NC resolution. It contains the elements that Ms. Youen recommends be included in such a resolution. The sample follows the Town's current definition of "local businesses" by including both Waynesville and Haywood County. This is a key definition and I recommend the Board discuss this key element in the policy.

A second element is the resolution's definitions of "qualified businesses". In section 5 the resolution outlines three criteria for being eligible to be considered "local". The Board should review these criteria and determine if they are acceptable.

RESOLUTION NO.  
RESOLUTION ADOPTING THE TOWN OF WAYNESVILLE  
LOCAL PREFERENCE POLICY

WHEREAS, the economic development of the Town of Waynesville will be promoted by the implementation of a Local Preference Purchasing Policy in the procurement of goods and services in that it supports local businesses; and

WHEREAS, in addition to promoting economic development, a Local Preference Purchasing Policy provides a benefit to the Town of Waynesville in that local businesses have the opportunity to be more timely and responsive in providing goods and services; and

WHEREAS, the Board of Aldermen of the Town of Waynesville hereby finds and determines that the Local Preference Purchasing Policy herein adopted accomplishes the aforementioned goals while ensuring fiscal responsibility and the provision of goods and services in a manner which best serves the needs of the Town of Waynesville.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF ALDERMEN OF THE TOWN OF WAYNESVILLE:

Section 1. Purpose.

The purpose of the Local Preference Purchasing Policy is to ensure the best overall value in the procurement of goods and services while providing a preference to local businesses to support the Town's economic development. The policy also provides the Town with goods and services delivered on a more timely and responsive manner.

Section 2. Definitions.

- (a) Eligible Local Bidder means a bidder that has paid and is current on any applicable Town of Waynesville property tax and meets the qualifications set forth in Section 5.
- (b) Non Local Bidder means a bidder that is not an Eligible Local Bidder as defined in subsection (a).
- (c) Responsible bidder means the bid or proposal is submitted by a bidder that has the skill, judgement and integrity necessary for the faithful performance of the contract, as well as sufficient financial resources and ability.
- (d) Responsive bidder means that the bid or proposal submitted by a bidder complies with the specifications or requirements for the request for bids or request for proposals.

### Section 3. Policy.

The policy of the Town of Waynesville is to provide a preference to local businesses in the procurement of goods and services for the contracts which the Town may apply a local preference. When the request for bids involves the bidder submitting a price, a price matching preference will be given to Eligible Local Bidders of the contracts for purchase of goods and services. The preference will allow an Eligible Local Bidder to match the price and terms of the lowest responsible, responsive bidder who is a Non-Local Bidder, if the Eligible Local Bidder's price is within five percent (5%) or \$30,000 whichever is less, of the lowest responsible, responsive Non-Local Bidder's price. When the request seeking proposals is based upon qualification for a service contract without a price being submitted as a bid, a factor in the evaluation of proposals shall be whether the proposal is submitted by an Eligible Local Bidder. Five percent (5%) of the points to be awarded to a bidder in an evaluation of proposals shall be awarded to an Eligible Local Bidder.

### Section 4. Local Preference Eligible Contracts.

The provisions of the Local Preference Purchasing Policy shall apply when bids or proposals are sought for the following:

- 1 Contracts for the purchase of apparatus, supplies and equipment costing less than \$30,000.
- 2 Contracts for construction or repair costing less than \$30,000.
- 3 Contracts for architectural, engineering, surveying, construction management at risk services costing less than \$50,000 and
- 4 Contracts for services (other than contracts for architectural, engineering, surveying, construction management at risk services, design-build services and public-private partnership construction services).

Notwithstanding the foregoing, the provisions of the Local Preference Purchasing Policy shall not apply to contracts involving a project funded by a federal grant unless the grant has specific language which overrides the prohibition of the Grants Management Common Rule which does not allow local preferences and the provisions of the Local Preference Purchasing Policy shall not apply (i) when bids or proposals are not sought due to an emergency situation or (ii) in special cases when the required expertise or item is not available locally as determined by either the Purchasing Agent or Department Head, or (iii) when the purchase involves an expenditure of less than \$500 when the purchase is from a business that qualifies as an Eligible Local Bidder.

## Section 5. Qualification.

In order to qualify for the local preference, an Eligible Local Bidder must present proof that they meet the qualifications of an Eligible Local Bidder prior to the submittal of a bid or proposal. The bidder must update their information when their location changes even though they remain in the jurisdiction. The Eligible Local Bidder must be current on any property taxes that may be due the Town of Waynesville.

When the request for bids involves the bidder submitting a price, in order for a bidder to be an Eligible Local Bidder, the bidder must either:

- (a) Have an office or store from which all or a portion of its business is directed or managed and which is located within Waynesville or Haywood County consisting of a least 500 square feet of floor area within a building on property having a non-residential zoning classification; or
- (b) Have an office or store located within Waynesville or Haywood County and have at least three (3) employees who are based and working out of said office or store; or
- (c) Have an office located within Waynesville or Haywood County from which all or a portion of its business is directed or managed and which is located within a residence as allowed by the Zoning Ordinance for a period of one (1) year.

When the request seeking proposals is based upon qualifications for a service contract without a price being submitted as a bid when the proposal is submitted, in order for a bidder to be considered as an Eligible Local Bidder, the bidder must either:

- (a) Have an office in which all or a portion of its business is directed or managed and which is located Waynesville or Haywood County consisting of at least 500 square feet of floor area within a building on property having a non-residential zoning classification; or
- (b) Have an office located within Waynesville or Haywood County and have at least three (3) employees who are based and working out of said office; or
- (c) Have an office from which all or a portion of its business is directed or managed and which is located within a residence within Waynesville or Haywood County as allowed by the Zoning Ordinance for a period of at least one (1) year; or
- (d) Have an arrangement with one or more firms or companies that qualify as an Eligible Local Bidder pursuant to (a), (b), (c) above to subcontract with said firms or companies to perform at least twenty-five percent (25%) of the dollar value of the work to be performed pursuant to the service contract, if the bidder is awarded the contract.

## Section 6. Process when Bid Involves Price.

Bids will be evaluated in accordance with the award criteria stated in the request for bids to determine the lowest responsible, responsive bid when the request for bids involves the bidder submitting a price. If the lowest responsible, responsive bid is submitted by an Eligible Local Bidder, then there will be no consideration of the price-matching preference.

If the lowest responsible, responsive bid is submitted by a bidder who is not an Eligible Local Bidder and there are no submitted bids from an Eligible Local Bidder that is within five (5%) of the lowest responsible, responsive bid, then none of the Eligible Local Bidders will qualify for the price-matching preference. The award will be made to the lowest responsible, responsive bidder.

If only one Eligible Local Bidder qualifies for the price-match preference, the Eligible Local Bidder will first be offered the contract award and will have two (2) business days to accept or decline the award based on the lowest responsible, responsive bidder's price. If the lowest responsible, responsive Eligible Local Bidder declines to accept the contract award, then the award is made to the lowest responsible, responsive bidder.

If more than one Eligible Local Bidder qualifies for the price-matching preference, then the qualified Eligible Local Bidders shall be prioritized according to their original bids, from lowest to highest, so that the Eligible Local Bidder who submitted the lowest responsible, responsive bid should get the first opportunity to match the quote of the lowest responsible, responsive Non-Local Bidder. The Eligible Local Bidder will first be offered the contract award and will have two (2) business days to accept or decline the award based on the lowest responsible, responsive Non-Local Bidder's price. If the lowest responsible, responsive Eligible Local Bidder declines to accept the contract award, then the contract should be offered to the next lowest responsible, responsive Eligible Local Bidder and will continue in this manner until either a responsible, responsive Eligible Local Bidder within five percent (5%), of the lowest responsible, responsive bid accepts the contract award or the award is made to the lowest responsible, responsive bidder if no qualified Eligible Local Bidders accept the award. If two responsible, responsive Eligible Local Bidders qualify for the price-matching preference and both bid the same amount, then the Eligible Local Bidder which will be offered the contract award will be chosen by lot.

At any time, all bids may be rejected.

#### Section 7. Process when Considering Qualifications for Service Contracts.

When the request seeking proposals is based upon the qualifications for a service contract without a price being submitted as a bid when the proposal is submitted, the request seeking proposals shall state that being local is a factor to be considered in determining the qualification of the bidder. The proposals will be evaluated in accordance with an award criteria developed to determine the best qualified responsible, responsive bidder submitting a proposal. Five percent (5%) of the points to be awarded to a bidder in an evaluation shall be awarded to each Eligible Local Bidder submitting a proposal. Once the best qualified responsible, responsive bidder submitting a proposal is determined, the price is then negotiated. If an agreement on the price does not occur, then the Town will negotiate with the next qualified responsible, responsive bidder submitting a proposal.

Although being local is a factor in determining the best qualified responsible, responsive bidder submitting a proposal, other factors such as specialized experience and expertise will be a component of the award criteria when determining the best qualified proposal.

At any time, all proposals may be rejected.

Section 8. Solicitation of Bids or Proposals.

Whenever bids or proposals are sought by directly contacting bidders for bids or proposals for a contract for which the provisions of the Local Preference Purchasing Policy apply, the request for bids or proposals shall be provided to potential bidders having an office or store located within Waynesville or Haywood County which have submitted a request to be included in a bid list for a particular good or service.

Section 9. False or Substantially Inaccurate or Misleading Certifications.

If at any time during or after the procurement process, the Town determines that the bidder has submitted false or misleading information relating to the bidder's residence within Waynesville or Haywood County the Town may:

- (1) Cancel Eligible Local Bidder's contract or purchase order that was awarded based on the preference: The Eligible Local Bidder shall be liable for all costs it incurs as a result of the cancellation and all increased costs of the Town that may be incurred by awarding the contract to the next lowest bidder.
- (2) Exclude the bidder from any preference in any future Town bidding opportunities for a period of time determined by the Finance Director.
- (3) Debar the bidder from doing business with the Town for a period of time determined by the Finance Director.

Section 10. That all resolutions and clauses of resolutions in conflict with this resolution are hereby repealed.

Section 11. That this resolution shall become effective for requests for bids or proposals issued after November 1, 2017.

This the 6<sup>th</sup> day of October, 2017.

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Gavin A. Brown, Mayor

ATTEST:

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Eddie Ward, Town Clerk



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## Local Preferences in Public Contracting, Part 1

### About the author

Eileen R Youens



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This entry was posted on September 22nd, 2010 and is filed under [Local Preferences](#), [Purchasing](#), [Construction](#), [Property Transactions](#).



Hard times have come to Emerald City, North Carolina. People are out of work, no one is buying or building anything, and it doesn't look like things will get better anytime soon. The Emerald City Council has decided that they need to take action to help out their local businesses, so they decide to pass a local preference policy. Is such a policy legal?

My next few blog posts will focus on local preferences in contracting—that is, when can a North Carolina local government give a preference to a contractor or vendor based on whether the contractor or vendor is “local” or based on whether the contractor or vendor will promise to hire local employees? Although the U.S. Constitution and the North Carolina General Statutes place substantial restrictions on how and when local governments in North Carolina may institute local preferences, carefully worded preferences are permissible in a few limited contexts. This first post will set out some definitions and key questions. In later posts, I'll discuss the answers to those questions.

#### Defining “local”

So, who is “local,” anyway? The first step in defining “local” is to establish the geographic scope of the preference. Does “local” mean your municipality, zip code, county, state, country, or continent (e.g. the North American Free Trade Agreement)? The next step is to determine who will be covered by the preference within that geographic area. Residents of the area? Taxpayers? Companies with a majority of employees living in the area? Companies with a majority of shareholders living in the area? Companies headquartered in the area? Companies with a principal place of business in the area? Companies that have paid state/county/city property taxes on equipment necessary to perform the contract under consideration? Companies headquartered in the area, but only if the company is smaller than a certain size (by number of employees, amount of yearly profits, or some other measure of the company's size)? How a unit chooses to define “local” will depend on the goals the unit hopes to achieve through its preference policy.

#### Defining local preferences

What is a “local preference”? Local preferences can be implemented through statutes, regulations, ordinances, and written and unwritten policies. There are three types of local preferences: (1) hiring preferences, which require contractors to hire a certain percentage of local workers; (2) purchasing preferences, which require contractors to use supplies or materials that are made locally (e.g. [the Buy American Act](#)); or (3) contract award preferences, which give local bidders or proposers an advantage in the award of public contracts.

There is not much variation in the first two types of local preferences—hiring preferences and purchasing preferences. However, there are four major variations in contract award preferences. In one variation, the awarding government applies a specific percentage price increase to bids from non-local bidders, or applies a specific percentage price decrease to bids from local bidders. Because many bids are awarded based on price, this has the effect of giving the local bidders a better chance at winning contracts, even if their bids are higher than their non-local competitors. For example, let's say Dorothy, Inc., a non-local bidder, is the lowest bidder on an Emerald City construction project with a bid of \$1 million. The Wizard, Co., a local bidder, has the next lowest bid, \$1,009,000. Dorothy clearly has the lowest bid. However, if Emerald City applies a 5% increase to non-local bids, Dorothy's bid is increased (for purposes of determining which bid is lowest) to \$1,050,000, making The Wizard the lowest bidder. And, similarly, if Emerald City applies a 5% decrease to local bids, The Wizard's bid would be decreased (for purposes of determining which bid is lowest) to \$95,8550, again making The Wizard the low bidder.

