



Town of Waynesville

AGENDA
REGULAR MEETING
BOARD OF ALDERMEN
TOWN OF WAYNESVILLE
TOWN HALL - 9 SOUTH MAIN STREET
MARCH 22, 2011
TUESDAY - 7:00 P.M.

Call to Order

1. Approval of Minutes of March 8, 2011
2. Retirement of Narcotics Dog "Teddy"
Policy Amendment
3. Public Hearing - Revised Land Development Standards
4. Tax Collector James Robertson
Requests to Advertise Delinquent Taxes
5. Downtown Waynesville Association
2011 Street Closing Request
6. Water Purchase Agreement
Lake Junaluska Assembly
7. Water Purchase Agreement
Junaluska Sanitary District
8. Adjournment

Additional information regarding this agenda is available at www.townofwaynesville.org

ITEM 2. RETIREMENT OF NARCOTICS DOG "TEDDY"
POLICY AMENDMENT

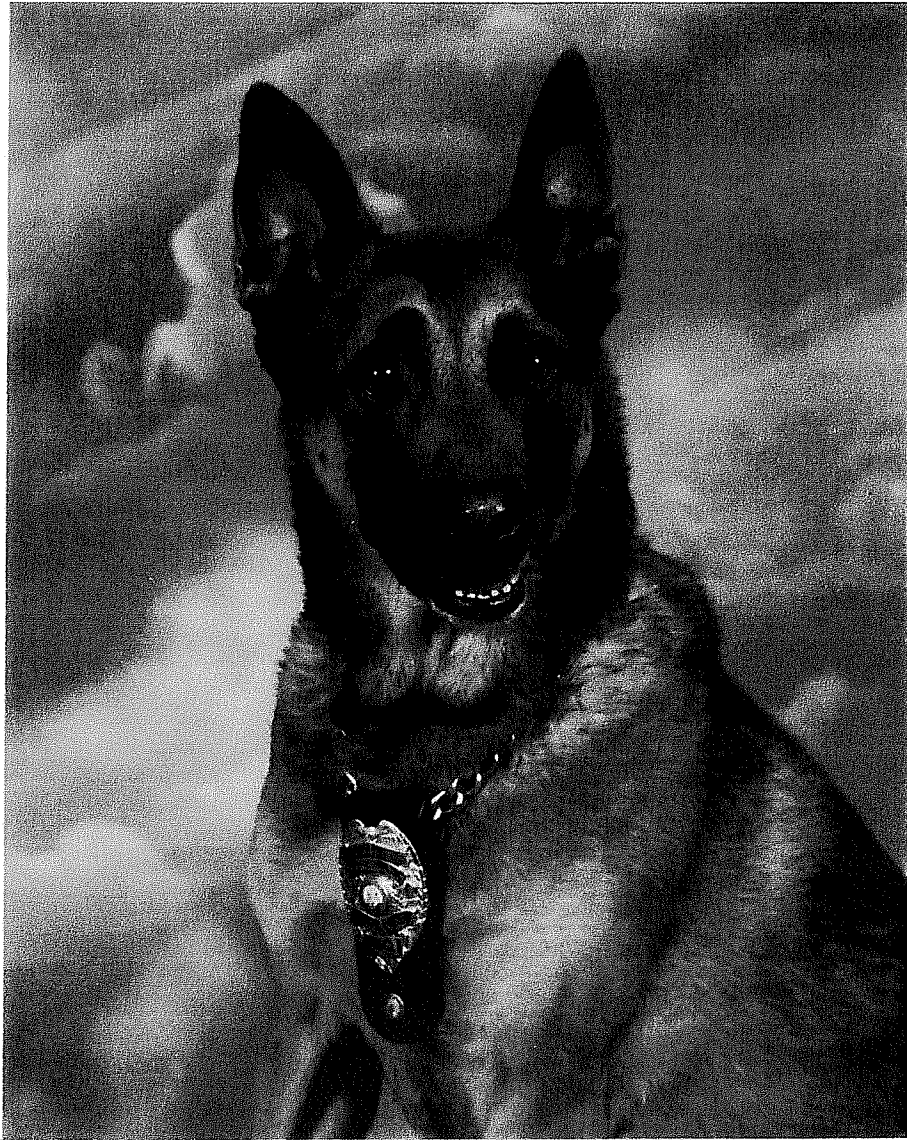
As the Town Board adopted the 2010-2011 annual budget, funds were included for the purchase of a new narcotics dog. After many years of faithful and loyal service to the Town and Haywood County, Narcotics Dog "Teddy" has decided to retire. He has served the citizens of the community for over a decade, providing his services in seeking out illegal drugs and helping to eradicate the drug traffic and use in Waynesville and Haywood County.

There follows a picture of Narcotics Dog "Teddy" along with a listing of his many accomplishments while serving with the Waynesville Police Department. What an asset this officer has been!

For most retiring employees, it is customary to honor the service of that employee with a watch. Narcotics Dog "Teddy" indicated that he was not really interested in a watch, but he did request that he be allowed to spend his retirement years with his partner, fellow officer Brandon Gilmore. "Teddy" is our first Narcotics Dog to reach retirement, and while the Town has a formal K-9 policy, we found that the policy did not address the manner in which the retirement of the canine is handled.

In an effort to fulfill "Teddy's" request, we found that the Town Board would need to adopt an amendment to the policy. For your information, the entire K-9 policy is attached, and the section addressing Retirement precedes the full policy and is highlighted in yellow.

Narcotics Dog "Teddy" will be on hand for the retirement ceremony on Tuesday evening and it will be a great opportunity for us to paws to honor him.

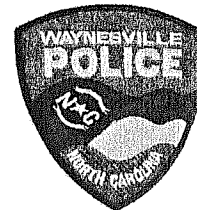


Retirement

Police service dogs that are retired will be placed with their handler if possible. The Canine Handler must submit a request through the chain of command to purchase his/her canine. The Chief of Police and Town Manager must approve the request. If the request is approved, the Canine Handler must pay one dollar and sign a written agreement releasing the Town from liability.

Waynesville Police Department

General Order



| | | |
|---|--|----------------|
| Effective Date: November 4, 2004 | | Number: |
| K-9 Policy | | |
| Distribution: All Personnel | Related CALEA Standards: 41.2.17, 47.1.3, 47.1.4 | |

PURPOSE:

The purpose of this policy is to provide support through the use of a canine to improve effectiveness. This policy will also establish guidelines for the police canine handler and the deployment, training, and care of the canine.

POLICY:

It is the policy of the Waynesville Police Department to maintain a fully operational police canine unit to support patrol and additionally other components of the department, as well as other agencies upon request. Any agency requesting assistance from our departmental canine unit must have a valid "mutual aid" agreement on file. The police canine unit shall be deployed using great caution, and only after careful consideration of the circumstances. The utilization of the police canine unit shall be authorized for the use in the following circumstances; narcotic detection, tracking, building searches, article searches, explosive searches, handler protection issues, and public relations.

