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**CUMBERLAND**  
★ **COUNTY** ★  
NORTH CAROLINA

**BOARD OF COMMISSIONERS**

CANDICE WHITE  
Clerk to the Board

KELLIE BEAM  
Deputy Clerk

**MEMORANDUM**

TO: Policy Committee Members (Chairman Council, Adams, Evans and Lancaster)

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

DATE: November 23, 2016

SUBJECT: Policy Committee Meeting – December 1, 2016

**There will be a regular meeting of the Policy Committee on Thursday, December 1, 2016 at 10:30 AM in Room 564 of the Cumberland County Courthouse.**

**AGENDA**

1. Approval of Minutes – October 6, 2016 Policy Committee Regular Meeting **(Pg. 2)**
2. Consideration of Interlocal Agreement with the Town of Eastover for Minimum Housing Ordinance Enforcement **(Pg. 15)**
3. Other Items of Business **(NO MATERIALS)**

Cc: Board of Commissioners  
County Management  
County Legal  
County Department Heads  
Sunshine List

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ITEM NO. 1

CUMBERLAND COUNTY POLICY COMMITTEE  
COURTHOUSE, 117 DICK STREET, 5TH FLOOR, ROOM 564  
OCTOBER 6, 2016 – 10:30 A.M.  
MINUTES

MEMBERS PRESENT: Commissioner Jeannette Council  
Commissioner Glenn Adams  
Commissioner Charles Evans

MEMBERS ABSENT: Commissioner Larry Lancaster

OTHER COMMISSIONERS  
PRESENT: Commissioner Jimmy Keefe  
Commissioner Marshall Faircloth  
Commissioner Kenneth Edge

OTHERS PRESENT: Amy Cannon, County Manager  
James Lawson, Deputy County Manager  
Tracy Jackson, Assistant County Manager  
Melissa Cardinali, Assistant County Manager for Finance/  
Administrative Services  
Sally Shutt, Governmental Affairs and Public Information  
Officer  
Rick Moorefield, County Attorney  
Phyllis Jones, Assistant County Attorney  
Jeffery Brown, Engineering & Infrastructure Director  
Vicki Evans, Finance Director  
Heather Harris, Budget Analyst  
Deborah Shaw, Budget Analyst  
Kim Cribb, Budget Analyst  
Buck Wilson, Public Health Director  
Ashley Curtis, Public Health  
Candice White, Clerk to the Board  
Kellie Beam, Deputy Clerk to the Board  
Press

Commissioner Council called the meeting to order.

1. APPROVAL OF MINUTES – SEPTEMBER 1, 2016 POLICY COMMITTEE  
REGULAR MEETING

MOTION: Commissioner Adams moved to approve the minutes.  
SECOND: Commissioner Evans  
VOTE: UNANIMOUS (3-0)

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## 2. CONSIDERATION OF APPROVAL OF CONTRACTOR PRE-QUALIFICATION POLICY

### BACKGROUND:

CDM Smith, the Solid Waste Department's consulting engineer, is reaching the final stages in completing the construction drawings as well as the permitting with the Department of Environmental Quality (DEQ) for the construction of cells #9 and #10 at the Ann Street Subtitle D Landfill. In order to ensure that the County gets a well-qualified contractor that has experience in landfill construction, it would be advantageous for the Solid Waste Department to prequalify contractors. In order to prequalify contractors, North Carolina General Statute 143-135.8 requires the unit of local government to adopt an objective prequalification policy as well as an assessment tool that includes the prequalification scoring values and the minimum score required for prequalification. In conjunction with the County Attorney, the Solid Waste Department provided a copy of the prequalification policy along with the assessment tool for this specific project to the Policy Committee. The proposed prequalification policy is recorded below.

### RECOMMENDATION/PROPOSED ACTION:

The Interim Solid Waste Director, the County Attorney and County Management recommend that the Policy Committee adopt the Prequalification Policy along with the assessment tool for the construction of cells #9 and #10 at the Ann Street Subtitle D Landfill and forward it to the Board of Commissioners for its consideration at their October 17, 2016 meeting.