A second variation is bid price matching, where the awarding government is required to local bidders the opportunity to match the lowest bid if the lowest bidder is a non-local bidder. (An example of this second variation is Governor Purdue's recent Executive Order 50, which I discussed in an [earlier post](#).) Revisiting our Emerald City bid from the previous paragraph, let's say Emerald City's new ordinance provides that if the lowest responsive, responsible bidder is non-local, the lowest local bidder whose bid is within 5% of the non-local bidder's bid must be given the opportunity to match the lowest bidder's bid. Accordingly, if Dorothy's bid was \$1 million, and The Wizard's was \$1,009,000 (which is within 5% of \$1 million), Emerald City's ordinance would require the City to give The Wizard (the local company) the opportunity to agree to perform the contract for \$1 million.

A third variation is a reciprocal preference, where the awarding government is required to apply a percentage increase to non-local bidders' bids only if the non-local bidder's jurisdiction applies such a preference. For example, let's say Kansas (Dorothy, Inc.'s principal place of business) applies a 5% increase to non-local bids. If Emerald City has a reciprocal bid preference, it will apply that same 5% increase to Dorothy's bids on Emerald City projects. [G.S. 143-59\(b\)](#) applies such a preference to state contracts in North Carolina (but not to local government contracts) for "equipment, materials, supplies, and services" costing more than \$25,000.

A fourth variation is a tie-bid preference, where the awarding government will award to an in-area bidder when the in-area bidders' bid and an out-of-area bidder's bid are equal in price and quality. If Dorothy and The Wizard both bid \$1 million for an Emerald City construction project, Emerald City would award the contract to The Wizard, the local company. [G.S. 143-59\(a\)](#) applies a tie-bid preference to state contracts (but not to local government contracts) for the purchase of "foods, supplies, materials, equipment, printing or services."

**Questions to Consider**

If your unit of government is considering implementing a local preference policy, and after you've settled on a definition of "local," you'll need to consider the following five questions:

1. Is the policy constitutional?
2. Do you have the authority to implement the policy?
3. Does the policy comply with rules applicable to grants?
4. What goals are you trying to achieve through the policy?
5. Will the policy achieve those goals?

My next posts will focus on these five questions. Stay tuned!

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## Local Preferences in Public Contracting, Part 2

### About the author

Eileen R Youens



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This entry was posted on October 6th, 2010 and is filed under [Local Preferences](#), [Purchasing](#), [Construction](#), [Property Transactions](#).



In [my last post](#), I talked about the efforts of the City Council of Emerald City, North Carolina, to support its local businesses by adopting a local preference policy. We now rejoin our friends in Emerald City, where the City Council has asked Purchasing Officer Scarecrow to research what goals a preference policy might achieve. (This is number four on the list of “questions to consider” that I provided in my last post—but the answer to this question will provide a necessary context for the answers to the remaining questions.) Scarecrow is now ready to report back to the Council.

Let’s listen in on the Scarecrow’s report...

“The Council stated three goals of this proposed policy during the last Council meeting: first, to reduce local unemployment, second, to support local businesses, and, finally, to increase Emerald City’s tax base. I’ve been putting my new brain to work trying to figure out what our policy would have to do in order to meet these goals, and that’s what I’ll share with you today.

“First, to reduce unemployment, our policy would have to have the effect of creating more jobs for local workers in addition to retaining current jobs held by local workers.

“As for the second goal, supporting local businesses, there are two kinds of ‘support’ that were discussed at last month’s meeting. One is financial support. To achieve this goal, our policy would have to have the effect of directing more money to local businesses. The other type of support is political or moral support. To achieve this goal, our policy would have to have the effect of showing local businesses that we are taking concrete actions to assist them.

“Finally, there’s the goal of increasing Emerald City’s tax base. To achieve this goal, our policy would have to have the effect of increasing property taxes and sales taxes in the City. In other words, the policy would have to encourage people to spend money with local businesses and to buy property in the City.”

Councilman Lion broke in. “There’s a fourth goal, too. I’ve heard that a ‘buy local’ policy will reduce the city’s carbon footprint. It’s the green thing to do, and even I’m not afraid to say that it’s also the right thing to do! This is Emerald City, after all.”

“Thank you for that point, Councilman Lion,” responded Scarecrow. “My new brain tells me that for our policy to meet the goal of reducing the city’s carbon footprint, our policy would have to have the effect of cutting down on transportation costs for the goods and services that the City spends money on. Is that what you mean?” Councilman Lion nodded affirmatively.

Scarecrow turned to the rest of the Council, “So now I’ll close with two questions:

1. Do you agree with my analysis of what our policy will have to do in order to achieve the goals of reducing unemployment, supporting local businesses, increasing the City’s tax base, and reducing our carbon footprint?
2. Are there any other goals that you’d like to achieve through this policy?”

And I’ll close Part 2 by turning those same questions over to you. Please add your comments to this post (note that your comments will not appear until I approve them), or email me directly [here](#).

Thank you in advance for participating in this discussion.

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## Local Preferences in Public Contracting, Part 3

### About the author

Eileen R Youens



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This entry was posted on October 20th, 2010 and is filed under [Local Preferences](#), [Purchasing](#), [Construction](#), [Property Transactions](#).



In my last two posts ([here](#) and [here](#)), I've discussed the efforts of the City Council of Emerald City, North Carolina, to support its local businesses by adopting a local preference policy. Purchasing Officer Scarecrow has just finished reviewing the Council's goals for the policy: reducing local unemployment, supporting local businesses, increasing Emerald City's tax base, and reducing the City's carbon footprint. The Council has asked Scarecrow to give them time to consider his comments so they can determine if there are other goals that they would like to achieve through the local preference policy.

Meanwhile, City Attorney Tin Man is about to present his report to the Council on the legal issues presented by a local preference policy. Tin Man explains that he'll begin his report by discussing Emerald City's legal authority to implement a local preference policy. (This is number two on the list of "questions to consider" that I provided in my first post, but will provide a framework for the discussion of questions 1 and 3.) Let's listen in as Attorney Tin Man begins his report:

"As you know, local governments in North Carolina only have the powers given to them by the State Constitution and the General Assembly. This is not true for every state in the United States. In some states, called 'home rule' states, local governments have broad authority to act unless some statute restricts their authority. North Carolina is not a 'home rule' state, and that means North Carolina local governments can't do some things that local governments in some other states can do.

"The types of local preferences we've discussed—hiring preferences, purchasing preferences, and contract award preferences—all involve the City's power to enter into contracts. While the North Carolina General Statutes do give local governments the authority to enter into contracts, the statutes also require that local governments follow specific procedures for awarding certain types of contracts. If a local government enters into one of those contracts without following the specific procedures in the statute, the contract will be invalid. Practically speaking, this means the City couldn't force a general contractor to complete a construction project based on an invalid contract, or couldn't force a vendor to deliver equipment purchased through an invalid contract.

"So how does this impact our ability to institute local preferences? Well, [North Carolina General Statutes 143-129](#) and [143-131](#) require that local governments award formally and informally bid contracts to the lowest responsive, responsible bidder. Formal bidding applies to contracts for the purchase of apparatus, supplies, materials, and equipment costing \$90,000 or more and to construction or repair contracts costing \$500,000 or more. Informal

bidding applies to contracts for the purchase of apparatus, supplies, materials, and equipment costing \$30,000 or more but less than \$90,000, and to construction or repair contracts costing \$30,000 or more but less than \$500,000. In other words, any purchase contracts or construction contracts costing \$30,000 or more must be awarded to the lowest responsive, responsible bidder.”

“Wait a minute!” exclaims Councilman Lion. “I thought we had to use informal bidding on purchases costing \$5,000 or more.”

“That’s right,” agrees Tin Man. “Here in Emerald City, our purchasing policy requires informal bidding on purchases and construction projects costing \$5,000 or more, and formal bidding on purchases and construction contracts costing \$50,000 or more, which means the City is required to award contracts for purchases and construction projects costing \$5,000 or more to the lowest responsive, responsible bidder. The Council may want to reconsider these bidding thresholds after hearing the rest of my report, although there are good reasons for keeping the thresholds where they are.”

Tin Man continues. “When I say that these contracts must be awarded to the lowest responsive, responsible bidder, what do I mean? Well, the ‘lowest’ part is easy. ‘Responsive’ means that the bid matches up with what we’ve asked for in our specifications—that the product we’ve asked for is what the bidder will provide, for example—and that any legal requirements have been met. For example, if a bid bond is required, and the bidder didn’t provide one, then that bid is not responsive. The term ‘responsible’ addresses the bidder’s ability—considering the bidder’s skill, experience, financial resources, and track record—to perform the contract.

“This means that where a bidder lives or how a contract will affect the City’s unemployment rate or tax base or carbon footprint simply doesn’t figure in to the questions of whether a bid is responsive or whether a bidder is responsible. In other words, let’s say we put out a bid for ruby slippers, and our friend Dorothy from Kansas was the lowest bidder with a bid of \$35,000, and an Emerald City company was the next lowest bidder with a bid of \$35,100, and they were both bidding ruby slippers that met our specifications, and they both had the skill, experience, financial resources, and track record to perform the contract. In that situation, we would have to award the contract to Dorothy, even though she’s not from Emerald City.”

“But that’s only a difference of \$100!” protests Chairwoman Glinda. “Surely if the difference is that small it wouldn’t matter if we awarded the contract to the Emerald City bidder.”

Tin Man shakes his head, “Actually, it would matter. The statutes don’t say we can award to the lowest responsive, responsible bidder unless the next lowest is local and their bid is only a little bit more. It says we must award to the lowest responsive, responsible bidder, period.”

The Council erupts in protests until Chairwoman Glinda manages to bring them to order by pounding her sparkling wand on the table. “Quiet down, quiet down! Please continue, Tin Man.”

“Purchasing Officer Scarecrow will explain the reasoning behind this when he resumes his report. There *are* good policy reasons for these statutes, but I’ll leave it to him to explain them. I’d like to get back to the issue at hand: the authority we have to institute a local preference policy.

“The bottom line is this: for contracts that must be informally or formally bid, any policy that would require the consideration of factors other than the bid price, the bid’s responsiveness, or the bidder’s responsibility would be outside of our authority. We simply cannot institute local preferences for these types of contracts. But if you think about it, there are lots of contracts we enter into that do not have to be formally or informally bid. Even under our purchasing policy, we’re not required to bid purchases of apparatus, supplies, materials, or equipment costing less than \$5,000, and we’re not required to bid construction contracts costing less than \$5,000. And then there’s an entire category of contracts that doesn’t have to be bid at all—service contracts.”

“What kinds of service contracts do we enter into?” asks Councilman Lion.

Chairwoman Glinda answers quickly, “I think he’s talking about contracts like accounting contracts, janitorial contracts, consultant contracts, and engineering contracts, right?”

“Almost right,” says Tin Man. “The General Statutes don’t say anything about how we’re supposed to award most service contracts; they leave that up to our discretion. So it’s up to us to decide how to award contracts for accounting services, janitorial services, and consulting services, to use your examples, Chairwoman. But [G.S. 143-64.31](#) requires us to use a qualifications-based selection process for four specific types of services—architectural, engineering, surveying, and construction management at risk services. In other words, to hire an engineer to do engineering work, we have to evaluate engineering firms based on their qualifications—not on price. However, that statute *does* require us to consider whether a bidder is local when we’re evaluating bidders. It says that we must give a preference to North Carolina bidders—not Emerald City bidders—over a bidder from another state, but only to the extent that the non-North Carolina bidder would be given a preference by their home state. This is called a reciprocal preference. Of course, preferences in other states usually relate to price, and since we can’t consider price in awarding these types of contracts, it’s not clear to me how we’d apply this reciprocal preference.”

“But you’ve told us before that we don’t have to use that qualifications-based process,” interrupts Councilman Lion.

“That’s true,” says Tin Man. “[G.S. 143-64.32](#) allows local governments to [exempt themselves from the qualifications-based process](#). If we do exempt ourselves, I suppose we could use the reciprocal preference, although we wouldn’t have to. And it would only make sense to apply that preference if we decided to consider price instead of awarding the contract outright to a specific firm.

“So, we’re required to use qualifications-based selection to award contracts for design services (unless we exempt ourselves),” concludes Tin Man. “But, as I just said, the General Statutes don’t say anything about how we’re supposed to award other types of service contracts.”

“So you’re saying we *can* use local preferences for service contracts.” Councilman Lion says hopefully.

“And for purchases and construction contracts costing less than \$5,000—or less than \$30,000, if we used the thresholds in the statute,” adds Chairwoman Glinda.

“Or what if the General Assembly changes the bidding law to give us the authority to institute local preferences?” asks Councilman Lion, his tail waving in excitement.

“Not so fast,” replies Tin Man. “There’s the Constitution to consider.”

“The Constitution?” asks Chairwoman Glinda. “What does the Constitution have to do with local preferences?”

We'll hear the Tin Man's response to this question in my next post. In the meantime, here are some additional reference materials on the topics covered in this blog:

- [A Legal Guide to Purchasing and Contracting for North Carolina Local Governments](#), by Frayda Bluestein – a comprehensive reference book on local government procurement in North Carolina;
- [“Local Government Purchasing and Contracting Update: Statutory Requirements and Local Policies,”](#) by me – a shorter (free) overview of the bidding laws; and
- [“Understanding the Responsiveness Requirement in Competitive Bidding,”](#) by Frayda Bluestein – a discussion of the concepts of responsiveness and responsibility (also free).

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## Local Preferences in Public Contracting, Part 4

### About the author

Eileen R Youens



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This entry was posted on November 10th, 2010 and is filed under [Local Preferences](#), [Purchasing](#), [Construction](#), [Property Transactions](#).