DEFINITIONS:

CANINE (K-9) - Working dog which has been procured and specially trained to execute a number of specific law enforcement and public service tasks, which make use of the canine's speed, agility, and sense of smell.

POLICE CANINE OFFICER / HANDLER - An officer specially trained in the care, handling, and training of a police canine for law enforcement use.

POLICE CANINE UNIT - A unit consisting of a police canine handler, and a specialty canine used in law enforcement specifically trained for scent work, detection, or tracking work. Specialty units are used for narcotics detection, explosive detection, article and vehicle searches, and tracking purposes.

POLICE CANINE TRAINER - Canine trainer who is certified/qualified to conduct basic, in-service, and maintenance training.

POLICE CANINE FACILITY - Training sites or facilities recognized as a law-enforcement training facility.

CANINE DEPLOYMENT TACTICS - Any type of action in which the canine is utilized and is properly trained for.

TRACKING - The utilization of the canine's sense of smell to locate fleeing subjects. Scene containment is essential in order to effectively utilize the police canine unit. Crime scenes should

be quickly cordoned off utilizing as many available officers as possible to effectively prevent escape, pending the arrival of the patrol canine unit. A canine is much more effective if a scene is not contaminated with the scent of several officers. If you lose sight of a subject during a foot pursuit, consider setting up a perimeter and calling the police canine unit immediately as opposed to conducting an extensive search with several officers.

BUILDING SEARCHES - The utilization of the canine's sense of smell, agility, and speed to locate hiding subjects in buildings, or related structures where a search by officers would create an unnecessary risk.

ARTICLE SEARCHES - The utilization of the canine's sense of smell to locate items from a crime scene. These type searches can include, but not limited to; items recovered from a tracking deployment, and/or items that have been discarded in an identified area.

NARCOTIC SEARCHES (MOTOR VEHICLE) - The police canine unit can be called upon to "scent" search a motor vehicle when an officer has conducted a valid traffic stop, and has reasonable suspicion to believe the operator and/or passengers are in possession of illegal narcotics. A "scent" search by the canine of the exterior of a vehicle in an exploratory manner **DOES NOT** constitute a search.

NARCOTIC SEARCHES (RESIDENCE/ BUILDINGS) - The police canine unit can be called upon to assist in searching these type structures once consent has been obtained from the owner, and/or a search warrant has been obtained.

SCENT SEARCH - Exercises whereby the police canine conducts searches to locate evidence or other articles within buildings, vehicles, containers, or any other interior/exterior areas.

IN-SERVICE TRAINING - Certified training (actual working conditions) conducted by a recognized law-enforcement canine trainer to maintain skills that must be performed during re-evaluation.

MAINTENANCE TRAINING - Certified training (performance exercises) conducted by a recognized law-enforcement canine trainer to maintain skills that must be performed during re-evaluation.

SECONDARY TRAINING - Training exercises (searches, tracking, concealment, demonstrations) conducted by the police canine handler as an independent and overlapping method to reinforce in-service and maintenance training.

CONSENT TO SEARCH FORM - A form granting permission to search the vehicle, residence, and/or building in question or under suspicion. Person(s) who either own, have control of, or in possession of said vehicle, residence, and/or building may give consent to have any and all contents, containers, luggage, buildings, trailers, or other items related to the property searched. Suspicious panels, components, contents, or compartments that require removal for access should be accomplished in the least intrusive manner possible. If any items are confiscated, an inventory sheet shall be left stating what was taken.

EXPLOSIVE SEARCHES - The police canine unit will be available on an "on call" basis to assist when a bomb threat has been made. The utilization of the canine to search areas that are not readily accessible to people, or that are too expansive to be searched expediently by people, can be accomplished with greater efficiency and while exposing fewer people to danger. In the event a device has been discovered, and/or if an explosion has occurred, the police canine unit can search for components of the primary device. The police canine unit can be utilized to search for a secondary explosive device, or a device that may have failed to detonate.

PROCEDURES:

A. Police Canine Unit Responsibilities

1. The police canine unit's primary responsibility is to utilize the canine while performing pro-active traffic enforcement within the city limits.
2. The on-duty police canine unit can be requested by any officer, supervisor, or other component of the department as needed. Any arrest made or evidence located as a result of a request for the canine assistance shall be considered to have been accomplished by the requesting officer. Reports, suspects, and evidence obtained through canine assistance will be processed by normal department procedures.
3. Whenever the police canine unit responds to a request for assistance, and/or initiates a canine search, the canine officer shall be responsible for completing required documentation of a Canine Activity Report.
4. The canine officer is responsible for forwarding all Canine Activity Records, including any training documentation to their appropriate supervisor on a monthly basis.
5. The on-duty police canine unit should not be dispatched as a primary unit to "report" type calls unless "calls for service" exceeds the limitations of the assigned working shift.
6. The on-duty police canine unit shall respond to a "crime in progress" when the possibility exists of containing the subjects within a building or given area.
7. The on-duty police canine unit will attempt to assist other officers as a backup when possible.
8. The on-duty police canine unit will handle any self initiated calls and take appropriate police action concerning on-view criminal activity, and shall be responsible for completing necessary reports.

B. Departmental Call-Out

1. The police canine unit is available on a 24-hour, on-call basis to conduct building searches for hiding suspects, tracking suspects, locating evidence of a crime, for the detection of concealed narcotics, and for the detection of explosive devices.
2. Officers requesting the call-out of the police canine unit must do so through their immediate supervisor. The supervisor will assess the need for a canine and may contact the off-duty police canine unit.
3. The police canine handler is responsible for determining whether a situation justifies canine use and the appropriate tactical measurement that should be taken. When the on-scene supervisor disagrees with the canine handler's tactical assessment, the directions of the on-scene supervisor shall be followed.

4. The police canine unit will inform communications when they are responding to the scene, and also when clear from the call-out procedure.