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### Prequalification Policy Cumberland County, North Carolina

In accordance with North Carolina General Statute 143-135.8, Cumberland County has established this Prequalification Policy which shall be used for construction projects and repair projects for which Cumberland County intends to prequalify bidders. The Contractor Prequalification Policy establishes a process of evaluating and determining whether potential bidders have the skill, judgment, integrity, sufficient financial resources, and ability necessary to faithfully perform a contract for construction or repair. This Prequalification Policy pertains only to projects for which Cumberland County intends to prequalify bidders. The policy is intended to be general in nature and therefore, any prequalification process initiated by Cumberland County will require the preparation of a separate project specific Contractor Prequalification Form (also known as an assessment tool which outlines criteria for that specific project). This Prequalification Policy and the use of the Contractor Prequalification Form shall be applied objectively.

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On projects requiring prequalification, only bids from prequalified bidders will be accepted. Bids from non-prequalified firms will be deemed non-responsive and will not be opened.

## Contractor Prequalification Form

For each construction or repair project in which the County intends to prequalify bidders, a project specific Contractor Prequalification Form will be adopted by the Cumberland County Board of Commissioners for each project and will be available to all interested firms. The form shall include specific requirements for the project and shall meet all the following criteria:

1. Must be uniform, consistent, and transparent in its application to all bidders.
2. Must allow all bidders who meet the prequalification criteria to be prequalified to bid on the construction or repair work project.
3. Clearly state the prequalification criteria, which must comply with all of the following:
  - a. Be rationally related to the construction or repair work.
  - b. Not require that the bidder has previously been awarded a construction or repair project by Cumberland County.
  - c. Permit bidders to submit history or experience with projects of similar size, scope, and complexity.
4. Clearly state the assessment process of the criteria to be used.
5. Provide a process for a denied bidder to protest the County's determination.
6. Outline a process for notifying a denied prequalified bidder.

## Contractor Prequalification Evaluation Process

Cumberland County shall establish a Prequalification Review Committee to review all of the prequalification applications. The Prequalification Review Committee shall, at a minimum, consist of: a representative from the Cumberland County Purchasing Department, a representative from the Cumberland County Engineering & Infrastructure Department and a representative from the Cumberland County Department in which the work is being completed for. The committee may also include other pertinent individuals. The committee will evaluate each application and the accompanying scoring matrix using the criteria established in the Project Specific Contractor Prequalification Form to determine whether the applicant is prequalified to bid on the project, based on the information contained in the application. All firms that submitted prequalification applications will be notified, in writing, of the committee's decision.

## Protest Procedure

Any firm(s) that is denied prequalification to bid may protest the decision as outlined below:

1. A firm which is denied prequalification may protest the committee's decision by filing a written protest to the County Manager, unless otherwise designated, within three (3) business days of receiving the notice that the firm has been denied prequalification. Specific notification details will be included in the project specific Contractor Prequalification Form.

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2. The protest shall clearly state all of the reasons why the firm is contesting the denial and include all documents supporting the firm's position.
3. The Prequalification Review Committee will review the written protest and notify the firm within five (5) business days of their decision.
4. All protest review decisions by the Prequalification Review Committee are final.
5. Such protest process shall be completed prior to opening bids under the provisions of N.C. Gen. Stat. § 143-129 (b) and shall allow sufficient time for a bidder subsequently prequalified pursuant to a protest to submit a bid on the contract for which the bidder is subsequently prequalified.
6. A firm's failure to comply with any requirements of the protest procedures of this section shall result in the firm's protest being terminated and rendered moot.

## Notice of Decision

All firms that submitted applications for prequalification shall be promptly notified in writing of the Prequalification Review Committee's decision, including the reason for denial, via e-mail. Notice shall be provided prior to the opening of bids for the project and with sufficient time for the firm to protest the denial of the application. Such notice is available upon request as well.

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Jeffery Brown, Engineering and Infrastructure Director, reviewed the background information, recommendation and Prequalification Policy as recorded above.

Commissioner Keefe asked if local contractors have a preference on being prequalified and stated he feels on the point system there should be value given to local contractors. Mr. Brown stated local participation is encouraged. Commissioner Evans asked when the project is expected to start and Mr. Brown stated he hopes to advertise in December 2016 and award the contact in February 2017.

MOTION: Commissioner Adams moved to recommend to the full board approval of the proposed Prequalification Policy along with the assessment tool for the construction of cells #9 and #10 at the Ann Street Subtitle D Landfill.