This is the fourth installment of a series of posts discussing the efforts of the City Council of Emerald City, North Carolina, to support its local businesses by adopting a local preference policy. (You can find the earlier installments [here](#), [here](#), and [here](#).) In the last post, City Attorney Tin Man gave the City Council an explanation of Emerald City's legal authority, under North Carolina law, to implement a local preference policy. The Council was happy to hear that North Carolina law would permit local preferences for purchases and construction projects costing less than the informal bidding threshold, and for service contracts, and that—under North Carolina law—the City could enact a local preference policy for other contracts if the General Assembly gave them the authority to do so. But the Tin Man cautioned them that North Carolina law was not the only potential stumbling block to instituting a local preference policy. In this post, we'll hear what the City Attorney Tin Man has to say about the United States Constitution and local preferences.

"What does the Constitution have to say about local preferences?" asks Council Chairwoman Glinda.

"I'll get to that in just a minute," responds Tin Man, "but first I want to quickly review the three general types of local preferences, because this will be important to the rest of our discussion. There are three general types of local preferences: hiring preferences, which require contractors to hire a certain percentage of local workers; purchasing preferences, which require contractors to use supplies or materials that are made locally; and contract award preferences, which give local bidders or proposers an advantage in the award of public contracts." [I discussed these in the first post in this series, which you can find [here](#).]

"OK," says Tin Man, "so now let's talk about the Constitution. Successful constitutional challenges against local preferences have come out of three constitutional doctrines: the Privileges and Immunities Clause, the Commerce Clause, and the Equal Protection Clause. I'll start with the Privileges and Immunities Clause, which is found in article IV, section 2 of the Constitution. It says that "the Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States."

"What does that mean?" asks Cowardly Lion.

"Essentially it means that you can't treat someone from one state worse than someone from your home state just because of the fact that the person is from a different state," responds Tin Man. "After all, we're the *United States*—the purpose of this clause was to help make us one nation instead of simply a collection of individual mini-nations."

"So we can't enact local preferences because of this Privileges thing?" asks Cowardly Lion.

"Well, the courts have said that direct public employment is not a privilege protected by the Clause, so the Privileges and Immunities Clause only comes into play when we're talking about local hiring preferences—not contract award preferences or purchasing preferences," says Tin Man. "But a carefully drafted local hiring preference should still be OK, as I'll explain in a minute. I hope you'll let me give you a brief explanation of the Commerce Clause and Equal Protection Clause first."

"Fine, go ahead," grumbles Cowardly Lion.

"The Commerce Clause is found in article I, section 8 of the Constitution," continues Tin Man. "It says that 'Congress—not the States—'shall have the Power . . . to regulate Commerce . . . among the several States.' And the doctrine of the 'dormant Commerce Clause' or 'negative Commerce Clause' basically says that because Congress has the power to regulate interstate commerce, states and local governments don't have the power to take actions on their own that burden interstate commerce."

Glinda cuts in, "So you're saying we can't adopt any kind of local preference, because that would burden interstate commerce?"

"No," says Tin Man. "There's an exception to the dormant Commerce Clause known as the market participant exception. Under that exception, a state or local government *can* regulate commerce that the state or local government itself engages in—such as hiring contractors, awarding contracts, and buying goods."

"Oh, I see," says Glinda. "And you said there was one more constitutional doctrine to consider?"

"Yes," says the Tin Man. "That's the Equal Protection Clause. It's found in the Fourteenth Amendment, and it says 'no State shall . . . deny any person within its jurisdiction the equal protection of the laws.'"

"What does that have to do with local preferences?" asks Cowardly Lion, incredulously.

"It does seem like a stretch," agrees Tin Man, "But the courts have interpreted this language as a check against laws or policies that treat one group of people differently from another group of people. If a law or policy treats groups of people differently because of certain characteristics—like race or religious affiliation—then it's really difficult for a law or policy to survive a challenge under equal protection. But treating people differently because of where they live or where their business is based is not such a big deal, as long as the reason for the treatment is legitimate, and the law or policy has some rational relationship to that legitimate goal."

"So what does all of this mean for us?" asks Glinda. "What kinds of preferences are permitted?"

"Well," responds Tin Man, "it depends on what type of preference we're talking about."

#### **Hiring preferences**

"Hiring preferences are the most problematic," explains Tin Man, "because they interfere with contracts between private parties—specifically, contracts between a contractor and its subcontractors. After reviewing the cases, I've come up with the following criteria for a hiring preference that has the best likelihood of surviving a constitutional challenge:

"1. The policy, ordinance, or resolution establishing the preference should be worded to reflect a legitimate interest of the City, such as encouraging local industry, reducing local unemployment, or enhancing the local tax base.

"2. The preference should target qualified unemployed resident workers—such as workers that have signed up for unemployment assistance—rather than targeting all residents, regardless of their qualifications or employment status.

"3. The preference should establish a goal rather than a quota. In other words, it would require contractors to make good faith efforts to employ resident workers rather than simply rejecting contractors who fail to hire a specific number of resident workers.

"And, fourth, the real challenge: the local hiring goal should be based on data regarding how many jobs on public works projects are given to non-local workers when qualified unemployed resident workers are available to perform those jobs," Tin Man explains.

"How could we get that data?" asks Cowardly Lion.

"We'd need to work with a consultant," responds Tin Man, "We don't have anyone on staff who could come up with that data on their own."

Cowardly Lion grows softly to himself as the Tin Man continues. "Contract award preferences and purchasing preferences are not as problematic as hiring preferences because they don't interfere with contracts between private parties. I'll discuss contract award preferences next."

#### **Contract award preferences**

"Here's the criteria I've come up with for a contract award preference that has the best chance of surviving a constitutional challenge:

"1. No criminal penalty must be imposed on a public employee or officer who awards a contract without taking the preference into account.

"2. The percentage preference should be relatively small. Five percent seems to be acceptable, but anything higher than that is more likely to be struck down. A reciprocal preference—that is, one that is only imposed on bidders from states or local governments that have their own local preference, and only imposed to the same extent as that preference—has the best chance of surviving a constitutional challenge. [I discussed these in the first post in this series, which you can find [here](#)]. Also, setting a larger percentage preference for contracts under a certain dollar amount, and a smaller percentage preference for contracts over than amount is a common practice that seems finds favor with courts. For example, if the contract is less than \$1 million, you could give a 5% preference to local vendors (up to \$50,000), and if the contract is \$1 million or more, the preference would only be 2% (to reduce the actual dollars involved).

"Finally, as with a hiring preference, the policy, ordinance, or resolution establishing the contract award preference should be worded to reflect a legitimate interest of the City, such as encouraging local industry, reducing local unemployment, or enhancing the local tax base."

“What about getting data about how contracts awarded to non-local companies hurt Emerald City?” asks Glinda.

“Courts don’t look for that data when reviewing contract award preferences,” Tin Man replies. “They seem willing to assume that contract award preferences have a plausible relationship to improving the local economy.”

**Purchasing preferences**

“There are even fewer restrictions on purchasing preferences,” continues Tin Man. “As long as the policy, ordinance, or resolution establishing the preference is worded to reflect a legitimate interest of the City, such as encouraging local industry, reducing local unemployment, or enhancing the local tax base, the preference should survive a constitutional challenge.”

**A couple of key points**

“With that said,” warns Tin Man, “there are a couple of things to watch out for with all three of these preferences. First, the preference cannot apply to projects funded by federal grants when those grants prohibit the use of geographical preferences.”

“Do many federal grants prohibit geographic preferences?” asks Chairwoman Glinda.

“Yes, they do,” responds Tin Man. “The prohibition is found in something called the Grants Management Common Rule, which applies to all federal grants, although some grants have specific language that overrides this prohibition on geographic preferences.” [You can read more about the Grants Management Common Rule [here](#).]

“And second,” continues Tin Man, “If we ask our legislators to change the bidding laws to authorize us to adopt a local preference, we should ask them to work towards adopting legislation that gives us the *authority* to adopt such a preference, but does not *require* us to do so.”

“Is that because of the market participant exception you explained a few minutes ago?” asks Cowardly Lion.

“Exactly,” Tin Man replies. “There’s some question about whether a local government could take advantage of that exception when the preference is imposed at the state level rather than the local government level.”

“Unless you have any questions, that’s it for me,” concludes the Tin Man. “I think Purchasing Officer Scarecrow will be ready to talk with you next about whether a local preference will be able to achieve the goals you discussed earlier.”

[Note: A bulletin is forthcoming which will provide a more detailed discussion of the information presented above, along with case citations.]

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## Local Preferences in Public Contracting, Part 5

### About the author

Eileen R Youens



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This entry was posted on November 24th, 2010 and is filed under [Local Preferences](#), [Purchasing](#), [Construction](#), [Property Transactions](#).



This is the fifth installment in a series of posts discussing the efforts of the City Council of Emerald City, North Carolina, to support its local businesses by adopting a local preference policy. (You can find the earlier installments [here](#), [here](#), [here](#), and [here](#).) In the last post, City Attorney Tin Man explained the constitutional issues involved in local preferences to the City Council. As we rejoin the Emerald City Council meeting, a short man in a bright green suit has asked Chairwoman Glinda if he can make some remarks to the Council.

“You have 5 minutes,” says the Chairwoman. The man approaches the podium in the center of the room, produces a step stool, steps up on the stool, and pulls the microphone down to bring it closer to his mouth.

“Thank you, Chairwoman Glinda, and thank you, Council, for addressing this very important topic,” says the man. “My name is Green Apple, and I represent the Lollipop Guild. We are against local preferences, and I’d like to explain why.”

“The Lollipop Guild?” interrupts Cowardly Lion. “What are you doing here in Emerald City? I thought the Lollipop Guild was based in Munchkinland!”

“Yes, sir,” replies Green Apple, “but we have chapters in every state throughout the United States, and I represent the North Carolina chapter of the Lollipop Guild. We have one member right here in Emerald City, Ms. Blue Raspberry, and I’m here this evening on her behalf.” He gestures to a petite woman in a bright blue hat sitting in the front row, who smiles cheerily and waves at the council members.

“Fine, fine,” says Cowardly Lion. “Carry on.”

“Thank you, sir,” continues Green Apple. “Now you all know that the Lollipop Guild represents manufacturers of lollipops. However, you may not know that our members are also involved in construction—specifically, the construction of gingerbread houses. This means that our members are affected by all three of the types of preferences that have been discussed here: hiring preferences, contract award preferences, and purchasing preferences.

“Take Ms. Raspberry here—the owner of one of the local businesses you want to help. She’s thrilled when the City buys its lollipops from her. But Emerald City and its contractors are only a small—although important—part of Ms. Raspberry’s business. She also sells to nearby cities and counties, and

she's worried that if Emerald City implements a local preference, many of her other customers will, too. That will mean that she'll have the advantage when bidding on Emerald City's contracts, but she'll be at a disadvantage when bidding on contracts everywhere else."

"What do you mean?" asks Chairwoman Glinda.

"Ms. Raspberry's business is an Emerald City business," responds Green Apple. "So if the Town of Poppy Fields adopts a local preference, they'll favor their own businesses over Ms. Raspberry's. And if Munchkinland adopts a local preference, they'll favor their own businesses over Ms. Raspberry's. And so on. So even if Ms. Raspberry is offering the best prices for her lollipops, she could end up losing lots of business."

Ms. Raspberry nods her head emphatically from the front row.

"Not only that," continues Green Apple, "but Ms. Raspberry also has concerns about this preference from her perspective as an Emerald City taxpayer. She's worried that a local preference policy will mean that the City will end up paying higher prices for goods, services, and construction."

"Why?" Cowardly Lion asks, indignantly.

"If non-local companies realize that they're at a disadvantage when they compete for Emerald City business, they may stop bidding. It only makes sense to put time and effort into putting a bid together—especially when you're talking about a large, complicated project—if you know you're competing on a level playing field. If the odds are stacked against you, and if you know that City policy is actually hostile to non-local businesses, why waste your time? This means that local companies won't face as much competition, so they'll be able to win contracts with higher bids. And who will pay for those higher prices? Your taxpayers. Sure, it may only be a couple hundred bucks here, and a couple hundred bucks there, but those hundreds add up."

Chairwoman Glinda, looking thoughtful, breaks in. "Mr. Apple," she says, "I can see why you and Ms. Raspberry are concerned about contract award preferences—that is, a preference to local companies bidding on Emerald City purchases or projects. But what about purchasing preferences or hiring preferences?"

Green Apple nods. "The relationship between contract award preferences and the two issues I've mentioned—retaliatory preferences and decreased competition—is certainly a more direct relationship. But purchasing preferences and hiring preferences have the same issues. If you require all of your contractors to buy only Emerald City products, then that means neighboring cities and counties may implement a similar policy, and, again, business owners like Ms. Raspberry won't be able to supply contractors doing work for those cities or counties. At the same time, local businesses owners will be able to build more profit into their bids, knowing that Emerald City contractors are restricted from purchasing from non-local businesses.

"For hiring preferences, the issue of retaliatory preferences can be even more serious," continues Green Apple. "Local workers won't be able to work on Emerald City projects year round—they'll need to be able to find work elsewhere, and if other cities and counties adopt hiring preferences, your Emerald City workers will be in trouble. At the same time, the administrative hassle of verifying residency for all workers will cost the contractors time and money—and they'll pass those costs along to you.

"I hope you'll consider what I've said before you decide to implement a local preference policy," concludes Green Apple. "And I thank you for your time."