CANINE DEPLOYMENT TACTICS:

A. Tracking

1. Once the on-scene supervisor has evaluated the scene, and the need for the police canine unit has been established, the police canine unit should be requested.
2. The scene should be secured and the perimeter should be maintained until the police unit arrives and advises that the track has been concluded.
3. Attempts should be made not to contaminate the crime scene and/or pathway(s) of escape. Unauthorized persons shall not be permitted within the perimeter.
4. Physical evidence, or any "scent" article at the crime scene should not be contaminated.
5. Upon arrival to the scene, the police canine officer shall coordinate with the supervisor and assess the situation to insure the use of the canine is appropriate. Information pertaining to the type of crime, subject description, weapon information, time lapse, and perimeter information should be made available to the police canine officer as soon as possible.
6. The police canine officer examines the crime scene and makes a determination on deployment, taking into consideration subjects last known direction of travel and the canine's capabilities.
7. When the police canine unit begins a track for a subject, another officer will be assigned (if possible) to follow at a distance of 25 feet to the rear and off the "scent" track, keeping the police canine unit in view and watching for suspects.
8. When the police canine is used for tracking a subject, the canine should remain on a leash of sufficient length to provide a reasonable measure of safety to the subject of the search without compromising the canine's ability to track.
9. The police canine handler shall keep the supervisor updated on the direction of travel, so that adjustments may be made in the perimeter containment.
10. When a subject is located, the police canine handler will control the canine once the situation has been stabilized. The cover officer will secure the subject with the canine unit providing cover.

11. In the event the subject is injured, medical personnel will be contacted. The injury will be photographed by the canine handler and/or supervisor after medical attention has been provided.
12. The officer assigned to the case will take custody of the prisoner and ensure the subject is properly charged with the crime committed.
13. Evidence located on the track will be turned over to the officer assigned to the case.
14. The police canine officer shall complete the necessary paperwork, including the Canine Activity Report, and a departmental Use of Force Report (if required).
15. The police canine officer's supervisor shall review all Use of Force Reports to determine if the utilization of the canine was in accordance with the agencies written policy.

B. Building Searches

1. When a responding officer believes that a subject could be hidden within a building, he/she shall request the assistance of back-up officers to secure the building and all possible exits to ensure that no one enters or exits.
2. Once the on-scene supervisor has evaluated the scene and the need for the canine has been established, the police canine unit should be requested.
3. Whenever possible, the building's owner should be contacted to determine whether there may be tenants or others in the building. Also, the building's "layout" may be obtained to aid in the search.
4. When a canine building search is anticipated, a preliminary search by officers should not be conducted; as this will interfere with the canine's ability to discriminate scents.
5. Upon arrival, the police canine officer shall coordinate with the supervisor on-scene, and assess the situation to insure the use of the canine is appropriate. Attention should be focused on the entry and exit points, movement detected inside the building, or and other pertinent information.
6. Prior to the police canine unit conducting a building search, communications should be notified to clear the channel and prepare to record the verbal canine announcement. Once communications has cleared the channel, a loud verbal warning recorded over the police radio will be given two (2) times stating, "Waynesville Police Canine Unit - We Are Giving You the Chance To Come Out, Or I'll Release The Canine". This warning will be given at a ten (10) second interval to avoid injuries to innocent bystanders and allow the criminal the opportunity to surrender. The warning will be given only by the police canine officer and not given prior to the canine unit arrival as a ploy to surrender.

7. The police canine officer shall advise other officers when the canine is being released to ensure that no perimeter officers are in the area of any exits. The police canine officer will make every attempt to keep the canine within view during the search.
8. When the police canine unit is being utilized to conduct a building search, a cover officer will be assigned when possible. This assignment should generally be made at the direction of the police canine officer, and/or as directed by a supervisor.
9. When an apprehension is made inside the building and the situation has been stabilized, the police canine officer shall control the canine on lead and provide cover. The cover officer shall secure the subject and escort the subject from the building.
10. The cover officer shall return to the police canine officer after making radio contact with the handler to complete the building search.
11. In the event the subject is injured by the canine, medical personnel will be contacted. The injury will be photographed by the police canine handler and/or supervisor after medical attention has been provided.
12. The officer assigned to the case will take custody of the prisoner and ensure the subject is properly charged with the crime committed.
13. The police canine officer shall complete the necessary paperwork, including the Canine Activity Report, and a departmental Use of Force Report (if required).
14. The police canine officer's supervisor shall review all Use of Force Reports to determine if the utilization of the canine was in accordance with the agencies written policy.

C. Article Searches

1. The supervisor shall evaluate the scene and determine the need for the canine. The scene should be secured to prevent contamination and no one should be allowed within the search area.
2. The police canine officer shall respond to the scene to evaluate the situation, and determine what type of evidence is being sought.
3. The police canine officer shall determine the proper deployment of the canine after considering the search area and wind direction.
4. The officer in charge of the scene shall ensure the protection of the found evidence until it can be properly processed and placed into evidence.

D. Narcotic Searches (Motor Vehicles)

1. Once an officer has determined the presence of the police canine unit is needed, it will be the initiating officer's responsibility for ensuring the scene is not contaminated.

2. The police canine officer shall evaluate the situation and determine if the search is within legal guidelines for the use of the canine, and whether the search area is safe for the canine to conduct a search.
3. The requesting officer must be prepared to take appropriate action after the canine gives a positive alert as to the presence of the odor of narcotics (i.e., arrest, secure a search warrant when needed, take custody of located narcotics and place them into custody).
4. The use of the canine to detect narcotics on a subject's person is prohibited.
5. The use of a canine to search the exterior of a vehicle (scent search) is permitted without a search warrant or consent from the owner. If canine gives a positive alert, police canine handler will be responsible for making decision (i.e., search warrant, emergency search) on course of action to be taken.
6. If consent to search is given for the interior of the vehicle, a Consent Form must be signed.
7. The police canine officer shall complete all necessary paperwork, including the Canine Activity Report.

E. Narcotic Searches (Residence/Building)

1. Once an officer has determined the presence of a police canine unit is needed, the on-duty police canine unit shall respond to the scene.
2. Once the police canine officer arrives on-scene, all persons should be removed into one area.
3. The police canine officer shall evaluate the situation and determine if the search is within legal guidelines for the use of the canine, and whether the search area is safe for the canine to conduct a search.
4. The police canine officer shall attempt to reduce all air flow within the rooms to be searched prior to deployment of the canine.
5. The requesting officer must be prepared to take appropriate action after the canine gives a positive alert as to the presence of the odor or narcotics (i.e., arrest, take custody of located narcotics and place them into evidence).
6. The use of the canine to detect narcotics on a subject's person is prohibited.
7. The use of the canine to search the exterior of a residence or a dwelling is prohibited without a search warrant or consent from the owner. If consent is given, Consent Form must be signed.
8. The police canine officer shall complete all necessary paperwork, including the Canine Activity Report.

F. Narcotic Searches (Public Schools)

1. The school's principal or designated authority must request or approve use of the canine.
2. The police canine unit shall respond to the scene and conduct a search, limiting the search to inanimate objects in public areas such as the exterior of student lockers, unless reasonable suspicion exists to gain admission to lockers and related areas, or if school officials request the search and grant access.
3. The police canine officer shall complete all necessary paperwork, including the Canine Activity Report.

