

MEMORANDUM

TO: Charlotte City Council

FROM: Thomas M. Hitch, City Attorney

RE: **CITY ATTORNEY REPORT**

DATE: October 6, 2016

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The following is my report to the City Council on several issues in which our office has been engaged since the last Council meeting:

1. In Mold Settlement. I have received the check representing payment in full of the back taxes. The check is being transmitted to Christine Mossner today. I have also prepared a Release of Lien which Christine will sign and file with the Register of Deeds. Finally, I have signed, by authorization from the other attorneys, the Stipulation to Dismiss and Notice of Dismissal and this matter is now closed.

2. CNI Plastics. I received information today that the firm of Miller, Canfield, Paddock & Stone is no longer representing CNI Plastics. A new law firm, apparently representing the interests of the prior owner of CNI Plastics, has now taken over. I suspect that this change in counsel will cause a change in the Scheduling Order, allowing new counsel the opportunity to "get up to speed."

I am also in the process of retaining an expert witness. He is an appraiser of industrial machinery in Chicago, Illinois, who came very highly recommended.

I continue to review documents in preparation of a small number of depositions that will be taken, at least on the City's behalf. I do anticipate an inspection of the site with our expert from Chicago who can begin the appraisal process. I will keep the Council apprized.

3. Ordinance Drafting. I have made revisions to a draft ordinance regarding special transitory food units which I received from City staff and the Planning Commission. I have made amendments to the proposed draft, not including the food ordinance in the Zoning Code, which has certain legal issues, such as the creation of nonconforming uses by the passage of such an ordinance, which made me conclude that it should be adopted in another part of the City Code. Chapter 46 appears to be the most logical place, because it is dealing with transient businesses called solicitors and canvassers.

In reviewing Chapter 46, Solicitors and Canvassers, I conferred with the City Manager and we determined that it was appropriate to modify that chapter as well. Instead of using the term "Solicitors", I have used the more common term "Peddler" in its place. I have also removed sections regulating canvassers as it is my opinion that the provisions in Sections 46-6 and 46-7 are unconstitutional, and therefore completely unenforceable. I have added a new article for the transitory food units. I have made one modification for clarification at 46-61, as it relates to the number of units in effect at any one time. There are, however, several other issues that need to be addressed, in my opinion. The first is that as drafted, this ordinance would cover ice cream trucks which, as I understand it, may have been covered under 46-2. Secondly, it is unclear how this ordinance is to apply, if at all, to major activities on courthouse square or at Frontier Days where there are frequently numerous "transitory food units." Clearly, the restrictions envisioned in this ordinance would not apply to such events but it is not clear that the language exempts those activities.

While the ordinance regulating transitory food units is not an amendment to the Zoning Code, implementing this ordinance does require changes to the Zoning Code. It is, therefore, my recommendation that, as the Planning Commission has had much input in the preparation of this ordinance before, that it continue to have such input. It is my recommendation that upon first reading, both ordinances should be forwarded to the Planning Commission for any further recommendations that it might have.

TMH:ddy