"Thank you, Sir," replied Chairwoman Glinda. "You've given us a lot to think about. Purchasing Officer Scarecrow is next on the agenda, and we'll ask him for his thoughts on this, too."

[Green Apple's arguments were adapted from a publication issued in February of this year by the United States Chamber of Commerce, titled "The Cost of Buy American Mandates on American Jobs: Reviewing the 'Buy American' Requirement on the Recovery Act's Anniversary." You can find it [here](#). ]

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## Local Preferences in Public Contracting, Part 6

### About the author

Eileen R Youens



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This entry was posted on December 8th, 2010 and is filed under [Local Preferences](#), [Purchasing](#), [Construction](#), [Property Transactions](#).



This is the final post in a series on local preference policies. (Earlier posts can be found [here](#), [here](#), [here](#), [here](#), and [here](#).) Once again, we find ourselves listening in on the Emerald City Council meeting where the Council is discussing local preference policies. The Council has [just heard](#) from Mr. Green Apple, a representative from the Lollipop Guild, about why he dislikes local preferences. The Council had already asked Purchasing Officer Scarecrow to report back to them about whether the preference policies they've discussed will achieve the goals they hope to accomplish through those policies, and now they've also asked Scarecrow to respond to Green Apple's comments. Let's listen in....

"I'll start by reminding you of the four goals of the proposed policy: reducing local unemployment, supporting local businesses, increasing the tax base, and reducing the city's carbon footprint," begins Scarecrow.

"As I said [earlier](#), to reduce local unemployment, our policy would have to have the effect of creating more jobs for local workers in addition to retaining current jobs held by local workers. Similarly, to support local businesses financially, our policy would have to have the effect of directing more money to local businesses." The Council members nod in agreement.

"But," says Scarecrow, "as we've just heard from Mr. Apple, a local preference policy won't necessarily achieve this goal because we don't generate enough projects or purchases to keep our local workers employed. They have to be able to work with other towns and counties as well, and if other towns and counties follow our lead, this could result in a disadvantage to our local workers and businesses."

"But establishing a local preference policy *will* show our local businesses that we support them!" protests Cowardly Lion.

"I agree completely," replies Scarecrow. "However, there are other ways that we can show our support for local businesses without risking the disadvantages that may come with a local preference policy. And I'll get to those in just a minute. I first want to address the last two goals the Council raised: increasing the tax base and reducing the City's carbon footprint. As I mentioned earlier, to increase the tax base, our policy would have to encourage people to spend money with local businesses in the City. Again, while we may be able to encourage spending of our dollars and our contractor's dollars with local businesses through a local preference policy, that probably won't be enough to sustain many of these businesses, and it may end up hurting them if they're disadvantaged when selling their products and services elsewhere. There are other ways to encourage people to spend money with our local businesses.

“To reduce the City’s carbon footprint,” continues Scarecrow, “our policy would have to help cut down on transportation costs for the goods and services that the City purchases. If we have a preference for products that are manufactured here in Emerald City, we will reduce transportation costs when we purchase those locally manufactured goods. But we’ll need to consider how many goods are manufactured here. We know lollipops are made here, but what about the other goods that we purchase regularly? No one in Emerald City makes computers, for example. We could buy computers from Flying Monkeys, the Emerald City computer store, but Flying Monkeys will have to buy those computers from somewhere outside of Emerald City. That won’t reduce our carbon footprint. Contracting with local companies for services or construction contracts could reduce our carbon footprint if we assume that nonlocal workers would commute back and forth. But again we have to consider whether there are enough qualified and available local workers and companies for us to do business with.”

Chairwoman Glinda interrupts, “Scarecrow, it sounds like you don’t think a local preference policy will do much to achieve our goals. But we care deeply about our local businesses and our local workers, and we know they’re suffering right now. Are you saying we can’t do anything to help them?”

“Not at all, Chairwoman,” replies Scarecrow. “There are several things we can do through the Purchasing Department to support local businesses and local workers:

1. Offer regular training to local businesses and local workers about how to do business with Emerald City, including information on how bidding works and where to find contracting opportunities with the City. Or the training could be a general introduction to doing business with governments, to give our local businesses and local workers a leg up when trying to get work with neighboring cities and counties as well.
2. Partner with other public entities or non-profits to provide other assistance to local businesses and local workers, such as mentoring programs that match small businesses with larger, more established businesses.
3. Ease bonding requirements when possible—in other words, we shouldn’t require performance or payment bonds when those bonds aren’t required by statute or when there isn’t a real need for them. It can be difficult for newer or smaller businesses to get bonds.
4. When possible, we should make smaller projects available to local businesses so they can build experience and a good track record.
5. Encourage local businesses to register with the State’s [Interactive Purchasing System](#). This will help connect them to public contracting opportunities throughout the State of North Carolina, not just here in Emerald City.
6. Reorganize our website to make bidding opportunities easier to find, and to provide links to the resources I’ve just mentioned such as opportunities for training and the Interactive Purchasing System.
7. Work with our Economic Development department to encourage Emerald City citizens to support local businesses.

“I’m sure there are other ways to support local workers and businesses, as well,” concludes Scarecrow, “we just need to think creatively, and make sure that we remember that we don’t lose sight of our primary procurement goals: promoting fairness and transparency, encouraging healthy competition, procuring quality goods and services, and being good stewards of the taxes we use to pay for those goods and services.”

“Thank you, Scarecrow,” says Chairwoman Glinda. “It’s good to know that there are other ways we can help our local businesses. I move that we ask you, TinMan, and our Economic Development Department to develop a plan for supporting our local businesses and local workers based on these suggestions you’ve made today.” The motion passes, and the Chairwoman brings the meeting to a close with a firm tap of her wand.

If you’re interested in an Economic Development perspective on supporting local businesses and local workers, take a look at the School of Government’s [Community and Economic Development blog](#). For example, my colleague [Jonathan Morgan](#) has written a great [post](#) on how local governments can help local businesses to develop and find new markets (domestic and foreign) for their goods and services.

Meanwhile, I hope that you’ll consider commenting on this post (or other posts in the series) with your thoughts, questions, and suggestions about ways local governments support local businesses. I look forward to hearing what you have to say.

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[Local Preferences in Public Contracting, Part 2](#)  
October 6, 2010  
In "Local Preferences"

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November 10, 2010  
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[Local Preferences in Public Contracting, Part 3](#)  
October 20, 2010  
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«

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»

**Leave a Comment**

NOTE - You can use these HTML tags and attributes:

<a href="" title=""> <abbr title=""> <acronym title=""> <b> <blockquote cite=""> <cite> <code> <del datetime=""> <em> <i> <q cite=""> <s> <strike> <strong>

## Memorandum

To: Mayor and Board of Aldermen  
From: Rob Hites  
Date: 9/27/2017  
Subject: Economic Development Incentive Policy

---

### Issue

As we move into the later part of the decade we are seeing an uptick in interest from statewide developers. We are becoming competitors for new tax base with the rest of the State. Waynesville is entering a development arena where developers expect local government to provide some sort of incentive grants to lure them to the location. Henderson, Buncombe Counties and Asheville have adopted policies that state the conditions and types of incentives that they may offer a business that they are interested in attracting. Most business incentive deals are made for the expansion of existing businesses even though they get less publicity than the grand announcement of a new business. In the past four months we have dealt with two businesses that have asked for incentives to help defray the costs of development.

### Background

The State of North Carolina has permitted its local governments to offer economic development incentives since 1925. Opponents of such programs have challenged them in court and the NC Supreme Court has consistently upheld the law.

In North Carolina a local government may not defer or wave property taxes or utility payments as a form of incentive, the government must make a specific "grant" to a prospective business. That grant may be based on a tax or utility payment that has been made by the business but an outright waiver is not permitted.

In the early 2000s a case was heard by the NC Supreme Court, *Maready v. Winston Salem*. In that case the constitutionality of economic development incentives was challenged by former Supreme Court Justice Robert Orr. The Court upheld the constitutionality of such incentives, but suggested that a local government should make an economic development incentive pursuant to specific programs adopted by governing bodies. To protect themselves local governments adopted policies that set thresholds that businesses had to meet in order to qualify for incentives.

## Proposed Policy

The policy that I have prepared for your consideration was based on advice provided by an attorney hired by Electri-Cities.

It is based on several performance measures that **MUST** be met in order to qualify:

- (1) The business must meet a certain threshold of new tax base. *Such a threshold varies from community to community and can be changed as a reaction to the business cycle.*
- (2) Businesses must meet a threshold for job creation and average wages paid. *In the current quarter the average hourly wage in Haywood County is \$16.68. The more jobs, the higher the wages the higher the incentive the business qualifies for, and*
- (3) They must meet those performance measures by a date certain.

In some cases the use of large quantities of water, sewer and or electricity may be bundled with increases in tax base to increase the incentive.

One of the key components of a municipality's economic incentive policy is a governing body's choice of businesses to provide incentives. A local government is **NOT** required to provide incentives to all comers. They may determine what types of business would be most beneficial to the community and direct the staff to attract such business and offer such incentives.

## Statutory Requirements

Chapter 158 on the NC General Statutes establishes the procedures that Local Governments must follow should they wish to establish an economic development program.

An offer of incentives by a local government **MUST** be made **AFTER** a public hearing on the merits of such incentives. Many businesses request anonymity until they announce their decision to locate in a geographic area. The State permits local governments to negotiate the expansion and location of industry in closed session and hold the public hearing without naming the business. The local government **MUST** inform the public as to the nature of the business.

*For example: the advertised call for the public hearing might state "The Board of Aldermen will consider offering an economic incentive to a business engaged in the manufacture of nonwoven fabrics. The business projected that it will hire forty (40) new employees at an average wage of \$17.00 per hour. In addition the industry will provide a full range of benefits including health insurance, retirement 401K, vacation and sick leave."*

After receiving a report from the economic development staff and input from the citizens, a Board may approve such an incentive under stated conditions and instruct the Town's attorney to prepare a civil contract that would hold the business to the agreement.

### **Summary**

Given the increasing interest in Waynesville and the possibility that a business that we would like to locate within the Town may be contacting us in the near future, I recommend that the Board provide the staff with a list of specific business activities that you would be interested in attracting and then adopt a policy that the staff may use to negotiate incentives that would be brought to the Board during a public hearing.

Please remember a local governing board has the final say in determining an incentive package. After a public hearing you may approve or deny any request for incentives that is brought before you.

I am including a proposed policy and list of possible businesses that you and people in the community have suggested we attract to help the economy of the Town. Additionally I am including Henderson County's Economic Development Assistance Guidelines. You will note its similarity with the policy I am proposing.

**TOWN OF WAYNESVILLE**  
**Business and Industry Development Incentive Policy**

---

**POLICY STATEMENT:**

It is the policy of the Town of Waynesville to promote a strong business presence within its corporate limits. In the spirit of this policy the Town Board may find it necessary to stimulate development of business by offering incentive grants to offset development costs associated with a business location or expansion. Such grants may be used to offset the cost of expenses including, but not limited to: environmental testing, clearing, grading, stormwater mitigation, water/wastewater/power line extensions, power substation design and construction, and road construction.

**CRITERIA FOR INCENTIVE CONSIDERATION:**

The Town will entertain requests for incentives on a case by case basis and will weigh their merit according to the following:

- Incentives may be granted for location and expansion of a specific business or industry where increase in employment, tax base and or utility usage are immediate and measurable. The threshold increase in tax base shall be \$5 million except when the Haywood County employment rate rises above 3.9% or an existing industry expands and creates at least five jobs, then threshold increase in tax base shall be \$3 million.
- Creation of jobs that pay the county's average wage or higher as determined by either the Article 3J Credits or the SIC Code for a particular job determined through the Employment Security Commission.
- Environmentally clean and responsible.
- The applying party must be the business or industry locating or expanding in the Town or willing to petition for annexation into the corporate limits of Waynesville.
- The business must be willing to guarantee, through contract, the tax base, job creation and average wages and pledge to reimburse the Town for a portion of the incentive when these thresholds are not achieved.
- The Town shall not make incentive grants for development of land.

The parameters for defining the kind of contribution based solely on tax base growth of less than \$20 million shall be:

	<u>WAGE RATE*</u>	<u>ELIGIBILITY RATE</u>
Level I	120% of county average wages (\$20.02)	80% of eligible reimbursement
Level II	110% of county average wages (\$18.35)	70% of eligible reimbursement
Level III	100% of county average wages (\$16.68)	60% of eligible reimbursement
Level IV	Less than 100 % of county average wages	0% of eligible reimbursement

(Note): Projects in excess of \$20 million dollars in new tax base growth shall be reviewed on a case by case basis.

\* The wage rate shall be determined by either the Article 3J rating sheet or the prevailing wages established by the SIC Codes provided by the Haywood County Employment Security Commission during the year in which the grant is requested.

**PROCEDURES:**

In concert with Chapter 158 of the NC General Statutes the Town adopts the following procedures for requesting incentives to locate or expand business in Waynesville:

1. The applicant shall apply directly to the Town Manager or Haywood County Economic Development Council and receive their approval before being considered by the Town Board.
2. The Manager and Director of Haywood County EDC will bring the request to the Town Board with a recommendation of the type and level of incentive.
3. The Town Board will set a public hearing on the issue in accordance with Chapter 158 of the NC General Statutes.
4. The Town Board will hold the hearing and act on the request.
5. The Town attorney shall prepare a contract between the Town and client for such incentives.
6. The Town shall obtain a petition of annexation, if necessary, before any payments are processed.
7. The client will send request for payment to the Town and it will process the request and reimburse the client as specified in the contract.
8. The client shall consent to an audit of its employment records during, and one year after, the period covered by the incentive contract to insure that it meets both the wage and employment goals set forth in the contract.
9. In order to receive a distribution of an incentive grant the client must be current on all taxes, fees and payments.