G. Explosive Searches

1. Once a bomb threat has been made and the on-scene supervisor has evaluated the situation, the on-call police canine unit should be requested.
2. Prior to the arrival of the police canine unit, officers should have the building to be searched completely evacuated and sealed.
3. The supervisor should attempt to locate someone familiar with the interior of the building, and what articles customarily belong there, prior to the arrival of the police canine unit.
4. Upon arrival to the scene, the police canine unit shall coordinate with the supervisor in charge and obtain all pertinent information.
5. The police canine handler shall determine the most appropriate search pattern to be utilized during a search.
6. When a detonation time is received, the police canine handler shall terminate their search thirty (30) minutes prior to the time advised.
7. In the event a suspicious device, package, or positive canine alert is received, the scene will be isolated and contact will be made through "land line" to the closest Explosives Ordinance Disposal Team (EOD).
8. In the event that no suspicious device is found, and the detonation time has passed, the police canine unit may be used to do a secondary search of the building, if requested or permitted to do so by the person in charge of premises.

H. Canine Handler Protection

1. The police canine handler may utilize the canine for self protection when deemed appropriate and in compliance with the agencies written policy.

I. Public Demonstrations

1. The police canine unit will provide public demonstrations when requested by chain of command.

2. The police canine unit shall be utilized within the canine's limitations, with the safety of the public and the canine as foremost concern.
3. The police canine officer shall ensure adequate room for the demonstration prior to deployment.
4. Request for canine demonstrations will be honored, personnel permitting.

INJURIES CAUSED BY CANINE(S):

1. In all instances where a canine injures a person, or causes significant injury to property, the handler and the supervisor on duty are responsible for:
 - a.) Giving prompt medical attention to an injured person by immediately contacting EMS.
 - b.) Contact a supervisor if not on-scene, or the Criminal Investigations Division for photographs, after medical attention has been provided.
 - c.) Conduct a full investigation of the circumstances, including interviews of all available witnesses, and documenting the incident. Forward all appropriate paperwork to supervisor.

TRAINING:

1. The police canine unit shall complete a Basic Canine course once assigned as a police canine officer/handler. This course should consist of approximately 40 hours of certified training, and be taught by a recognized law enforcement canine training facility before performing any law enforcement functions.
2. The police canine officer shall attend an eight (8) hour "Legal Issues and the Canine" course taught by the North Carolina Justice Academy within an allotted time designated by the supervisor.
3. The police canine officer and the canine will nationally certify through the United States Police Canine Association (USPCA), or an equivalent accredited association approved by the supervisor.
4. The police canine officer will obtain a "researcher's" license through the Drug Enforcement Agency (DEA), and will be responsible for maintaining the appropriate order forms, narcotic training aids, and associated paperwork.
5. The police canine handler will be responsible for maintaining all training aids. The training aids will be kept in a locked box, except when being used for training purposes.
6. The police canine handler must document and maintain complete training records for the canine, showing the time, type, success, or any failures of all training. All Canine Activity Reports, along with training documentation, shall be submitted to the supervisor on a monthly basis for review.

7. The training shall consist of not less than fourteen (14) hours per month for a multi-purpose canine, and not less than eight (8) hours per month for a single-purpose canine.
 - a.) For multi-purpose canines, seven (7) hours for maintenance training, seven (7) hours for in-service training per month.
 - b.) For single-purpose canines, four (4) hours for maintenance training, four (4) hours for in-service training per month.
8. The monthly certified training, both maintenance and in-service, shall be taught by a recognized law enforcement canine training facility.
9. The police canine handler may initiate, and is encouraged to deploy different methods and systems of training as a "secondary training" program to keep the canine unit proficient. Any secondary training will be consistent with the monthly training standards. The secret to training is to do it often and be consistent. Additional training records will also be forwarded to the appropriate supervisor on a monthly basis.

CANINE CARE AND MAINTENANCE:

1. The police canine handler will be responsible for the proper care and maintenance of the assigned canine.
2. The canine shall be fed as recommended, based upon the advice of an authorized veterinarian, or as the canine contract stipulates.
3. The police canine handler shall bathe and groom the canine as necessary, taking into consideration work and weather conditions.
4. The police canine handler shall be responsible for taking the canine to the veterinarian for yearly check-ups and necessary shots.
5. The police canine handler shall notify the supervisor if a perceived problem arises, on or off duty. The supervisor will be responsible for notification of other personnel as regulated by contractual services or operating procedures.
6. In a day time emergency situation, the police canine officer will attempt to render aid to the canine (if possible). If unable, notify communications and transport the canine to the nearest animal hospital.
7. In a night time emergency, the police canine officer will notify communications of the emergency situation, and have them make contact with an on-call veterinarian. If the emergency situation can be delayed (non life threatening) until the veterinarian arrives, transport to appropriate facility. If situation cannot be delayed, canine officer will notify communications to make contact with the emergency REACH Animal Hospital, and advise them of situation prior to arrival.

CANINE VEHICLE:

1. An assigned vehicle may be issued to the police canine unit in order to transport the officer, canine, and associated equipment during normal working duties, demonstrations, and specialized applications.
2. Only the police canine officer shall operate the canine vehicle, and only in accordance with policies regulating operation of marked police units.
3. A supervisor can authorize the use of the canine vehicle by others in special situations.
4. The police canine officer will be responsible for the cleanliness of the vehicle, both inside and out.
5. The patrol canine officer will ensure that proper maintenance is conducted on the vehicle, and made available to the garage when required.
6. The canine vehicle will contain the same equipment authorized for marked patrol vehicles, but should also include; canine first aid kit, locked narcotic's box, canine lifeguard temperature/engine monitor, canine lifeguard emergency door opener mechanism, and a canine containment area.

ASSIGNED EQUIPMENT:

1. The police canine officer shall be responsible for the assigned equipment, and ensure that it is maintained in a clean, functional condition.
2. When any equipment is damaged or becomes non-functional due to wear, the police canine officer shall fill out the departmental "Damage to Property" report, and advise the on-duty supervisor. Attempts should be made to replace the equipment by using the normal departmental purchasing procedures.
3. The police canine officer will be supplied with the following; six (6) foot leash, twenty-five (25) foot tracking leash, tracking harness, choke chain, canine comb/brush, reward aids, and other training aids as necessary and approved.
4. Additional equipment must be approved by supervisor before use, and/or purchase.

CANINE UNIT QUALIFICATIONS:

1. Once an opening has become available for a police canine officer, the applicant must submit a request to the appropriate chain-of-command stating their interest in the police canine officer position.

2. The applicant must have at least two (2) years of patrol experience, satisfactory work performance, and no disciplinary actions within the last year.
3. The applicant must be willing to remain with the unit for at least a period of three (3) years.
4. The applicant must have a willingness to "care for and house" the canine at the officer's residence.
5. The applicant must have a strong desire to work with canines, and willingness to "care for and train" appropriately.