SECOND: Commissioner Evans

VOTE: UNANIMOUS (3-0)

## 3. CONSIDERATION OF APPROVAL OF REVISED SMOKING ORDINANCE

### BACKGROUND:

The draft of the revised smoking ordinance is recorded below. It expands the coverage of the existing ordinance by adding all county facilities located anywhere, all privately-owned public places that are not located in any city and e-cigarettes. The additional coverage of all county facilities and public places was requested by the Health Director and proposed to the April 2016 Policy Committee. The addition of e-cigarettes was requested by the county manager and was not presented at the April Policy Committee

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meeting. The recent explosion of an e-cigarette carried by a person in front of the elevators on the first floor of the courthouse brought attention to an explosion hazard that had not been considered before.

The draft ordinance is in the form of the model ordinance developed by the North Carolina Department of Health and Human Services. It was obtained by Ms. Ashley Curtice, Regional Tobacco Control Manager at the Health Department. The model incorporates a substantial portion of the language in the enabling statute. Neither the enabling statute nor the model ordinance regulates e-cigarettes; however, on March 2, 2016, the U.S. Dept of Transportation banned e-cigarettes from all commercial flights, treating them the same as regular cigarettes. E-cigarettes have also been banned from being carried on commercial flights in checked luggage since late 2015. Even without being addressed in the enabling statute, the reasons given for the development of these federal regulations provides a sufficient public policy basis for the county to prohibit these devices from county facilities and privately owned public places as a public health and safety matter.

The proposed ordinance proposes three distinct areas to which the prohibition of smoking would be expanded. Those are the county facilities not presently covered, privately-owned businesses not located in a city, and e-cigarettes. The county facilities that are not presently covered are the Crown Complex, J.P. Riddle Stadium and county parks and recreation facilities. The ordinance proposes an effective date of April 1, 2017, to afford those facilities and businesses that are affected a generous amount of time to implement it. The enforcement provisions of the ordinance are dictated by the enabling statute. Enforcement outside those county buildings where security is provided by the Sheriff's Office will be difficult.

#### RECOMMENDATION/PROPOSED ACTION:

The Committee may recommend the ordinance as proposed or may choose not to expand it to all three areas.

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### **AN ORDINANCE OF THE CUMBERLAND COUNTY BOARD OF COMMISSIONERS REPEALING CHAPTER 9.5 ARTICLE VIII. SMOKING, OF THE CUMBERLAND COUNTY CODE AND ADOPTING A REVISED CHAPTER 9.5, ARTICLE VIII. SMOKING, OF THE CUMBERLAND COUNTY CODE**

WHEREAS, Cumberland County adopted an ordinance on March 17, 2014 (Cumberland County Code §9.5-91-98) prohibiting smoking within all county-owned or leased buildings, grounds and motor vehicles except certain entertainment and recreation facilities; and,

WHEREAS, on January 2, 2010, "An Act To Prohibit Smoking In Certain Public Places And Certain Places Of Employment, North Carolina Session Law 2009-27, became effective, authorizing local governments to adopt and enforce ordinances "that are more

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restrictive than State law and that apply in local government buildings, on local government grounds, in local vehicles, or in public places;” and

WHEREAS, Cumberland County is committed to providing a safe and healthy workplace in all County facilities for its employees and a safe and healthy environment for the public; and

WHEREAS, Cumberland County provides resources to its employees and residents who want to quit the use of tobacco products and encourages employees and residents to talk to their health care provider about quitting, ask about appropriate pharmacotherapy available through their health insurance plan and use the free quitting support services of the North Carolina Tobacco Use Quitline at 1-800-QUIT-NOW (1-800-784-8669); and

WHEREAS, Cumberland County wishes to minimize the harmful effects of smoking among County employees and eliminate secondhand smoke exposure for employees and the public in public places, in county buildings, and on public grounds; and

WHEREAS, the Cumberland County Smoking Ordinance has been codified as Chapter 9.5, Article VIII, Sections 9.5-90-99 of the Cumberland County Code; and

Whereas, the Board of Commissioners wishes to make a comprehensive revision of Chapter 9.5, Article VIII. Smoking. of the Cumberland County Code by the repeal of Chapter 9.5, Article VIII. Smoking, of the Cumberland County Code and the adoption of the Revised Chapter 9.5, Article VIII. Smoking, of the Cumberland County Code as set forth below; and

WHEREAS, the Board of Commissioners finds the comprehensive revision of Chapter 9.5, Article III. Smoking, of the Cumberland County Code to be in the public interest and to promote the public health, safety, and welfare,

NOW, THEREFORE, BE IT ORDAINED by the Cumberland County Board of Commissioners that:

Chapter 9.5, Article VIII. Smoking, of the Cumberland County Code is hereby repealed in its entirety and a revised Chapter 9.5, Article VIII. Smoking, of the Cumberland County Code is hereby adopted.