10. Incentive grants will be made on an annual basis except for those which will be used to extend public water/wastewater/electric lines or stormwater and street systems. These may be paid on presentation of receipts and physical inspection of the infrastructure in place.
11. Industrial or office operations to be considered for financial assistance must conform to Article 3J guidelines. Retail operations are eligible for assistance under this program should they meet all the guidelines of the policy.

The eligible projects include the following:

- company headquarters;
  - customer service call centers;
  - electronic or micro-electronic manufacture and design,
  - shopping and mail order houses;
  - information technology and services;
  - manufacturing;
  - pharmaceutical research,
  - manufacture and design,
  - wood products manufacturing,
  - industries related to traditional mountain products.
12. Projects eligible for this program must state in writing that without Town assistance, the company would not make the investment in Waynesville.
  13. Companies using this program should not have begun construction on a new facility or expansion of current facility prior to entering into this agreement.
  14. Should a grant recipient cease operations or reduce employment numbers by 50% or more of the total job numbers at the start of the grant period, or during the grant period, any remaining payments will be forfeited and the grant program will end immediately.

Policy Effective Date: October 2017

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Gavin A. Brown, Mayor

### **Economic Development Assistance Guidelines**

The following guidelines are adopted to promote diversified economic development, encourage growth in the property tax base, improve recruitment of business and industry, enhance job creation, and to continue Henderson County's ability to function as a local center of commerce and industry. All economic development assistance is offered at the discretion of the Henderson County Board of Commissioners ("the Board").

#### 1) General

- a) The companies that seek economic development assistance must first submit a letter requesting such assistance and a completed economic development grant application. The letter must demonstrate that a project is under consideration ("the project"), that Henderson County is being considered as a possible site for the project (but that other sites are under consideration as well), that no final approval of the project has been made, and that without County assistance, Henderson County would be at a relative competitive disadvantage in obtaining the project.
- b) Projects must neither have started construction nor been publicly announced prior to consideration of the application.
- c) Economic development incentive grants must comply with the N.C. Gen. Stat. §158-7.1 and other applicable general statutes.
- d) The company must enter into a binding economic development and incentives agreement with the County ("the agreement").
- e) The recipient must demonstrate compliance with all program criteria prior to receiving assistance.
- f) Leased properties may qualify if the applicant will enter into a binding lease that exceeds the length of the period for which grant payments will be made under the agreement.
- g) Economic development assistance under these guidelines is limited to new businesses and existing businesses undertaking expansions.
  - i) Assistance under these guidelines will not be awarded to existing businesses contemplating shifting locations within the County.
  - ii) An exception may be provided to this provision for business retention activities as described in paragraph 4), below.
- h) There is no right or entitlement to economic development assistance. All such assistance is made at the discretion of the Board.

- i) All statements herein are guidelines and are not intended to limit the discretion of the Board under N.C. Gen. Stat. §158-7.1 and other applicable laws.

2) Projects:

- a) The County may consider providing economic development grants for industrial projects that meet the following criteria:

- i) Net minimum increase capital investment of \$1,500,000 or more measured by an increase in the property tax assessment;
- ii) The project must create full-time jobs that pay wages at or above the median industrial wage for Henderson County as listed annually by the North Carolina Department of Commerce Finance Center, and provide health insurance and other benefits at a level commensurate with Henderson County industry.
- iii) Economic development grants for industries may be made in annual payments for up to six (6) years to projects that meet these criteria. The size of the annual grant will be determined as stated below.
- iv) Industrial projects include corporate headquarters and research and development facilities that qualify under the requirements of Article 3J of Chapter 105 of the North Carolina General Statutes.

- b) The County may consider providing economic development grants to non-industrial projects that meet the following criteria:

- i) The project must create new employment that pays wages at or above the median industrial wage for Henderson County as listed annually by the North Carolina Department of Commerce Finance Center, and provide health insurance and other benefits at a level commensurate with Henderson County industry.
- ii) The projects must increase the assessed value of real property by no less than \$1,500,000.
- iii) Non-industrial economic development grants may be made in annual payments for up to five (5) years to projects that meet these criteria. The size of the annual grant will be determined as stated below.
- iv) Non-industrial projects include professional offices, health care services, back office operations, but exclude residential projects. The following uses are not eligible for non-industrial economic development grants: cemeteries, golf courses, public utility uses, resource recovery facilities, adult uses, private clubs, agricultural uses, abattoirs, mining, landfills, retail uses, personal services uses and telecommunications towers. Mixed-use projects are eligible,

but any residential element must have its portion of the investment subtracted from the calculations of tax value. The residential portion of the project may be eligible for other grants for the creation of opportunities for home ownership.

- 3) Grants: Project grants are generally made in annual payments in an amount and for a period as determined in this policy. No payment may be made until the applicant demonstrates compliance with all terms of the agreement. Should any applicant fail to comply with conditions agreed to in the incentives agreement, the applicant shall refund all incentive payments to the County.
- a) Average grant length, up to the maximum lengths stated in paragraphs 2)a)iii) and 2)b)iii), shall be four (4) years for industrial projects, and three (3) years for non-industrial projects.
- b) Grant amounts for each project are determined in the discretion of the Board. However, it is intended that average grant amounts for projects will vary directly with the number of jobs created or retained directly as a result of the project, on the following schedule:

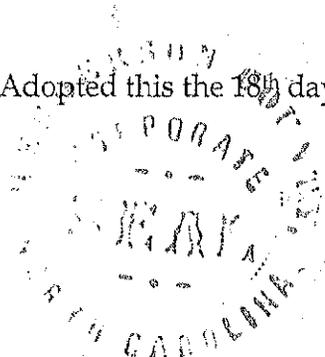
<u>Jobs Created or Retained</u>	<u>Maximum Annual Incentive Payment</u>
1-25	70% of the each year's property taxes generated as a result of the project for which the incentives are granted, limited to the period for which incentives are granted
25-50	80% of the each year's property taxes generated as a result of the project for which the incentives are granted, limited to the period for which incentives are granted
50-75	90% of the each year's property taxes generated as a result of the project for which the incentives are granted, limited to the period for which incentives are granted
75-150	100% of the each year's property taxes generated as a result of the project for which the incentives are granted, limited to the period for which incentives are granted
Over 150	120% of the each year's property taxes generated as a result of the project for which the incentives are granted, limited to the period for which incentives are granted

- 4) Business Retention Incentives. The County may consider providing incentives to retain business and industry under certain conditions. The intent of these incentives is to provide a tool for the County to retain significant tax base and employment in the event of a critical and potentially catastrophic business or industrial closing. Grants cannot be used to subsidize or artificially sustain businesses and industries when job losses or closings appear inevitable. Grants or loan funds under this

program are intended to benefit the County, its employees and citizens by increasing worker education, worker and company productivity and long-term industry competitiveness on a global basis. These incentives may not be used to protect companies from local business competition.

- a) Retention incentives may be used for the following purposes:
  - i) Employee training.
  - ii) Improving public infrastructure.
  - iii) Modernization of plant or equipment.
- b) Funding may be provided in the form of a loan or annual grants.
- c) Conditions of approval include commitment to maintain or increase levels of employment and tax base throughout the period agreed to in the incentives agreement:
- d) The recipient must agree to participate in public information programs about all modernization and employee training efforts in order to share information concerning successes in making local industries more competitive in the global economy.

Adopted this the 18<sup>th</sup> day of July, 2007.

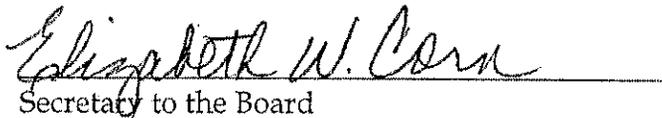


HENDERSON COUNTY BOARD OF COMMISSIONERS

By: \_\_\_\_\_

  
WILLIAM MOYER, Chairman

Attest:

  
Secretary to the Board

NORTH CAROLINA

HAYWOOD TOWN

**INCENTIVE AGREEMENT**

**THIS INCENTIVE AGREEMENT**, dated April, \_\_, 2012 (the "Agreement"), and between SONOCO PLASTICS INC., formerly known as Associated Packaging, a subsidiary of Sonoco Products Company (the "Company"), and TOWN OF WAYNESVILLE, a public body politic and a political subdivision of the State of North Carolina (the "Town"). The Company and the Town are sometimes collectively referred to herein as the "Parties."

**WITNESSETH:**

WHEREAS, the purpose of this Agreement is to describe certain incentives to be provided by the Town to the Company in connection with the Company's expansion of its consumer and industrial packaging manufacturing and service facility in the Town, known as Project Staples; and

WHEREAS, the Town is proceeding under the provisions of N.C. Gen. Stat. § 158-7.1(a) and § 158-7.1(d2), as well as other local actions applicable to Town.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained in this Agreement, the Parties hereby agree as follows:

**ARTICLE I**

**DEFINITIONS & RULES OF CONSTRUCTION**

1.1. Definitions. For all purposes of this Agreement, unless the context requires otherwise, the following terms shall have the following meanings:

"Beneficial Occupancy" means the date on which (a) substantial completion of the expansion of the Facility is accomplished on the Site; (b) at least thirty five (35) persons are employed for at least one week in the Facility; and (c) the Site has been leased from the Owner to the Company.

"Business Day" means any day that is not a Saturday or a Sunday, or a day on which banks in the State are required by law to be closed.

"Cancellation Date" means the date of Beneficial Occupancy at which time the Town surrenders its reversion rights, as referred to in Article I.

"Closing Date" means the date on which this Agreement is first executed and delivered by the parties.

“Direct Investment” means the original tax value of all land, buildings and equipment placed by the Company on the ad valorem tax rolls of the Town, regardless of the funding sources for said property, after January 1, 2012.

“Facility” means the expanded consumer and industrial manufacturing and service facility located at 288 Howell Mill Road, Waynesville, North Carolina which expansion and renovation work is under construction by the Company on the Site.

“Incentive” means the various incentive payments from the Town to the Company, as referred to in this Agreement.

“Occupancy Date” means the date on which the Company assumes Beneficial Occupancy of the Facility.

"Owner" means the fee simple owner of the Facility which is being leased by the Company.

“Site” means the real property of the Owner upon which the Facility is to be constructed, as more specifically described in Exhibit A.

“State” means the State of North Carolina.

1.2. Rules of Construction. Unless the context otherwise indicates:

(a) words importing the singular shall include the plural and vice versa, and words importing the masculine gender shall include the feminine and neuter genders as well;

(b) all references to Articles, Sections or Exhibits are references to Articles, Sections and Exhibits of this Agreement;

(c) the headings and Table of Contents herein are solely for convenience of reference and shall not constitute a part of this Agreement nor shall they affect its meanings, construction or effect.

## ARTICLE II

### OWNERSHIP OF SITE AND EQUIPMENT

2.1. Site Description. DC Plus LLC is the Owner of the Site, which is the real property upon which the Facility is to be constructed. The Site is described in Exhibit A.

2.2. Representations and Warranties of the Company. The Company hereby represents and warrants that it has a 20 year leasehold interest in the Site and is the owner of the Equipment being used for manufacturing on the Site.

2.3. Intent. The intent of this Agreement is that the Owner will continue to lease the Site to the Company which shall construct the Facility on the Site, and then the Company will continue to occupy and operate the constructed Facility.

### **ARTICLE III**

#### **SITE PREPARATION**

*[Intentionally Deleted]*

### **ARTICLE IV**

#### **TOWN INCENTIVE AND REIMBURSEMENT REQUIREMENTS**

4.1. Fair Market Value. The Fair Market Value of the Facility is agreed to be \$3,484,285. The Fair Market Value of the Equipment – Relocated is agreed to be \$4,000,000. The Fair Market Value of the Equipment – New is agreed to be \$3,500,000.

4.2. Company Investment. The Company's total investment, as derived from the Fair Market Value of assets agreed to under Section 4.1, is \$10,984,285.

4.3. Industrial Development Incentive Grant Guideline Program. The Town Incentive for Business and Industry effective May 3, 2004, as revised.

4.4. Incentive Grant Qualification. The Company qualifies for an annual incentive grant of \$72,520.00, as follows: \$28,175.00 in the first year, \$24,130.00 in the second year and \$20,215.00 in the third year.

4.5. Consideration. Town has concluded that consideration for the Incentive Grant of \$72,250.00 shall be based in part on the prospective tax revenues from the Fair Market Value of the aforesaid Facility, as expanded, the relocated equipment and the new equipment. Applying a tax rate of 0.4082 per \$100 valuation, and a Tax Grant of 90% in Year One, 80% in Year Two and 70% in Year Three, and applying certain depreciation factors, all as set forth on Exhibit B, the total Incentive Grant is computed to be \$72,520.00.

4.6. Reimbursement Requirements. In the event that the Company does not expend the minimum amount stated above to accomplish the full Company Investment on the improvements and personal property, Town's obligation to provide the Grant to Facility shall be void. Town acknowledges and agrees that in the event that the Company does not so expend the minimum amount stated above regarding the Facility, Town shall have no cause of action against the Company under this Agreement other than to withhold payment of the Grant related to the Facility.

The Company shall be solely responsible for providing certifications of expenditures to the appropriate Town officer at the time of filing the request for the annual Grant.