FUND CONTINGENCY:

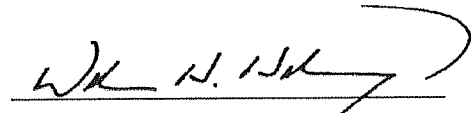
A contingency fund will be placed into a special account in the event exigent circumstances arise. This money will be set aside and funded from forfeitures that are awarded back to the department. Exigent circumstances may consist of, but not limited to:

1. Emergency search of vehicles and/or trailers, and containers.
2. Cargo/Load removal & reloads.
3. Secret compartment searches.
4. Additional equipment costs.
5. Man-power related costs.
6. Rental of necessary equipment, and/or buildings, warehouses, storage areas.

All funds and/or requests for funds must be approved by the Chief of Police, or his designee.

PROCUREMENT OF RESOURCES:

The police canine officer will be responsible for contacting local businesses to make arrangements for the loading/unloading of trailers, man-power requirements and wages, garage and tool needs, warehouse needs, and any other related issues. Any contractual obligations must be approved by the supervisor in advance.

A handwritten signature in black ink, appearing to read 'W. H. Hollingsed', written over a horizontal line.

**William Hollingsed
Chief of Police**

ITEM 3. PUBLIC HEARING
REVISED LAND DEVELOPMENT STANDARDS

Nearly three years ago, the Mayor and Board of Aldermen provided funds to hire a consultant to work with the Town in the review and revisions to the Land Development Standards. In addition, the Board created a special committee to work with the consultant and town staff in the conduct of this process. There were 9 representatives on this committee, one each appointed by the Mayor and Aldermen along with the chairmen of the Planning Board, the Board of Zoning Appeals and the Community Appearance Commission. This Committee worked diligently with the consultant, Craig Lewis of The Lawrence Group, as well as with Town Staff members, and each chapter and definition was reviewed. In the fall of 2010, a final document was approved by the Committee.

During the last week of November and first week of December, two public meetings were held to allow the public to attend and learn about the Land Development Plan and the Land Development Standards. Following those public information meetings, the Planning Board heard public comment on the proposed document at their December, 2010, January and February, 2011 meetings. With only a few changes, the Planning Board voted to recommend the revised Land Development Standards to the Mayor and Town Board for approval.

A public hearing on the revised document has been advertised for the meeting on March 22, 2011.

ITEM 4. TAX COLLECTOR JAMES ROBERTSON
REQUEST TO ADVERTISE DELINQUENT TAXES

Under North Carolina law, the Tax Collector of a governmental unit must annually appear before the elected officials of that unit to request permission to advertise the names and the properties for which real estate taxes have not been paid.

Mr. Robertson typically notifies each individual who has unpaid property taxes, giving them an opportunity to pay the outstanding balance prior to advertising the name and property in the local paper.

At the meeting on Tuesday evening, Mr. Robertson will be on hand to explain the process he follows and answer any questions.

ITEM 5. DOWNTOWN WAYNESVILLE ASSOCIATION
2011 STREET CLOSING REQUEST

Ms. Buffy Phillips, Executive Director of the Downtown Waynesville Association, has submitted the list of planned festivals and events for 2011. Ms. Phillips appeared at the Town Board's annual retreat on February 18, to discuss the events and noted that there were a few new events which are proposed for 2011. One of these is the Appalachian Lifestyle Celebration planned for Saturday, June 11, and the second is an Hispanic Street Dance scheduled for Friday, August 19.

On the list which follows, Ms. Phillips has listed the events along with dates, times and locations for which she is requesting that certain streets be closed in connection with those events. In addition, a request is being presented that merchants be allowed to conduct sidewalk sales for the weekends of Memorial Day, 4th of July and Labor Day.

Most merchants in the downtown area indicate that on the days of the festivals, they experience some of their highest customer counts of the year. They note that their retail sales certainly benefit from the festivals, and I am sure that the large number of visitors to our community must have a spillover effect for other businesses in our area.

We would endorse the request of the Downtown Waynesville Association for street closings and other considerations for the festivals, events and sidewalk sales on the list which is attached.

TO: Town of Waynesville Mayor and Board of Aldermen

FR: Buffy Phillips, Downtown Waynesville Association

DA: March 1, 2011

RE: STREET CLOSING requests

1. **Block Party Street Dance, Saturday May 28, 7-10pm on Main St.** Sponsored by DWA
▶ Close Main Street from Church St. to edge of courthouse lawn/Justice Center, 5-10:30pm.
2. **Friday Night Street Dances, June 24, July 8 & 22, August 5**
▶ Close Main St at Depot intersection to end of courthouse lawn/Justice Center at 5pm until 9:30 pm Co-sponsored by DWA, Town of Waynesville, Smoky Mountain Folk Festival.
3. **Appalachian Lifestyle Celebration, Saturday, June 11**
▶ Close Main St. @ 9pm Friday, 10th, from Church St. to edge of courthouse lawn/Justice Center
4. **Star & Stripes Celebration, Monday July 4th**
▶ Close top of Miller Street at N. Main Street. Miller Street parking lot would still be accessible at the bottom at Montgomery Street. Due to increased crowds on sidewalks, this crosswalk becomes very dangerous. DWA staff will place town barricades prior to 11am and take down after 3pm.
5. **Folkmoot Parade (1pm) & Opening Ceremonies (12:30pm) July 22,** Sponsored by Folkmoot
▶ Parade begins after the 12:30pm Opening Ceremony on the courthouse lawn and will proceed toward S Main St
Police: Parking removed several hours before parade and *street closed as parade progresses. Barricades must be placed on the side of the road in 4 locations; to be placed later in the street at the parade start, at the intersections of (1) East & Wall St. (2) Church & Montgomery St. (3) Depot & Montgomery St. (4) N. Main at the north edge of the courthouse lawn/Justice Center.*
6. **International Festival Day, Saturday, July 30**
▶ Close Main St. from Pigeon & S Main to north edge of courthouse lawn/Justice Center, **July 29 @ 9pm through July 30, until 7pm** or when street is cleared. Co-sponsored by HCAC & Folkmoot.
7. **NEW Addition Hispanic Street Dance Friday, August 19**
▶ Close Main Street at Depot intersection to end of courthouse lawn/Justice Center 5 to 9:30 pm Co-sponsored by DWA & Town of Waynesville
7. **Block Party Street Dance, Saturday September 3** Main Street Sponsored by DWA
▶ Close Main Street from Church to edge of courthouse lawn/Justice Center, 5-10:30pm.
8. **Church Street Art & Craft Show, Saturday, October 8**
▶ Close Main Street from Pigeon & S. Main to north edge of courthouse lawn & Justice Center **October 7** at 9pm thru **October 8** until 7pm or when street is cleared. Sponsored by DWA.
9. **Haywood County Apple Harvest Festival, Saturday, October 15**
▶ Close Main Street from Pigeon and Main to edge of courthouse lawn/Justice Center, **Oct 14** at 9pm through **October 15** until 7pm or when street is cleared. Co-Sponsored by Haywood Cooperative Extension Service, Haywood Apple Growers, Haywood Chamber and DWA
10. **Waynesville Christmas Parade, Monday evening, Dec 5** 6pm
▶ Parade begins at corner of N Main & Walnut St. parading toward S Main S Main ending at Bogart's Restaurant. Parking is removed before parade and street closed as parade progresses. Close Cherry, Hazel and Boundary Sts at Walnut & N Main at 3:30pm. Close Walnut at N Main at 6pm and leave closed until 7:30pm or when all floats have entered N Main for the parade route. Close Walnut at Branner St. at 5pm to redirect traffic from N Main St parade route. Leave closed until parade is finished. Sponsored by Town of Waynesville, Waynesville Kiwanis Club and DWA.