Sec. 9.5-90. Authority.

This ordinance is enacted pursuant to N.C. Gen. Stat. 130A-498 and 153A-121.

Sec. 9.5-91. Purpose and intent.

According to the Centers for Disease Control and Prevention (CDC), tobacco use and secondhand smoke exposure are leading preventable causes of illness and premature death in North Carolina and the nation.<sup>1</sup> A 2006 report issued by the United States Surgeon General stated that the scientific evidence indicates that there is no risk-free

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level of exposure to secondhand smoke, and that secondhand smoke has been proven to cause cancer, heart disease, and asthma attacks in both smokers and nonsmokers.<sup>2</sup> The CDC advises that all individuals with coronary heart disease or known risk factors for coronary heart disease should avoid all indoor environments that permit smoking.<sup>3</sup> In 2009, the United States Food and Drug Administration (FDA) announced that an analysis of e-cigarette samples indicated that the e-cigarettes contained not only nicotine but also detectable levels of known carcinogens and toxic chemicals, including tobacco-specific nitrosamines and diethylene glycol, a toxic chemical used in antifreeze.<sup>4</sup> The purpose and intent of this article is to promote the public health, safety and general welfare by prohibiting smoking within all county leased or owned buildings and vehicles, on all county grounds, in all common areas of multi-unit residential facilities/buildings and in all indoor office, retail, and other commercial establishments where the public is invited or permitted in the unincorporated areas of the county.

## Sec. 9.5-92. Definitions.

The following terms, words, and phrases as used in this article are hereby defined as follows:

- a. *Bus Stop.* A designated area, whether enclosed or unenclosed, where buses stop for passengers to board or exit a bus. This term shall include areas at bus stops and shelters, beginning at the bus stop sign and extending for a radius of one hundred (100) feet around the bus stop sign. This area expressly excludes any private property that may fall within the one hundred foot radius of the bus stop sign. .

<sup>1</sup> Centers for Disease Control and Prevention, Smoking and Tobacco Use Fast Facts, [http://www.cdc.gov/tobacco/data\\_statistics/facts\\_sheets/fast\\_facts/#toll](http://www.cdc.gov/tobacco/data_statistics/facts_sheets/fast_facts/#toll) (last visited Oct. 7, 2010).

<sup>1</sup> U.S. DEP'T OF HEALTH & HUMAN SERVS., THE HEALTH CONSEQUENCES OF INVOLUNTARY EXPOSURE TO TOBACCO SMOKE: A REPORT OF THE SURGEON GENERAL 11,14,16(2006),<http://www.surgeongeneral.gov/library/secondhandsmoke/report/index.html>.

<sup>1</sup> Memorandum from B.J. Westenberg, Deputy Director, CDER/OPS/OTR, Division of Pharmaceutical Analysis to Michael Levy, Supervisor Regulatory Counsel, CDER, Office of Compliance Division of New Drugs and Labeling Compliance (May 4, 2009), available at <http://www.fda.gov/downloads/Drugs/ScienceResearch/UCM173250.pdf>; see also Press Release, United States Food and Drug Administration, FDA & Public Health Experts Warn About Electronic Cigarettes (July 22, 2009), available at <http://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm173222.htm>.

- b. *County.* Cumberland County and any of its constituent local government departments, agencies and facilities.
- c. *County building.* A building owned, leased as lessor, or the area leased as lessee and occupied by the County.
- d. *County Grounds.* All unenclosed property owned, leased or occupied by the County.
- e. *County vehicle.* A passenger-carrying vehicle owned, leased, or otherwise controlled by



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Cumberland County and assigned to its employees, agencies, institutions, or facilities for official County business.