Performance Targets set forth in Article I, Section 1.1, represents the levels of Full Time Equivalent (FTE's) Employees and Direct Investment Article IV, Section 4.2, which must be achieved by the Company in order to qualify for a complete level of Future Incentive Grants.

Should the Company fail to achieve or maintain the committed levels of Performance Targets, Future Incentive Grants shall be reduced accordingly.

In the event of the Abandonment of manufacturing operations in the facility, no Future Incentive Grants will be required to be paid to the Company from the year in which the Abandonment of manufacturing forward. Also in this event, the Company shall be required to make reimbursements of the initial Incentive Grants.

The level of Full Time Equivalent Employees will be confirmed at the end of each calendar year based upon the Unemployment Tax report required by the Employment Security Commission. Whether or not the Company has maintained equipment and other improvements in the Facility which was a part of this Incentive Agreement for which incentives are being provided shall be determined each year based on the Business Real and Personal Property Listing Form filed by the Company with the Town each year.

## **ARTICLE V**

### **CONSTRUCTION OF FACILITY**

5.1 Construction of the Facility. The parties agree that construction of the Facility is solely the Company's responsibility. The Facility is under construction, and beneficial occupancy will occur on or before January 1, 2013. The Company will cause the construction to be carried out in accordance with all applicable State and local laws and regulations. The Facility will be constructed on the Site. The Facility will not encroach upon nor overhang any easement or right-of-way. The Facility will be located wholly within any applicable building restriction lines, however established, and will not violate applicable use of other restrictions contained in prior conveyances or applicable protective covenants or restrictions.

## **ARTICLE VI**

### **INDEMNIFICATION**

6.1. Indemnification. The Company hereby agrees to indemnify and hold harmless the Town and its officers, directors and employees from all liability, obligations, losses, claims, damages, actions, suits, proceedings, costs and expenses, including reasonable attorneys' fees, arising out of, connected with, or resulting directly or indirectly from the Site or the transactions contemplated by or relating to this Agreement, including without limitation, the possession, condition, construction or use thereof, in so far as such matters relate to events subject to the control of the Company and not the Town. The indemnification arising under this Article shall survive the termination of this Agreement.

**ARTICLE VII**  
**LIMITED OBLIGATION OF TOWN**

7.1. No provision of this Agreement shall be construed or interpreted as creating a pledge of the faith and credit of the Town within the meaning of any constitutional debt limitation. No provision of this Agreement shall be construed or interpreted as delegating governmental powers nor as a donation or a lending of the credit of the Town within the meaning of the State Constitution. This Agreement shall not directory or indirectly or contingently obligate the Town to make any payments beyond those appropriated in the Town's sole discretion for any fiscal year in which this agreement shall be in effect. No provision of this Agreement shall be construed to pledge or to create a lien on any class or source of the Town's moneys, nor shall any provision of this Agreement restrict to an extent prohibited by law, any action or right of action on the part of any future Town governing body. To the extent of any conflict between this article and any other provision of this Agreement, this Article shall take priority.

**ARTICLE VIII**  
**MISCELLANEOUS**

8.1. Governing Law. The parties intend that this Agreement shall be governed by the law of the State of North Carolina.

8.2. Notices. Any communication required or permitted by this Agreement must be in writing except as expressly provided otherwise in this Agreement. Any communication shall be sufficiently given and deemed given when delivered by hand or five days after being mailed by first-class mail, postage prepaid, and addressed as follows:

(1) If to the Company, to: \_\_\_\_\_.

(2) If to the Town, to: Mark B. Clasby, Haywood County Economic Development Commission, 144 Industrial Park Dr., Waynesville, NC 28786.

Any addressee may designate additional or different addresses for communications by notice given under this Section to each of the others.

8.3. Non-Business Days. If the date for making any payment or the last day for performance of any act or the exercising of any right shall not be a Business Day, such payment shall be made or act performed or right exercised on or before the next preceding Business Day.

8.4. Severability. If any provision of this Agreement shall be determined to be unenforceable, that shall not affect any other provision of this Agreement.

8.5. Entire Agreement; Amendments. This Agreement, including Exhibits A through D Attached, which are incorporated herein and made a part hereof, constitutes the entire contract between the parties, and this Agreement shall not be changed except in writing signed by all the parties.

8.6. Binding Effect. Subject to the specific provisions of this Agreement, this Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties and their respective successors and assigns.

8.7. Time. Time is of the essence in this Agreement and each and all of its provisions.

8.8. Liability of Officers and Agents. No officer, agent or employee of the Town or the Company shall be subject to any personal liability or accountability by reason of the execution of this Agreement or any other documents related to the transactions contemplated hereby. Such officers, agents, or employees shall be deemed to execute such documents in their official capacities only, and not in their individual capacities. This Section shall not relieve any such officer, agent or employee from the performance of any official duty provided by law.

8.9 Counterparts. This Agreement may be executed in several counterparts, including separate counterparts. Each shall be an original, but all of them together constitute the same instrument.

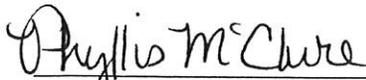
IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in their corporate names by their duly authorized officers, all as of the date first above written.

SO AGREED:

**SONOCO PLASTICS,**  
f/k/a Associated Packing, a subsidiary of  
Sonoco Products Company

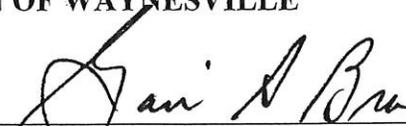
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

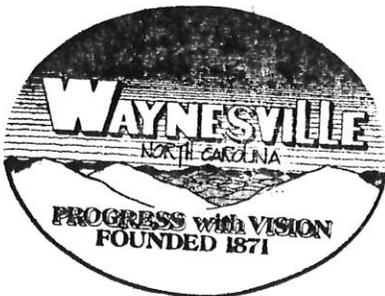
ATTEST:

  
\_\_\_\_\_  
**Phyllis McClure**  
Town Clerk

**TOWN OF WAYNESVILLE**

By:

  
\_\_\_\_\_  
**Gavin A. Brown**  
Mayor, Town of Waynesville





## Town of Waynesville

May 3, 2012

Mr. Roger Buckley  
Sonoco Products Co.  
Mngr of Income Tax & Tax Accounting  
1 North Second St., MS B04  
Hartsville, SC 29550

Dear Mr. Buckley:

Enclosed are two copies of the Incentive Agreement between Sonoco Plastics, Inc., and the Town of Waynesville, approved by the Board of Aldermen and executed by Mayor Gavin A. Brown.

After execution of the document by Sonoco Plastics, please forward one copy to the Town of Waynesville to the attention of Town Clerk Phyllis R. McClure P. O. Box 100, Waynesville, NC 28786. A stamped, pre-addressed envelope is enclosed for your convenience.

Please do not hesitate to contact the Town of Waynesville at 828-452-2491 or [townclerk@townofwaynesville.org](mailto:townclerk@townofwaynesville.org) if you have questions or concerns regarding this document. Thank you for your help in this matter.

Sincerely,

Phyllis R. McClure  
Town Clerk

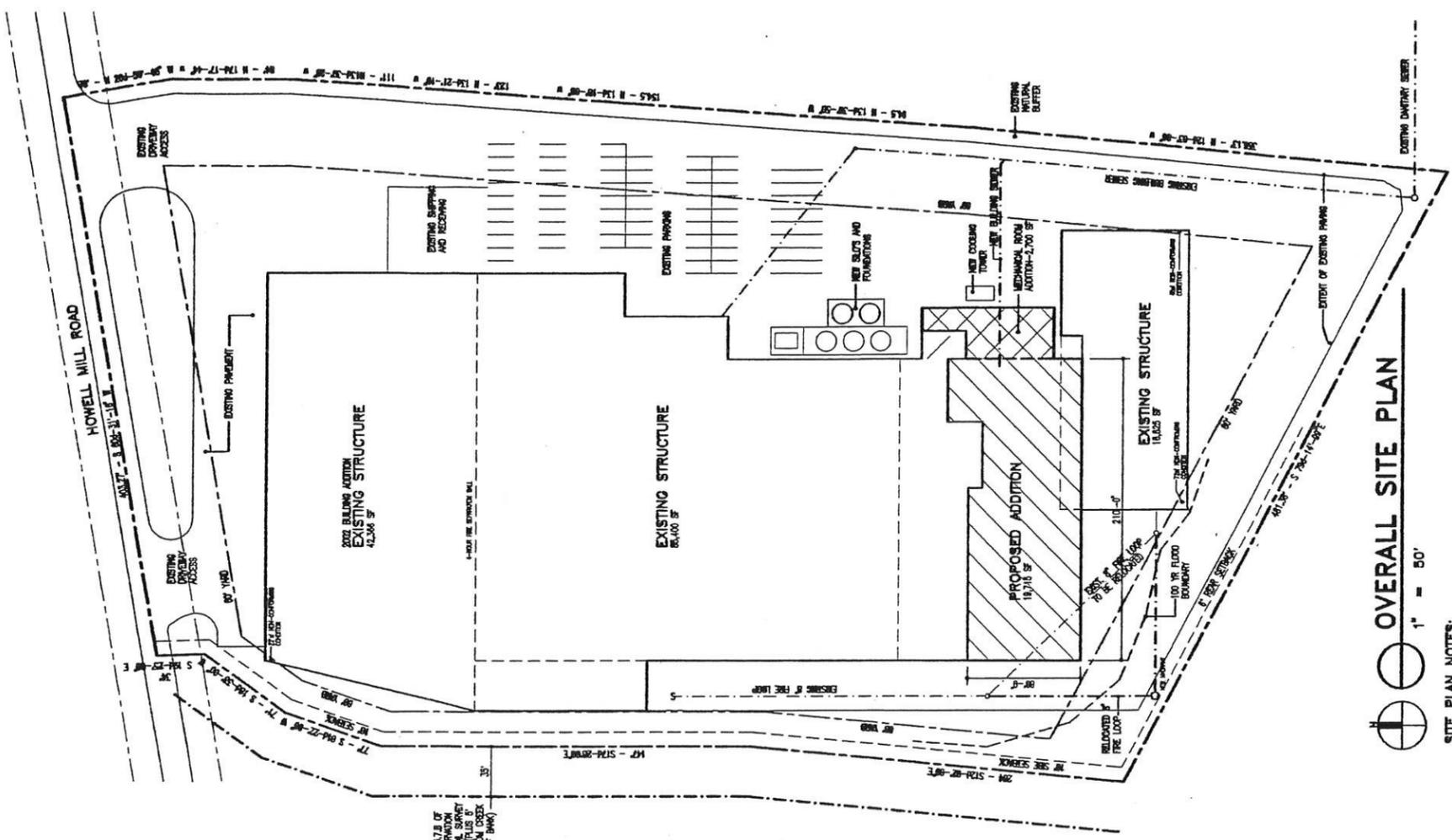
Enclosures

cc: Marcy Onieal, Waynesville Town Manager  
Mark B. Clasby, Haywood County Economic Development Commission



02/07/12 REV.  
01/25/12 REV.  
12/07/11 REV.  
DRAWN BY DAJ DATE 11/29/11

DANE A. JOHNSON FAJA ARCHITECT 39 PATTON AVENUE, ASHEVILLE, NC.  
SONOCO PLASTICS  
201 BUILDING ADDITION TO THE FACILITIES OF  
299 HOWELL MILL ROAD  
WAYNESVILLE, NORTH CAROLINA



### OVERALL SITE PLAN

1" = 50'

#### SITE PLAN NOTES:

1. SITE PLAN INFORMATION TAKEN FROM DRAWINGS DATED 10/24/11 FOR LUMBER COMPANIES, INC., AS PREPARED BY ROBERT HALL ARCHITECT; TOPOGRAPHIC SURVEY DATED 10/11/11 FOR DC PLUS, LLC, AS PREPARED BY DANNY R. TOLAR, P.E., AND FROM AERIAL COS MAPS AS PROVIDED BY HAWKWOOD COUNTY.
2. EXCEPT AS OTHERWISE INDICATED, ALL SITE IMPROVEMENTS ARE EXISTING.

BY SETBACK PER 12.17.7.8 OF ZONING ORDINANCE AND SETBACKS OF THE CITY OF HAWKWOOD COUNTY (PLUS 5' ASSIGNED DISTANCE FROM CREEK CENTERLINE TO TOP OF BANK)

3/24/12 + "A"

# Memorandum

**To:** Mayor and Board of Aldermen  
**From:** Amie Owens, Assistant Town Manager  
**Date:** September 29, 2017  
**Subject:** Value of In-Kind Services

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## Issue

The Town of Waynesville has always been generous with its provision of in-kind services related to special events. Public safety (Police and Fire) and Public Services (Streets and Sanitation) are typically enlisted to assist with festivals, parades and other special events. Due to the mounting number of events and the overtime associated with these events, a policy needs to be considered to allow for continued assistance but to set a reasonable expectation for staffing and the reimbursement when a festival, parade or special event exceeds a certain threshold.

## Background

We have been tracking the amount of overtime in Police, Fire and Public Services associated with various events. Each of these departments was requested to provide their own listing of events that they have assisted with during 2017 and any projections for the remainder of the year. A spreadsheet outlining the various events and the amount of over time that was spent for each department was developed in order to determine a level of in-kind service for festivals and to indicate at what point, recoupment of costs should be considered.

## Proposed Policy

The policy that I have prepared for your consideration is based on research from special events policies from Statesville, Asheville and Hendersonville that allows for recoupment of costs associated with certain services as part of the special event permitting process.