11. **"A Night before Christmas"**, Saturday evening, **Dec 10** 6-9pm
▶ Close Main Street from Church to Depot St, 5-10pm Parking will be removed during this time period. Luminaries will line Main Street Merchants remain open until 9pm Horse drawn wagon rides, live music and caroling, Santa, and more will be provided "A Tour of Bethlehem" resented by First Baptist Church has plans to continue in their small parking lot.

2011 Sidewalk Sales

The Downtown Waynesville Association & and businesses within the MSD would like to request these dates for sidewalk sales for the following weekends:

May 27, 28, 30 *Memorial Day weekend*

July 1, 2, 4 *4th of July weekend*

Sept 2, 3, 5 *Labor Day weekend*

ITEM 6. WATER PURCHASE AGREEMENT
LAKE JUNALUSKA ASSEMBLY

A few years ago, a developer approached the Lake Junaluska Assembly to request that it supply water to a development being planned on the northeastern side of Utah Mountain. The Assembly did not typically serve areas outside of the Assembly area, and as it was a new situation, they approached the Town to discuss the matter. The Assembly and the representatives of Avalon Development came before the Board and the Board indicated that it did not object to the arrangement with Avalon.

At that time, it was agreed that the Town should update its water purchase agreement with Lake Junaluska Assembly to cover matters such as the sale of water outside of the Assembly boundaries. It was also noted at that time that the Town's agreement with the Junaluska Sanitary District was also outdated and needed to be updated and renewed.

While we remain in negotiations with the Junaluska Sanitary District, the Lake Junaluska Assembly has now signed the Water Purchase Agreement with the Town of Waynesville. The contract is for a ten year period, commencing January 1, 2011, and ending on December 31, 2020.

We would recommend that the Town Board approve the agreement with the Lake and authorize Mayor Brown to execute the agreement on behalf of the Town.

STATE OF NORTH CAROLINA
COUNTY OF HAYWOOD

AGREEMENT TO PURCHASE WATER

THIS CONTRACT is made and entered into this _____ day of October, 2010 by and between the Town of Waynesville, a North Carolina Municipal Corporation hereinafter referred to as "Town" and the Lake Junaluska Assembly, Incorporated hereinafter referred to as "LJA".

WITNESSETH

WHEREAS, the Town of Waynesville and the Lake Junaluska Assembly, Incorporated are organized and existing under the laws of the State of North Carolina, both having the power and authority to enter into this agreement, and the signatories hereto have been authorized to execute this document on behalf of the Waynesville Board of Aldermen and the Lake Junaluska Assembly, Incorporated; and

WHEREAS, Town currently owns and operates a water treatment and distribution system, and is engaged in the enterprise of managing, operating, maintaining said system and selling potable water to the public within its service area; and

WHEREAS, LJA owns and operates a water distribution system, and is also engaged in the enterprise of managing, operating, maintaining the system and selling potable water to the public within its service jurisdiction; and

WHEREAS, LJA does now purchase and for many years past has purchased water from Town and has resold said water to its customers within its service jurisdiction; and

WHEREAS, Town and LJA mutually desire to enter into an agreement to continue to sell and purchase water in accordance with the terms and provisions contained herein; and

WHEREAS, Town has determined that it has the capacity to sell water to LJA throughout the term of this agreement without impairing services to the users connected to its water system; and

WHEREAS, LJA has determined that the public health, safety, and welfare of the users connected to its water system can best be served and protected by entering into this agreement to purchase water from Town; and

WHEREAS, Town and LJA each has or holds and will continue to have or hold throughout the term of this agreement, all appropriate permits necessary to effectuate their respective

responsibilities under this agreement or will use their best efforts to obtain such permits;

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

1. Town agrees to sell to LJA a daily quantity of water not to exceed THREE HUNDRED THOUSAND (300,000) GALLONS through metered connections with LJA that now exist or which shall be made in the future, at a minimum residual pressure of one hundred (100) pounds per square inch at either the Big Gym US19 meter or the Holston Village meter at the discretion of the Town.
2. LJA agrees to purchase from Town a daily quantity of water that is at least ONE HUNDRED THOUSAND (100,000) GALLONS, and which does not exceed THREE HUNDRED THOUSAND (300,000) GALLONS, unless Town expressly agrees in advance that said daily purchase(s) may exceed said maximum for a specified period of time.
3. The water purchased by LJA from Town shall be transmitted on a continuous basis unless one of the following circumstances arise:
 - a) Operational interruptions required to flush and maintain water lines, in which case, Town shall notify LJA and schedule such interruptions to minimize the impact on LJA's customers.
 - b) Unavoidable breaks, outages or interruptions of Town's water supply or delivery system.
4. This agreement shall commence on January 1, 2011 and unless earlier terminated in accordance with the terms herein, shall expire on the 31st day of December 2020. This agreement may thereafter be renewed by the parties, for additional five (5) year terms by mutual written agreement by the parties, under such terms as they may agree upon at the time of renewal. In the event that negotiations are occurring in good faith for the renewal of this agreement or any subsequent renewal of this agreement, the same shall continue in full force and effect under the terms and conditions established herein, until the execution of a renewal agreement or until the parties cease negotiation and either party notifies the other of their intent to terminate the contractual relationship.
5. LJA agrees to tender at least a twelve month written notice to Town prior to the expiration of this agreement or subsequent renewals of this agreement if it desires to renew said agreement or any subsequent renewal to this agreement.
6. Town agrees that it will notify LJA in writing of its decision to renew or not to renew this agreement or any subsequent renewal to this agreement on or before sixty days after having received notification of LJA's desire to renew this agreement or any subsequent renewal of this agreement.