- f. *E-cigarette.* Any electronic oral device, such as one composed of a heating element, battery, and/or electronic circuit, which provides a vapor of nicotine or any other substances, and the use or inhalation of which simulates smoking. The term shall include any such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, or under any other product name or descriptor. An e-cigarette does not include any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product, as a tobacco dependence product, or for other medical purposes, and is being marketed and sold solely for such an approved purpose.
- g. *Employee.* A person who is employed by the County, or who contracts with the County or a third person who performs services for the County, or who otherwise performs services for the County, with or without compensation.
- h. *Enclosed area.* – An area with a roof or other overhead covering of any kind and walls or side coverings of any kind, regardless of the presence of openings for ingress and egress, on all sides or on all sides but one.
- i. *International ‘No Smoking’ symbol.* Symbol consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it.
- j. *Lodging establishment.* – An establishment that provides lodging for pay to the public.
- k. *Private club.* A country club or an organization that maintains selective members, is operated by the membership, does not provide food or lodging for pay to anyone who is not a member or a member's guest, and is either incorporated as a nonprofit corporation in accordance with Chapter 55A of the General Statutes or is exempt from federal income tax under the Internal Revenue Code as defined in G.S. 105-130.2(1).
- l. *Private residence.* A private dwelling that is not a child care facility, as defined in G.S. 110-86(3), and not a long-term care facility, as defined in G.S. 131E-114.3(a)(1).
- m. *Private vehicle.* A privately owned vehicle that is not used for commercial or employment purposes.
- n. *Public place.* An enclosed area to which the public is invited or in which the public is permitted.
- o. *Sidewalk* refers to any sidewalk that is located upon any premises owned, leased or occupied by the County.
- p. *Smoke* or *smoking* shall refer to:

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- (1) The carrying or holding of a lighted pipe, cigar or cigarette of any kind or any other lighted smoking equipment or device, including an e-cigarette; or
- (2) The possession of any burning tobacco, weed or other plant product; or
- (3) The lighting of, emitting of, exhaling of the smoke of a pipe, cigar or cigarette of any kind or the vapor of an e-cigarette.

q. Tobacco *shop*. – A business establishment, the main purpose of which is the sale of tobacco, tobacco products, and accessories for such products, that receives no less than seventy-five percent (75%) of its total annual revenues from the sale of tobacco, tobacco products, and accessories for such products, and does not serve food or alcohol on its premises.

## Sec. 9.5-93. Where smoking is prohibited.

- a. Smoking is prohibited in all of the following:
  - (1) All County buildings;
  - (2) All County grounds, including playgrounds, trails, and athletic fields;
  - (3) All County vehicles;
  - (4) Sidewalks; and
  - (5) Bus stops.
- b. Smoking is prohibited in County buildings and on County grounds at all times, even if being used for private events, and regardless whether such County buildings or County grounds are located within the corporate limits of any city.
- c. Except as provided in Section 9.5-94, smoking is prohibited in all public places within the County not located within the corporate limits of a city, including but not limited to:
  - (1) Polling places;
  - (2) Child care facilities;
  - (3) Shopping malls;
  - (4) Public restrooms;
  - (5) Elevators;
  - (6) Galleries and museums;
  - (7) Entertainment and sports arenas;
  - (8) Gaming facilities;
  - (9) Bingo halls;
  - (10) Indoor office; retail and other commercial establishments where the public is invited or permitted; and
  - (11) Common areas of multi-unit residential facilities and buildings.

## Sec. 9.5-94. Exceptions: Where Smoking is Not Regulated By This Ordinance.

- a. In accordance with G.S. 130A-498(b1), smoking is not prohibited by this ordinance in the following places.

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- (1) A private residence.
  - (2) A private vehicle.
  - (3) A tobacco shop if smoke from the business does not migrate into an enclosed area where smoking is prohibited pursuant to Article 23 of the North Carolina General Statutes. A tobacco shop that begins operation after July 1, 2009, may only allow smoking if it is located in a freestanding structure occupied solely by the tobacco shop and smoke from the shop does not migrate into an enclosed area where smoking is prohibited pursuant to Article 23 of the North Carolina General Statutes.
  - (4) All of the premises, facilities, and vehicles owned, operated, or leased by any tobacco products processor or manufacturer, or any tobacco leaf grower, processor, or dealer.
  - (5) A designated smoking guest room in a lodging establishment. No greater than twenty percent (20%) of a lodging establishment's guest rooms may be designated smoking guest rooms.
  - (6) A cigar bar if smoke from the cigar bar does not migrate into an enclosed public place where smoking is prohibited pursuant to Article 23 of the North Carolina General Statutes. A cigar bar that begins operation after July 1, 2009, may only allow smoking if it is located in a freestanding structure occupied solely by the cigar bar and smoke from the cigar bar does not migrate into an enclosed area where smoking is prohibited pursuant to Article 23 of the North Carolina General Statutes.
  - (7) A private club.
  - (8) A motion picture, television, theater, or other live production set. This exemption applies only to the actor or performer portraying the use of tobacco products during the production.
- b. This ordinance shall not apply to any property owned, leased, or maintained by the State of North Carolina or the United States.
- c. Except as to County buildings and County grounds, this ordinance shall not apply within the corporate limits of any cities within the county unless adopted by the city pursuant to G.S. 153A-122.