# **TOWN OF WAYNESVILLE**

## **In-Kind Service Provision Policy**

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### **Statement**

The Town of Waynesville acknowledges that festivals, parades and special events have an economic impact for the Town and provides the following as its policy related to in-kind service provision for such events.

### **Policy**

A special event is defined as a pre-planned event, whether publicly and/or privately sponsored, which is proposed to be held on public property, including but not limited to parks, streets and/or sidewalks. All special events require a Special Event Permit issued by the Town of Waynesville.

### **Procedure**

Individuals applying for a special event permit must complete the special event application (Attachment A) and submit it at least sixty (60) days in advance of an event, or thirty (30) days in advance of a neighborhood street closure.

Once the application has been reviewed and approved, a special event permit (Attachment B) will be granted indicating the name, date and organizer of the event. A copy of the special event permit must be with the event organizer at all times.

### **In-kind Service Provision**

While the Town may charge for the actual cost of any special event requiring expenditure of public resources, the Town will provide the following as a basis for special event staffing related to event traffic control, fire safety, crowd control and any other event support including set up and clean up.

#### **Police Support:**

Events that are approved via the Special Events Permitting process will have up to four (4) hours of staff time provided as an in-kind service. Any event requiring more than four (4) hours of staff time will be billed a fee of \$35.00 per hour for each hour in excess.

Events which exceed the attendance threshold established below and/or operate with an ABC special event permit are required to hire off-duty police officers. Hourly rates for off duty officers are included for budgeting purposes. Some events may require a larger or smaller number of officers depending on event specific conditions.

<b>Attendance Range</b>	<b>Officers Required</b>
0 to 5,000	Two to Three
5,000 to 10,000	# determined by Police Chief
10,000 (plus)	# determined by Police Chief
Hourly Rate for Off Duty Officer	\$35.00 (with four hour minimum)

**Fire Support:**

Events that are approved via the Special Events Permitting process will have up to four (4) hours of staff time provided as an in-kind service. Any event requiring more than four (4) hours of staff time will be billed a fee of \$35.00 per hour for each hour in excess.

**Public Services Support:**

Events that are approved via the Special Events Permitting process will have up to six (6) hours of staff time for set up and clean up provided as in-kind service. Any events requiring more than 6 hours of staff time will be charged an hourly rate for staff. The current hourly rate for such staffing is \$14.00 per hour.

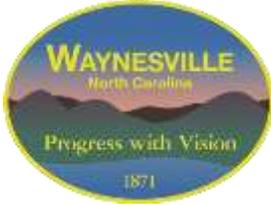
**Services Exceeding In-Kind Provision**

If the Special Event assistance exceeds the number of hours outlined the policy as in-kind, the hours in excess will be billed to the event organizer via invoice from the Town of Waynesville. Only the Town Board of Aldermen will be able to waive any service fees associated with a special event and must do so at a regular meeting by majority vote.

Policy effective this 6<sup>th</sup> Day of October, 2017.

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Gavin A. Brown, Mayor



# Application for Special Events Permit

## I. General Information

EVENT NAME: \_\_\_\_\_

EVENT DATE(S): \_\_\_\_\_  
Note: If event is more than three days in duration, and not in the public right-of-way, you will also need a temporary event permit. Contact the Waynesville Police Dept. at 828-456-5363 for more information.

LOCATION: \_\_\_\_\_

IF THIS EVENT IS A PARADE OR ROAD RACE: \_\_\_\_\_  
Please provide a full route description and map

SET-UP TIME (START/END): \_\_\_\_\_

EVENT HOURS: \_\_\_\_\_

DISMANTLE HOURS (START/END): \_\_\_\_\_

ESTIMATED ATTENDANCE: \_\_\_\_\_

BASIS ON WHICH THIS ESTIMATE IS MADE: \_\_\_\_\_

COMPREHENSIVE GENERAL LIABILITY INSURANCE REQUIRED: \$1,000,000. Please attach proof of insurance (or applicable rider).

## II. Applicant and Sponsoring Organization Information

SPONSORING ORGANIZATION NAME: \_\_\_\_\_

ARE YOU A NON PROFIT CORPORATION?	No	Yes	If yes, are you	501c(3)	501c(6)	Place of Worship
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APPLICANT NAME: \_\_\_\_\_ TITLE: \_\_\_\_\_

ADDRESS: \_\_\_\_\_ CITY: \_\_\_\_\_ STATE: \_\_\_\_\_ ZIP: \_\_\_\_\_

PHONE: \_\_\_\_\_ FAX#: \_\_\_\_\_ EMAIL: \_\_\_\_\_

ON-SITE CONTACT: \_\_\_\_\_ TITLE: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

PHONE #: \_\_\_\_\_ CELL PHONE #: \_\_\_\_\_ EMAIL: \_\_\_\_\_

**III. Brief Description of Event**

**IV. Street Closure Request (Attach map of the Street Closure)**

List any street(s) (or lanes of streets) requiring temporary street closure as a result of this event.

Include street name(s) indicating beginning and endpoints of the closing, day, date and time of closing and reopening:

1. \_\_\_\_\_

2. \_\_\_\_\_

3. \_\_\_\_\_

**V. Event Details**

**YES NO**

Does the event involve the sale or **use of alcoholic beverages**?

If yes, has the ABC permit been obtained? Yes  No  Please provide a graphic of the area where alcoholic beverages will be purchased or consumed (i.e. beer garden layout)

Does the event involve the **sale of food**? \_\_\_\_\_

If "YES", has the health department been notified? \_\_\_\_\_ Have you applied for a temporary permit? \_\_\_\_\_

Does the event involve the **sale of non-food items**? If "YES" have you applied for a privilege license? \_\_\_\_\_

Will there be **musical entertainment** at your event? IF "YES" provide the following information:

Number of Stages: \_\_\_\_\_ Number of Band(s): \_\_\_\_\_ Amplification? \_\_\_\_\_

Note: If amplification is used, you will be required to perform a pretest for compliance with the noise ordinance.

Do you plan to use an existing **occupied building**? Address \_\_\_\_\_

Do you plan to use an existing **vacant building**? Address \_\_\_\_\_

Will there be any **tents or canopies** in the proposed event site? Please provide the following information:

Approx. Number of Tents: \_\_\_\_\_ Will any tent exceed 400 sq. feet in area?  NO  YES

Does the event involve the use of **pyrotechnics**? Explain \_\_\_\_\_

Will you provide **portable toilets** for the general public attending your event? IF SO, how many and where will they be located? \_\_\_\_\_

Will you require **electrical hookup** for the event? Generators? \_\_\_\_\_

Will you require **access to water** for the event? Explain \_\_\_\_\_

Will **admission fees** be charged to attend this event? If "YES", provide the amount(s) of all tickets. \_\_\_\_\_

Will **fees be charged to vendors** to participate in this event? If "YES", please provide the amount(s). \_\_\_\_\_

Will **signs and/or banners** be displayed as part of the event? If "YES" have you applied for a sign permit? \_\_\_\_\_

Will **inflatable parade balloons** be used for the event? Provide details if necessary.

**VI. Additional Questions**

How will **parking** be accommodated for this event? \_\_\_\_\_

Notes:

- 1. Parking and buildings involved may be examined for ADA compliance.
- 2. You may be required to provide a shuttle if the event places undue demands on surrounding parking areas.

How will **trash** be contained and removed during and after the event? \_\_\_\_\_

**Apply for this permit at least 60 days prior to your special event. (30 days for a neighborhood street closing)**

**Return to:**  
**Amie Owens, Assistant Town Manager**  
**Town of Waynesville**  
**16 S. Main Street, P.O. Box 100, Waynesville, NC 28786**  
**Telephone: (828) 452-2491**  
**Fax No. : (828) 456-2000**  
**Email Address: [aowens@waynesvillenc.gov](mailto:aowens@waynesvillenc.gov)**

**VIII. Special Information for Applicants**

- \* Do not announce, advertise or promote your event until you have an approved and signed permit.
- \* You will be required to notify property owners affected by the event at the time a special events permit is issued with a copy of any correspondence provided to the Town for the permit file.
- \* No permanent alterations to the street will be permitted. Only chalk may be used on streets – no permanent paint.
- \* The Town has an ordinance prohibiting the use of tobacco and e-cigarettes in the business districts and all parks of the Town. The Applicant is to communicate this information to all vendors and participants. Permanent signs are in place in these districts and parks.
- \* The Town has an ordinance against animals at festivals except for service animals. The Applicant is expected to communicate this information to all vendors and participants.
- \* The Applicant shall be responsible for hiring and paying off-duty law enforcement officers, or reimbursing the Town for the costs of providing on-duty law enforcement officers, to appropriately police street closures. For festivals, the Applicant shall be additionally responsible for hiring and paying off-duty law enforcement officers, or reimbursing the Town for the costs of providing city staff, including but not limited to: on-duty law enforcement officers, to provide internal festival security and for hiring and paying necessary emergency medical technicians.
- \* The Assistant Town Manager, in consultation with the Waynesville Police Department, shall determine the number of officers needed to appropriately police street closures and for internal security, and with the Fire Department to determine the number of emergency medical technicians needed, and the time when such services shall commence and end.

**FOR INTERNAL USE ONLY:**

Application and fee received:

Application approved:

Application denied:



# SPECIAL EVENT PERMIT

PERMIT NUMBER – (Yr issued/DateofEvent/Approval Date)

Permit is hereby issued unto \_\_\_\_\_ in accordance with the policy to conduct a special event within the corporate limits of the Town of Waynesville for the following purposes:

This permit is issued subject to the above activity being performed in a lawful manner in compliance with all provisions of the Waynesville Code of Ordinances and the laws of the State of North Carolina and is further subject to the provisions specified below:

1. Times and dates permitted:
  
2. The person who will be responsible and in direct charge is:
  
3. Public streets to be closed and the limits thereof (or the park area reserved) are as follows:
  
4. Other provisions:

This permit includes the attached application and is subject to being withdrawn and the special event canceled by the Town Manager or Police Chief in the event there is any violation of the permit conditions, if there is a false statement in the application, or in the event it is determined there are circumstances which will adversely affect the health or safety of the citizens if the event is held or continued to be held.

Issued this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

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Robert W. Hites, Jr., Town Manager

## 2017 Cost of Service for Events in Waynesville Police, Fire and Public Services

These are the main festivals and events that require Board approval each year.

Event Name/Month	Police		Fire		Public Services		TOTAL EVENT COST
	Hours	Cost	Hours	Cost	Hours	Cost	
<b>March</b>							
Mountaineer 2 Miler	4	\$140.00					\$140.00
<b>April</b>							
	No Events		No Events		No Events		NO EVENTS IN APRIL
<b>May</b>							
Whole Bloomin Thing	9	\$315.00			6.5	\$91.00	\$406.00
Gateway 1/2 Marathon	105	\$3,675.00	8	\$280.00			\$3,955.00
<b>June</b>							
Block Party	5	\$175.00			6.5	\$91.00	\$266.00
<b>July</b>							
July 4th Kids Parade	4	\$140.00	2	\$70.00	6.5	\$91.00	\$301.00
Junaluska Fireworks	12	\$420.00	12	\$420.00			\$840.00
Street Dance	10	\$350.00			6.5	\$91.00	\$441.00
Folkmoot Parade	9	\$135.00	4	\$140.00	6.5	\$91.00	\$366.00
Folkmoot International Day	36	\$1,260.00	16	\$560.00	6.5	\$91.00	\$1,911.00
Car Rally (one time event)	12	\$420.00			2	\$28.00	\$448.00
<b>August</b>							
SARGE'S Dog Walk					6.5	\$91.00	\$91.00
Street Dance	10	\$350.00			6.5	\$91.00	\$441.00
<b>September</b>							
Block Party	16	\$560.00			6.5	\$91.00	\$651.00
Street Dance (special)	10	\$350.00			6.5	\$91.00	\$441.00
<b>October</b>							
Church Street	32	\$1,120.00	16	\$560.00	6.5	\$91.00	\$1,771.00
Apple Festival	48	\$1,680.00	16	\$560.00	6.5	\$91.00	\$2,331.00
Halloween/Treats on Street	32	\$1,120.00			6.5	\$91.00	\$1,211.00
<b>November</b>							
	No Events		No Events		No Events		NO EVENTS IN NOV
<b>December</b>							
Christmas Parade	45	\$1,575.00	18	\$630.00	8	\$112.00	\$2,317.00
Night Before Christmas	16	\$560.00			6.5	\$91.00	\$651.00
		<b>\$14,345.00</b>		<b>\$3,220.00</b>		<b>\$1,414.00</b>	<b>\$18,979.00</b>

The Police and Fire Departments also provide coverage for five (5) home Tuscola Football Games

Average Cost Per Game	24	\$560.00	8	\$280.00	\$4,200.00
THS/PHS Game	80	\$2,800.00	16	\$560.00	\$3,360.00
					<b>\$7,560.00</b>

The Police Department also provides additional coverage for Black Friday, Protests and Gatherings and Rolling Street Closures

	60	\$2,100.00			<b>\$2,100.00</b>
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**TOTAL FOR ALL EVENTS**