7. In the event that Town elects not to renew this agreement or any subsequent renewal of this agreement, Town will continue to sell water to LJA, under the terms of the agreement or renewal in effect at the time of notification of its intention not to renew, until LJA has had sufficient opportunity to secure another source(s) of potable water, except that Town shall not be bound to continue to sell water to LJA beyond twenty-four months past the date of its written notification to LJA of its intention not to renew said agreement or any renewal of this agreement.

8. Upon delivery of any notification of its intent to renew this agreement or any renewal of this agreement, LJA may request that Town increase the daily maximum quantity of water that may be purchased under this agreement. Town shall notify LJA in writing of its intent to supply the increased quantity of water or its inability to honor the request for additional water within thirty days of having received said notification from LJA.

9. LJA agrees to compensate Town for water purchased on a monthly basis, in accordance with invoices, which are based on meter readings conducted by the Town at all metered connections on the LJA water system. Town agrees to read said water meters monthly and deliver to LJA a written report summarizing said meter readings within ten (10) days of each monthly meter reading. Town shall submit to LJA a written invoice based on such meter readings by the 15th day of the following month. LJA agrees to pay Town the amounts of each such monthly invoice within 30 calendar days of the date of each invoice.

10. In the event that any Town invoice received by LJA is disputed, it shall pay that part of the invoice not in dispute. The parties shall make every attempt to resolve disputed invoices and if such disputes cannot be resolved within sixty (60) days either party will then be free to pursue whatever other remedies that may be available.

11. In the event that the monthly water purchase is less than the monthly minimum quantity provided for herein, LJA agrees to pay to Town a monthly minimum payment based upon said minimum monthly water purchase, except that the parties may agree to waive a portion of the minimum monthly payment in situations, which fall within the scope of Section 3 of this agreement.

12. Town shall set the water rates that are charged To LJA for water purchases. Said water rates shall be established for units of one thousand gallons of water. The water rate that shall be effective upon execution of this agreement is Three Dollars and Four Cents (\$3.04) per one thousand gallons of water purchased by LJA.

13. Over the term of this agreement or any renewal thereof, Town may, at its sole discretion, increase the rate that it charges for water purchased by LJA as it deems necessary in order to recover the cost of managing and operating its water system and capitalizing necessary improvements to said system. Said increases in rates may not be

more frequent than one time per fiscal year. Town agrees to notify LJA of planned increases in rates at least thirty (30) days prior to June 30 of any fiscal year, with rate increases becoming effective on August 1 that same year.

14. Town agrees to maintain compliance with all laws and regulations, which apply to the ownership, operation and maintenance of its water system, including adherence to the terms and conditions of all state permits, which establish appropriate water quality standards for its system.

15. LJA agrees that the Town and its water customers shall abide by and adhere to all water use policies, restrictions, and ordinances adopted by Town which impose water use restrictions, water conservation requirements, moratoriums, and other such limitations on the use of water during times of emergency or drought conditions or during other situations which for public health or financial reasons justify said policies, restrictions, and ordinances.

16. Town shall immediately notify LJA upon becoming aware of any activity, problem or circumstance that might present a danger to the health, safety and welfare of LJA water users. Further, Town shall take appropriate action to remedy such activity, problem or circumstance and to avoid or minimize disruptions in service.

17. In the event of damage or destruction of Town's key water facilities or any emergency which, in the reasonable judgment of Town, is likely to result in material loss or damage to the system or constitute a material threat to human health or safety, Town may suspend operation of its water system. Town's response to emergencies and unusual circumstances shall be in accordance with applicable policies, regulations, laws and requirements and with such personnel and equipment as necessary to maintain or restore the operations of its water system in a timely manner with the least possible disruption or inconvenience to the users connected to both the Town and LJA water systems.

18. LJA shall maintain backflow protection at all points of connections between the two water systems to prevent the backflow of water into Town's water transmission and delivery system. In the event that LJA accepts water from sources other than Town, LJA agrees to segregate flows of water entering its system from the Town system from water from other sources. In no instance shall LJA permit water from Town to be mixed with water from other sources, unless Town gives its written permission to LJA, which permission shall clearly stipulate the conditions and the term of the exception(s) to this provision. LJA's policies and ordinances pertaining to backflow protection shall be consistent with those policies and ordinances adopted for the Town's water system.

19. LJA shall not resell to bulk purchasers, resell to users outside of LJA's jurisdiction, give away, transfer or otherwise dispose of water purchased from Town without the prior written permission of Town.

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

21. Resolution of Disputes

The Parties agree that should any disputes arise under this agreement, including but not limited to disputes pertaining to services, rates, or invoices, said disputes shall be resolved, if at all possible, through good faith negotiations between the parties. It is the intent of Town and LJA that pursuit of legal action shall be a remedy of last resort and that a negotiated resolution, including the use of outside experts or arbitrators, shall be the preferred means of resolving disputes hereunder. It is further agreed that in the event such disputes cannot be resolved within sixty (60) days from the date they first arise, either party may seek such other remedies as may be available to it.

22. Default and Termination

This agreement may be terminated prior to its stated expiration date by Town or LJA in accordance with the terms and conditions set forth herein. The rights of Town and LJA to terminate this agreement shall be strictly construed in accordance with the provisions contained herein.

A. Termination for cause by Town. Upon the happening of any of the following events of default by LJA, Town shall have the right to terminate this agreement:

- a) The failure of LJA to perform or observe any of its material covenants, agreements, obligations and/or duties created by this agreement.
- b) The determination that any representation, warranty or covenant made by LJA is false and/or misleading in any material respect.
- c) The commencement of any bankruptcy, insolvency, liquidation and/or similar proceeding against LJA, which materially and adversely affects LJA's ability to perform its duties or obligations under this agreement.
- d) The failure of LJA to make any payment required to be made by it pursuant to the terms of this agreement within sixty (60) days of its receipt of notice from Town that any such payment is overdue.

B. Termination for cause by LJA. Upon the happening of any of the following events of default by Town, LJA shall have the right to terminate this agreement:

- a) The failure of Town to perform or observe any of its material covenants, agreements, obligations and/or duties created by this agreement.
- b) The determination that any representation, warranty or covenant made by town is false and/or misleading in any material respect.
- c) The commencement of any bankruptcy, insolvency, liquidation and/or

similar proceeding against Town, which materially and adversely affects Town's ability to perform its duties or obligations under this agreement.

- d) Any action by Town to divest itself of its water system or its water treatment facilities so that it no longer controls the supply of potable water which is sold to LJA under the terms, covenants and conditions of this agreement.