## Sec. 9.5-95. Posting of signs required.

"No smoking" signs with letters of not less than one inch in height or the international "no smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) shall be clearly, sufficiently and conspicuously posted in every building or other place where smoking is prohibited by this article, by the owner, tenant, public official or other person having control of such building or other place. No person shall remove or deface any sign required to be posted by or under the authority of this article.

## Sec. 9.5-96. Implementation Requirements.

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A person, who manages, operates, or controls a building or grounds in which smoking is prohibited by this ordinance shall:

- (1) Post signs that meet all the requirements in Section 9.5-95 of this ordinance;
- (2) Remove all ashtrays and other smoking receptacles from the area in which smoking is prohibited, except for ashtrays and receptacles for sale and not intended for use on the premises;
- (3) Direct a person who is smoking in a prohibited area to extinguish the lighted cigarette or other smoking device, cease smoking, and, if the person does not comply, ask the person to leave the premises; and
- (4) Contact the County Sheriff's Office if a person in violation refuses to leave the premises.

## Sec. 9.5-97. Enforcement and Penalties.

a. *Violations by persons smoking in prohibited areas.* Following oral or written notice by the person in charge of an area in which smoking is prohibited or his or her designee, failure to cease smoking constitutes an infraction punishable by a fine of not more than fifty dollars (\$50.00). A citation may be issued by a sworn law enforcement officer. Conviction of an infraction under this section has no consequence other than payment of a penalty, and no court costs may be assessed.

b. *Violations by persons who manage, operate, or control a public place.* The local health director may take the following actions and may impose the following administrative penalty on a person who manages, operates, or controls a public place and fails to comply with the provisions of this ordinance:

- (1) First violation – Written notice of the person's first violation and notification of action to be taken in the event of subsequent violations.
- (2) Second violation – Written notice of the person's second violation and notification of administrative penalties to be imposed for subsequent violations.
- (3) Third and subsequent violations – Impose an administrative penalty of not more than two hundred dollars (\$200.00).

c. Each day on which a violation of this ordinance occurs may be considered a separate and distinct violation.

d. *Additional sanctions for County employees.* In addition to any penalty under subsection (a), employees of the County who violate this ordinance shall be subject to disciplinary action consistent with the County's personnel ordinance

## Sec. 9.5-98. Declaration of Establishment as Nonsmoking and Prohibiting E-Cigarettes.

Nothing in this ordinance shall be construed to prevent the owner, operator, manager, or other person in control of an establishment, facility, or outdoor area from declaring that

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the entire establishment, facility, or outdoor area shall be smoke free, or from declaring that the use of e-cigarettes is not permitted in the establishment, facility, or outdoor area.

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Buck Wilson, Public Health Director, reviewed the background information, recommendation and proposed draft of the revised smoking ordinance as recorded above.

Commissioner Adams recommended the next time a proposed revised ordinance is brought forward to the Policy Committee he would like staff to highlight the specific changes instead of bringing a whole new document to the committee to avoid any possible confusion.

Mr. Moorefield stated the current smoke-free ordinance prohibits smoking on:

- County grounds with the exception of Parks and Recreation facilities and Civic Center facilities
- County vehicles
- All County buildings.

Mr. Moorefield stated the proposed recommended expansion would prohibit smoking on:

- All County buildings, vehicles and grounds including playgrounds, trails and athletic fields
- Crown Complex grounds
- Bus stops
- Sidewalks that are maintained by the County
- Common areas of multi-unit residential facilities/buildings
- Indoor office, retail and other commercial establishments where the public is invited or permitted such as (polling places, child care facilities, shopping malls, public restrooms, elevators, galleries and museums, entertainment and sports arenas, gaming facilities and bingo halls).

Mr. Wilson stated the Board of Health has approved the recommended changes as stated above and the changes can be made at no cost to the county. Mr. Wilson further stated Mr. Grafstrom at the Crown Coliseum does not feel prohibiting smoking at the Crown Complex will affect the business. Mr. Wilson stated the Parks and Recreation Director Michael Gibson stated there would be some parents disappointed if the parks were smoke-free. Mr. Wilson stated Mr. Aagard with the Fayetteville Swampdogs does not feel prohibiting smoking would affect business but there would be some concern about how far smokers would have to walk to get to the road to smoke.