**\$28,639.00**

Waynesville Police Department  
Event Overtime 2017

January /February	March	April	May	June	July	August	September	October	November	December	HOURS WORKED
											\$35.00 per hour
No Events	Mountaineer 2 miler	No Events	Whole Blooming Thing	Block Party	July 4 Kids Parade	Hospital Gala	Block Party	Football Game 10/13	Black Friday	Christmas Parade	
	4		9	5	4	2	16	24	15	45	
	4 x 35= \$140		9 x 35= \$315	5 x 35= \$175	4 x35=\$140	2 x 35 = \$70	16 x 35 = \$560	24 x 35= \$840	15 x 35= \$525	45 x 35=\$1,575	Average # of hours per event in 2017
											<b>20</b>
			Liter Pickup	Clyde Glow Run	Junaluska Fireworks		Football Game 9/1	Football Game 10/27		A Night Before Christmas	*excluding FB games
			4	8	12		80	24		16	19 events were less than 20 hours
			4 x 35= \$140	8 x 35=\$280	12 x 35 = \$420		80 x 35= \$2800 (THS/PHS Game)	24 x 35= \$840		16 x 35=\$560	6 events were 21 to 60 hours
											1 event was greater than 100 hours
			Gateway 1/2 Marathon		Street Dance		Football Game 9/8	Church Street Festival			
			105		10		24	32			
			105 x 35= \$3,675		10 x 35=\$350		24 x 35=\$840	32 x 35= \$1,120			
					Folkmoor International Day		Football Game 9/22	Apple Festival			
					36		24	48			
					36 x35=\$1,260		24 x 35= \$840	48 x 35=\$1,680			
					Folkmoor Parade		Football Game 9-28	Mast General Security			
					9		24	56			
					9 x 35= \$315		24 x 35= \$840	56 x 35=\$1,960			
					Car Rally		Prayer Walk	Tractor Parade			
					12		6	3			
					12 x 35= \$420		6 x 35= \$210	3 x 35=\$105			
							Goldwing Street Dance	Halloween Patrol			
							10	32			
							10 x 35= \$350	32 x 35= \$1,120			
							Protest				
							6				
							6 x 35= \$210				
							HCC Gala				
							10				
							10 x 35=\$350				
Total O/T	Total O/T	Total O/T	Total O/T	Total O/T	Total O/T	Total O/T	Total O/T	Total O/T	Total O/T	Total O/T	Overall Total
0	4	0	118	13	79	2	200	219	15	61	711
\$0	\$140	\$0	\$4,130	\$455	\$2,765	\$70	\$7,000	\$7,665	\$525	\$2,135	\$24,885

**Public Services In-kind Costs**

	Labor Hours Per Action	Hourly Labor Cost	Recurrence	Annual Cost (52X)	Comment
14 Festivals (approx. 6.5 hours each)	6.5	\$14.00	14	\$1,274.00	14 festivals supported, with some support required on Saturdays using overtime. Includes set up and take down. Usually only one person required sometimes two.
			<b>Total</b>	<b>\$1,274.00</b>	

May / June	July	August	September	October	November	December
Gateway 1/2 Marathon	July 4 Kids Parade Way.	No Events	Football Game 9/1	Fotball Game 10/13	No Events	Christmas Parade
8	2		16	8		18
8 X35 =280	2 X 35 = \$70		16 X 35 = \$560	8 X35 =280		18 X 35 = 630
	Junaluska July 4 Parade					
	4		Football Game 9/8	Football Game 10/27		
	4 x 35=\$140		8	8		
			8 X35 =280	8 X35 =280		
	Junaluska Fireworks		Football Game 9/22	Church Street Festival		
	12		8	16		
	12 x 35 = \$420		8 X35 =280	16 X \$560		
	Folkmoot International Day		Football Game 9-28	Apple Festival		
	16		8	16		
	16 X \$560		8 X35 =280	16 X \$560		
	Folkmoot Parade		HCC Gala			
	4		8			
	4 x 35=\$140		8 X35 =280			
						<b>Total O/T</b>
						160
						\$5,600

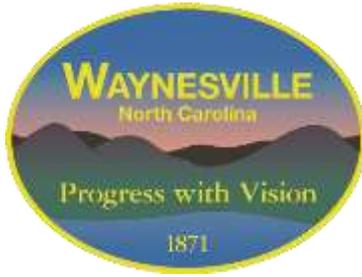
Average hours per event 2017

**10.5 hours**

\*excluding football games

All 10 events less than 20 hours

\* No Events January - April



# TOWN OF WAYNESVILLE

Development Services Department

PO Box 100

9 South Main Street

Waynesville, NC 28786

Phone (828) 456-8647 • Fax (828) 452-1492

[www.waynesvillenc.gov](http://www.waynesvillenc.gov)

## MEMORANDUM

**To:** Robert Hites, Town Manager  
**From:** Elizabeth Teague, Planning Director  
**Re:** Transportation Projects and Potential Match Costs  
**Date:** October 2, 2017

The Town has had much success in developing long range plans with the French Broad River Metropolitan Planning Organization (FBRMPO) and the North Carolina Department of Transportation (NCDOT). As these multiple projects and corridor studies make their way onto the NCDOT Project list for feasibility studies, engineering and construction, the Town is liable for matching federal and state monies with local funding. As a general policy, local match for NCDOT projects is 20% of the total cost of the project. These final costs are verified at project close out, and so can only be estimated at this point.

The attached table is a summary of the projects the Town may see come to fruition in the next 10 years through the NC Department of Transportation. These projects represent important infrastructure improvements that were identified as needs through various adopted Town and State planning processes with public involvement. This list does not include other types of infrastructure projects such as those for water, sewer, power, or parks as these will rely on other sources of grant funding and may have various degrees of match. This list also does not include those projects the Town is planning through Powell Bill funding, except for the upcoming construction of a portion of Greenway which is planned for this FY.

I am providing this information as a starting point for discussion on the need to prepare for future costs to the Town. This information will change as better cost estimations and other infrastructure needs or project and grant opportunities emerge in the future. At this moment in time however, it appears that the Town is liable for an estimated 13.5 to 14 million dollars in matching funds between this FY and FY 2028.

I have separated out the greenway funding match because, so far, match liability is already covered in the FY 17-18 budget as adopted, and these projects have not yet been programmed into the State TIP. Planning funds within the Development Services Budget and Powell Bill funds within the Public Works budget can match the programmed federal STP-DA funds. There are other grant funds in addition to NCDOT related funding that could go towards greenway construction, such as: The Pigeon River Fund, TDA grant funds, or the State Recreation Trails Program.

**FUTURE TRANSPORTATION INFRASTRUCTURE PROJECTS AND THEIR POTENTIAL MATCH IMPLICATIONS FOR THE TOWN**

**October 6, 2017**

<b>TIP#</b>	<b>Description</b>	<b>Timeframe or Status</b>	<b>Potential Project Cost / Match</b>
U5548	Realignment of Brown Avenue from Boyd Ave to 1200' from intersection with new roadway construction. Engineers offering 2 design options depending on mtg this week	STP-DA approved PE in FY2018	PE \$112,000 / \$22,400 Cons. \$1,700,000 / 340,000 or Cons option 2 \$1,200,000 / \$240,000
EB5859	Sidewalk along SR1170 Hazelwood/Plott Creek Rds from Richland Creek Bridge to Will Hyatt Rd. (on school side)	STP-DA approved as design/build FY17-18	\$125,000 / \$25,000 <i>Note: this match has already been paid</i>
EB5757	"Road Diet" from 4 lanes to 3 on Brown Avenue for pedestrian and bicycle improvements from S. Main to Belle Mead	STP-DA approved PE in FY 2018 Cons. in 2019+ (We haven't begun this yet, pending retreat)	PE: \$50,000 / \$10,000 Cons: \$229,284 / \$45,857
U5888	US23 Business (North Main) and Walnut, with possible relocation of Vance, intersection Improvements	ROW2018 Cons2020	\$2,675,000 / \$535,000
U5839	SR276 Russ Avenue Corridor Improvements 23/74 Expressway to Main S	ROW 2018 Cons in 2020+	\$19,383,000 / \$3,876,600
U4712	US23 Business (South Main St.) Corridor improvements Hyatt Creek Road to US276 Pigeon Street	ROW in 2020 Cons in 2023+	\$44,900,000 / \$8,980,000
	PE Greenway Hazelwood Park to Boyd Avenue	STP-DA approved 8/10/17	\$48,000 / \$9,600
	Feasibility Study Rec Park to High Tech Center (connection to Junaluska Trail)	STP-DA approved 8/10/17	\$72,000 / \$14,400
	<b>Match Liability Roadways and Sidewalks:</b>		<b>\$13,734,857 – 13,834,857</b>
	<b>Match Liability Greenway*</b> <i>Town has already allocated match funds</i>		<b>\$24,000</b>

## **FINANCING**

The Town will face several million dollars in capital costs over the next decade. The costs will exceed the ability of the general fund balance and annual revenue to fund as annual capital projects. Rather than create a borrowing for each project the Board may wish to explore the possibility of conducting a bond referendum or issue certificates of participation to fund a financing package of improvements. The following is a brief explanation of General Obligation Bonds and Certificates of Participation and the process used to have them approved and financed.

### **General Obligation Bonds (GS 159, Article 4)**

General Obligation Bonds provide a municipality with its most cost effective financing instrument. The bond is guaranteed by an affirmative vote of the Town's citizens. Such a vote pledges the "full faith and credit of the municipality" to pay off the bonds. It obligates the Town to use its taxing authority to pay the debt.

A Town may place several categories of need into one referendum. The voters are requested to vote "yea or nay" on each category. Should the voters approve the bonds the Town has seven years to "draw down" the debt. The election provides the local government with the authority to sell the bonds as the projects listed in the referendum are ready for construction. For example: the Town may sell part of the bonds in year one to build a fire station and a greenway. In year three they may sell another group of bonds to finance road improvements and a recreation facility. Bonds from different categories may be combined for sale during the seven year period. Should the Town not be able to complete the projects in seven years they may apply to the Local Government Commission for an extension of the Bond Order to ten years.

### **Certificates of Participation**

Another common method of financing municipal debt is the issuance of certificates of participation. The most attractive feature of this financing instrument is that it does **NOT** require a vote of the people. The lack of a vote of the people usually means that the bond markets will charge approximately one (1%) percent more for the borrowing than one that pledges repayment by a vote of the people. This is somewhat of a moot point in North Carolina since the State requires a local government to pay off its debt as its first priority and may compel a local government to do so.

The Town would most likely finance the categories of debt in two to five million dollar allotments. The markets don't like small borrowings. It is hard to sell them to institutional investors.

While certificates of participation carry an interest rate that is higher than general obligation bonds certificates are currently the most common method of financing municipal debt. The souring of the populace toward any issue that involves a tax increase of any kind has made it more difficult for municipalities to gain approval of financing through referenda. The general advice of financial advisors is to use general obligation bonds for discretionary projects and certificates of participation for projects that are required for health and safety reasons or through court order. For example: parks, greenways and civic centers are discretionary. Jails, schools, water and sewer plants that may be required by court or regulatory order must be constructed whether the voters approve or not. These should be financed through certificates of participation.

### **Process**

Both forms of financing share a similar regulatory path. The local government develops a list of projects to be financed and creates project budgets and timelines. The local government engages a bond attorney and financial advisor to bundle the packages into categories for submittal to the public for comment. The local government provides notice to the public and conducts a hearing requesting comment on the proposed borrowing. Should the local government not hear comment that dissuades them from continuing the process they will hold a meeting with the Commission staff and bond attorney to discuss the details of the project including the local government's plan to pay back the projected debt. Once the Commission staff approves the local government's plan it will be placed on the monthly calendar of the Local Government Commission. The Commission will issue a "bond order" that permits the local government to set a series of public notices that would lead to either an election in the case of general obligation bonds or a public sale of certificates of participation. The bond attorney and local government finance director will determine the size and timing of each sale. They will study the market and determine the best time to place each allotment to be sold.

The process may appear complicated; however, the bond attorney and financial advisor will guide the local government through the process and draft the necessary documents and prospectus for the process. The local government staff will only need to provide information to the consulting attorneys. The bond attorney and financial advisors may charge between \$20,000 and \$40,000 depending on the complexity of the bond order.

# Memorandum

**To:** Mayor and Board of Aldermen  
**From:** Amie Owens, Assistant Town Manager  
**Date:** September 29, 2017  
**Subject:** **Follow up** – University Participant Program at WCU

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## Issue

At the September 26<sup>th</sup> regular meeting of the Board of Aldermen, Kelly Kelley, PhD., co-director of the University Participant Program gave a presentation explaining their goals for providing an inclusive living and learning experience for college-aged persons with intellectual disabilities. At the meeting, Mayor Brown requested that I research to find potential ways for the Town to partner with the UP program in the future.

## Potential Partnership

While providing internships may be a possibility in the future, at the present time, transportation for students from WCU to work for the Town of Waynesville is a large impediment. This may be better suited for the summer semester. One potential project would be for UP students to present information to parents of children with intellectual disabilities at the inclusive playground once it is completed. The town could assist with marketing the event(s).

## Recommendation

At this time, a donation of \$500.00 is recommended to assist in tuition offset for next semester for one student.

As a non-profit, the UP program is eligible to be an applicant in the special appropriations for the Town of Waynesville as part of the budget process. Dr. Kelley will be encouraged to apply in February 2018.

Dear Town of Waynesville, Mayor, and Board of Aldermen,  
Thank you for allowing us to share our passions  
what we do at Western Carolina University Participa-  
(UP) Program. We appreciate your interest and  
allowing us to share the impact this experi-  
ence truly makes in the lives of individuals  
with intellectual disability and the community.  
We look forward to future correspondences  
and partnerships with you.

Thanks again,

Shawn Waitt

Kelley R. Kelley, UP Co-Director

Leya Wall

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