C. Upon the happening of any event described in the preceding section, the aggrieved party shall provide written notice to the party committing the alleged violation setting forth in detail the alleged failure and/or deficiency. Thereafter, within ten (10) days of receipt of notice of the alleged default, the parties to this agreement shall meet to discuss the circumstances and attempt to reach a resolution. If either party fails to fully perform or comply with all of the conditions, provisions and covenants of this agreement, and if the nonperformance or failure shall continue for more than thirty (30) days after written notice thereof by the other party, or if the nonperformance or failure cannot be reasonably remedied within the same thirty (30) day period and the party which is in violation of the agreement has not proceeded with or commenced the remedy in good faith, within fifteen (15) days of the receipt of such notification, that party will be considered to be in default of this agreement. If the alleged default continues or the parties disagree as to whether the matter has been resolved, the aggrieved party may send written notice to the party committing the alleged default declaring an impasse and proceed to enforce all rights and remedies available to it either in equity or at law.

D. Each of the parties to this agreement shall be entitled to pursue a claim against the other for any non-monetary remedies available and any additional actual damages suffered as a result of any default by the other party, in addition to attorney's fees. Notwithstanding anything in the agreement to the contrary, neither party shall be responsible to the other for any indirect, third-party or consequential damages arising from a breach of this agreement.

E. In the event of termination of this agreement or any subsequent renewal of this agreement or in the event that this agreement expires without being renewed by the parties, LJA agrees to permit Town to continue to flow water through its water system to components of Town's water distribution system that either now or in the future serve customers that are located beyond Town's system and are served only by conveying water through the LJA system.

23. To the extent allowed by law, Town shall indemnify, defend and hold harmless LJA, its elected and appointed officers, and its duly authorized agents, servants and employees from any and all costs, expenses or liabilities (including costs, expenses or liabilities to third parties and attorney's fees) which are caused by or arise from Town's

breach of this agreement or the negligent or willful acts of omissions of Town or its agents, servants, employees or subcontractors provided such cost, expenses or liabilities do not arise as a result of the negligent or willful acts or omissions of LJA.

24. To the extent allowed by law, LJA shall indemnify, defend and hold harmless Town, its elected and appointed officers, and its duly authorized agents, servants and employees from any and all costs, expenses or liabilities (including costs, expenses or liabilities to third parties and attorney's fees) which are caused or arise from LJA's breach of this agreement or the negligent or willful acts of omissions of LJA or its agents, servants, employees or subcontractors provided such cost, expenses or liabilities do not arise as a result of the negligent or willful acts or omissions of Town.

25. **NOTICES:** For the purpose of this agreement, all notices required shall be deemed to have been properly served and shall be only served when posted by Certified United States Mail, Postage Prepaid, Return Receipt Requested, Addressed to the Party to whom directed at the address herein set forth or at such address as may from time to time be designated in writing by either party:

To Town:

Town of Waynesville
Post Office Box 100
Waynesville, North Carolina 28786-0100

Attention: Town Manager
FAX 828-456-2000

To LJA:

Lake Junaluska Assembly
Post Office Box 67
Lake Junaluska, North Carolina
28745
Attention: Executive Director
FAX 828-452-5912

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

27. Nothing contained herein shall be construed to place the parties in the relationship of partners or joint venturers, and neither party shall have the power to obligate or bind the other party in any manner whatsoever.

28. No written waiver by any party to this agreement at any time of any breach of any other provision of this agreement shall be deemed a waiver of a breach of any provision herein or a consent to any subsequent breach of the same or any other provision.

29. The captions and article numbers appearing in this agreement are inserted only as a

matter of convenience and do not define, limit, construe or describe the scope of such paragraphs or articles of this agreement or in any way affect this agreement.

30. This agreement shall be governed by and interpreted in accordance with the laws of the State of North Carolina.

31. Time shall be of the essence in this agreement and each and every term and condition thereof.

32. Words of any gender used in this agreement shall be held to include any other gender, and words in the singular number shall be held to include the plural, when the sense requires.

33. If any provision under this agreement or its application to any person or circumstance is held invalid by any court of competent jurisdiction, such invalidity does not affect any other provision of this agreement or its application that can be given effect without the invalid provision or application.

34. In the event of litigation between Town and LJA as to the terms, performance, or any other aspect of this agreement, this agreement shall remain in force and effect during such litigation.

35. This agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, and it shall not be necessary in making proof of this agreement to produce or account for more than one such fully executed counterpart.

36. Except as provided herein, the rights and remedies provided for in this agreement are cumulative and are not exclusive of any rights or remedies that any party may otherwise have at law or in equity.

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

TOWN OF WAYNESVILLE, NORTH CAROLINA

By: _____
Gavin A. Brown, Mayor (SEAL)

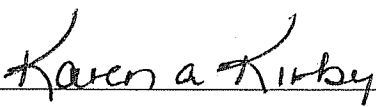
Attest:

By: _____
Phyllis R. McClure, Town Clerk

LAKE JUNALUSKA ASSEMBLY, INCORPORATED

By:  _____
Chairman, Board of Trustees

Attest:

By:  _____
, Clerk

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

By: _____

Eddie Caldwell, Finance Director
Town of Waynesville, North Carolina

By: _____

Lake Junaluska Assembly, Incorporated

ITEM 7. WATER PURCHASE AGREEMENT
JUNALUSKA SANITARY DISTRICT

At the Town Board's Retreat on February 18, 2011, the matter of the Water Purchase Agreement between the Town and the Junaluska Sanitary District (JSD) was discussed at length. A review of the negotiations over the new agreement was provided to the Board, and the three or four remaining, unresolved issues were discussed in detail. The main point of difference centered upon the minimum amount of water to which the JSD wished to commit. JSD was asking for a minimum of 50,000 gallons per day and the Town was asking for a minimum of 350,000 gallons per day. For the past three years, JSD has purchased an average of 466,000 gallons of water per day from the Town.

At the Retreat, Public Works Director Fred Baker explained that in order for the Town to supply the requested 750,000 gallons per day to the JSD, a number of improvements would be necessary to the water system. To justify making those improvements and to pay the cost of funding those improvements, he felt the Town needed to be assured of a steady, dependable revenue stream from the JSD. JSD had asked for a minimum of 50,000 gallons per day and if it is their intention to go elsewhere to secure their water or to make capital improvements so that they can supply their own water, the Town would not want to make the investment to assure delivery of the 750,000 gallons JSD was requesting. The Town Board made the decision to hold with the minimum of 350,000 gallons per day, and this information was conveyed to the JSD attorney, Burt Smith, by Town Attorney Woody Griffin.

On Wednesday, March 16, Town Attorney Griffin received the attached letter from the JSD Attorney Burt Smith asking for a minimum of 200,000 gallons per day rather than the 350,000 gallons per day that the Board had previously offered. As this matter has previously been discussed by the Town Board, Town Staff did not feel we could negotiate this matter further; consequently, we are returning this matter to the Town Board's agenda for the meeting on Tuesday evening.