Mr. Moorefield stated due to an incident recently regarding an exploding e-cigarette in front of the elevators on the first floor of the courthouse, the county manager is requesting to include a prohibition to e-cigarettes to all locations mentioned. Mr. Moorefield stated e-cigarettes are not specifically addressed by the enabling legislation from the state or by the model ordinance suggested by the North Carolina Department of Health and Human Services. Mr. Moorefield stated it was his opinion that a sufficient

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public policy basis for including e-cigarettes based on federal regulations as a matter of public health and safety. Questions and discussion followed.

The consensus of the Policy Committee was to not move forward with the proposed revised smoking ordinance. No action taken.

## 4. OTHER ITEMS OF BUSINESS

There were no other items of business.

MEETING ADJOURNED AT 11:12 AM

Charles Morris,  
Chair  
Town of Linden

Diane Wheatley,  
Vice-Chair  
Cumberland County

Jami McLaughlin,  
Town of Spring Lake  
Harvey Cain, Jr.,  
Town of Stedman

Donovan McLaurin  
Wade, Falcon & Godwin



**CUMBERLAND**  
**COUNTY**  
NORTH CAROLINA

*Planning & Inspections Department*

Thomas J. Lloyd,  
Director

Cecil P. Combs,  
Deputy Director

Vikki Andrews,  
Carl Manning,  
Cumberland County

Benny Pearce,  
Town of Eastover

Patricia Hall,  
Town of Hope Mills

**MEMO FOR THE AGENDA OF THE DECEMBER 1, 2016  
MEETING OF THE POLICY COMMITTEE**

**TO:** POLICY COMMITTEE MEMBERS  
**FROM:** CECIL P. COMBS, DEPUTY DIRECTOR  
PLANNING & INSPECTIONS  
**THROUGH:** W. TRACY JACKSON, ASST. COUNTY MANAGER  
**DATE:** NOVEMBER 17, 2016  
**SUBJECT:** CONSIDERATION OF INTERLOCAL AGREEMENT WITH  
THE TOWN OF EASTOVER FOR MINIMUM HOUSING  
ORDINANCE ENFORCEMENT  
**Presenter(s):** Cecil P. Combs, Deputy Director Planning & Inspection  
**Time:** 15 Minutes

**BACKGROUND:**

In order to more fully assist the Town of Eastover, the Planning & Inspection Department is seeking to create and adopt an interlocal agreement allowing the county to provide Minimum Housing Ordinance enforcement services for the town. The proposed interlocal agreement (attached) was prepared by the County Attorney and is included in your packet for consideration.

**RECOMMENDATION/PROPOSED ACTION:**

Staff recommends the Board of Commissioner's approve an interlocal agreement between Cumberland County and the Town of Eastover for the provision of Minimum Housing Ordinance enforcement.

NORTH CAROLINA

AGREEMENT FOR INTERLOCAL UNDERTAKING  
TO ENFORCE THE MINIMUM HOUSING CODE

CUMBERLAND COUNTY

THIS AGREEMENT, is made and entered into by and between the TOWN OF EASTOVER, a municipality duly incorporated under the laws of North Carolina (hereinafter referred to as TOWN), and CUMBERLAND COUNTY, a body politic and corporate of the State of North Carolina (hereinafter referred to as COUNTY);

WITNESSETH:

WHEREAS, pursuant to N.C.G.S. § 160A-441, COUNTY adopted a Minimum Housing Code codified as Chapter 4, Article IV of the *Cumberland County Code*; and

WHEREAS, COUNTY enforces its Minimum Housing Code through designated inspectors in its Department of Planning and Inspections; and

WHEREAS, by Resolution 2016-05 adopted July 12, 2016, TOWN'S governing board approved the application of COUNTY'S Minimum Housing Code within TOWN'S corporate limits pursuant to N.C.G.S. § 160A-441; and

WHEREAS, TOWN desires that COUNTY'S Minimum Housing Code be enforced within TOWN'S corporate limits by COUNTY to the extent that COUNTY and COUNTY'S Board of Commissioners shall be acting in the stead of TOWN and TOWN'S governing board for all purposes related to enforcement of COUNTY'S Minimum Housing Code within TOWN'S corporate limits; and

WHEREAS, the governing boards of TOWN and COUNTY have by resolutions ratified the provisions of this Agreement for Interlocal Undertaking pursuant to North Carolina General Statutes, Chapter 160A, Article 20, Part I, for the purpose of providing for the enforcement of COUNTY'S Minimum Housing Code within TOWN'S corporate limits.

NOW THEREFORE, for and in consideration of the mutual covenants herein contained and of the mutual benefits to result therefrom, the parties hereby agree as follow:

1. PURPOSE: The purpose of this Agreement is to establish an interlocal undertaking, as provided in N.C.G.S. § 160A-460, *et seq.*, whereby COUNTY shall enforce COUNTY'S Minimum Housing Code within TOWN'S corporate limits to the same extent as COUNTY'S Minimum Housing Code applies in COUNTY'S jurisdiction outside of TOWN'S corporate limits.

2. DURATION: This Agreement shall commence on the last date it is approved by either COUNTY'S or TOWN'S governing board and shall endure so long as the parties hereto exist and have the power to make and maintain such an agreement, unless sooner terminated as hereinafter provided; provided that this Agreement shall not extend beyond 99 years.



3. NO JOINT AGENCY: This agreement shall not create a joint agency between COUNTY and TOWN and COUNTY shall at all times enforce its Minimum Housing Code within TOWN'S corporate limits in such manner as COUNTY'S Board of Commissioners deems prudent and within the constraint of funds budgeted for this purpose.

4. PERSONNEL: All personnel necessary to implement, administer and enforce COUNTY'S Minimum Housing Code within TOWN'S corporate limits shall be those employees of the COUNTY designated by COUNTY for that purpose.

5. COUNTY'S RESPONSIBILITIES FOR FINANCING THE UNDERTAKING: All costs of enforcing COUNTY'S Minimum Housing Code within TOWN'S corporate limits shall be borne by COUNTY and TOWN shall not be required to allocate any funds to COUNTY for these costs. Costs shall include, but are not limited to, the following:

a. The personnel cost for any inspectors or other COUNTY employees related to enforcement actions.

b. The personnel cost associated with the provision of legal services to determine the ownership of any real or personal property for which enforcement is sought, to provide legal advice to any inspectors or other COUNTY officials related to enforcement actions and to defend any appeal of an inspector's decision to the courts.

c. All costs associated with service of process for any enforcement action.

d. The costs of demolition and disposal of demolition debris.

6. TOWN'S RESPONSIBILITIES FOR FINANCING THE UNDERTAKING: TOWN shall be solely liable and responsible for all costs associated with any claim made or lawsuit filed against COUNTY or any of its officials or employees arising out of, occasioned by or incident to the alleged or actual actions, omissions, negligence or constitutional violations by any of COUNTY'S employees or officials. Such costs shall include, but are not limited to, the following:

a. Attorneys' fees and any other litigation costs incurred for representation of COUNTY or any of its employees or officials.

b. Negotiated settlements of any claims made or lawsuits filed against COUNTY or any of its employees or officials.

c. Judgments rendered against COUNTY or any of its employees or officials.

7. REAL PROPERTY: This Agreement does not require the purchase, acquisition, or disposition of real property by either party.

8. AMENDMENT: This Agreement may be amended at any time by mutual agreement between the parties in writing and duly ratified by their respective governing boards in conformance with N.C.G.S. § 160A-461.

9. TERMINATION: This Agreement may be terminated by either party at the end of any fiscal year on June 30 by the governing board of the party wishing to terminate giving written notice to the other governing board no less than 90 days in advance of the termination. Any enforcement actions pending at the time of termination shall become the sole responsibility of TOWN.

THEREFORE, the parties have set their hands and seals pursuant to action of their respective governing boards taken on the date indicated for each.

TOWN OF EASTOVER  
By: \_\_\_\_\_  
Charles G. McLaurin, Mayor

ATTEST:

\_\_\_\_\_  
Jane F. Faircloth, Town Clerk

Ratified by Town's Governing Board on \_\_\_\_\_

CUMBERLAND COUNTY  
By: \_\_\_\_\_  
Marshall Faircloth, Chairman  
Board of Commissioners

ATTEST:

\_\_\_\_\_  
Candice White, Clerk to the Board

Ratified by the Cumberland County Board of Commissioners on \_\_\_\_\_