# City of Norcross

*65 Lawrenceville Street*
*Norcross, GA 30071*

## Meeting Agenda

**Tuesday, June 21, 2022**

**6:30 PM**

**2nd Floor Conference Room**

**Policy Work Session**

***Mayor Craig Newton***
***Mayor Pro Tem Matt Myers***
***Councilmember Andrew Hixson***
***Councilmember Josh Bare***
***Councilmember Bruce Gaynor***
***Councilmember Arlene Beckles***

## A. Roll Call (recorded)

## B. Citizen Input

## C. Board Updates

Tree Preservation Board Update- Charlotte Osborn

## D. General Updates

*Audit Report Update- Paul Hanebuth and Rushston & Company, LLC

## E. Council- General Discussion

## F. Board Appointments

*Mayor and Council will consider an appointment to the following board, authority or commission:*

*Discovery Garden Park Board (1 Application / 1 Vacancy)*

## G. City Manager's Report

*Update and Recommendation Regarding Employee Survey

## H. Items for Discussion

1. **22-6499** **Dumpster Ordinance Clarification**

A recommendation to edit Sec 36-207 regarding Storing of refuse to include a paragraph that clearly addresses that there is a time limit to the use of dumpsters on parcels within the City for purposes of cleaning a building or residence when the use of the dumpster is not tied to an active building or development permit. The suggestion is four weeks.

Agenda Report- Dumpster Item

Sec 36-207

Dumpster Item DRAFT ORDINANCE

2. **22-6508** **Unified Development Ordinance Text Amendment**

*Planning and Zoning Board:*
Recommendation for approval as presented by a vote of 3-0 at the Planning and Zoning Board Meeting Wednesday, June 1, 2022.

*Staff:*
The Community Development and Planning Department in consultation with the Tree Preservation Board (TPB), City Arborist, and City Engineer recommend the attached changes to sections of the Unified Development Ordinance (UDO) that address Tree Preservation. In addition, the Community Development and Planning Department in consultation with the City Engineer recommend approval of the attached changes with respect to Combination Plats and Exemption Plats.

Agenda Report - TEXT20222-002

Proposed Text Amendments June 2022

TEXT2022-002 DRAFT ORDINANCE

3. **22-6500** **Employee Handbook Edits**

A recommendation to adopt the revisions of the 2022 Employee Handbook.

Agenda Report- Employee Handbook Revision

EmployeeHandbook Revision 6-2022

4. **22-6501** **SureLock/Rubrik - Cloud Backup Solution**

A recommendation to install Rubrik Backup Solution (local appliance onsite that transfers data to a restricted cloud-based platform).

Agenda Report- Rubrik Backup Solution

EULA-Rubrik

City of Norcross 04.15.2022 Rubrik Solution

5. **22-6502** **Noise Ordinance Text Amendment**

A recommendation to approve a minor text amendment correcting two days of the week in subsection 26-21(b) of the recently revised and adopted noise ordinance.

Agenda Report Cover Noise Ord Text Amend 062122

Norcross Noise Control Ordinance - Text Amendment June 2022 PWS

6. **22-6503** **Bolton Circle Pavement Resurfacing Private Agreement with CarMax**

A recommendation to approve the Private Development Agreement between the City and CarMax to improve the existing Bolton Circle simultaneously with the construction of the development of the CarMax parking expansion at the corner of Beaver Ruin Road and Bolton Circle in accordance with the City of Norcross adopted Unified Development Ordinance on June 3, 2019.

Agenda Report - Bolton Circle

CarMax Private Development Agreement

GC GIS Map

Norcross CarMax Parking Expansion Site Plan

7. **22-6504** **Amendment to FY22 Operating Budget**

Approve amendments to the FY22 budget appropriate to changes in macroeconomic conditions, council priorities, staffing levels and compensation plans, and other factors since the original FY22 budget was presented in July 2021.

Agenda Report- Amended FY22 Budgets

Budget Resolution

Proposed Budget Amendments

8. **22-6505** **Financial Advisor Contract**

A recommendation to approve a financial advisory services contract with Piper Sandler for the period ending June 30, 2023, consistent with a contract signed by the Downtown Development Authority (DDA) at its June meeting.

Agenda Report - Financial Advisor Contract

Financial Advisor Contract

9. **22-6506** **Demolition of Former Norcross Library**

Authorize demolition of the former Norcross Library building, located at 6025 Buford Highway, and fencing of the site in anticipation of future site development and construction of a public safety building to house the Norcross Police Department and the Norcross Municipal Court at this location.

Agenda Report- Old Norcross Library

10. **22-6507** **Full-Time Employee– Internal Communications Lead**

An internal full-time employee is needed to stay abreast of internal/external communications strategy, and branding, and to be the one point of contact of the city to provide a consistent message across all our communications mediums.

A recommendation that the attached report be revisited, and a Strategic Communications Master Plan created and used as a guideline to better inform our residents and businesses.

Agenda Report - Full-Time Communications Lead

Norcross Communications Task Force Report and Recommendations

## I. Adjourn to Executive Session for Personnel, Real Estate or Legal

## J. Signed by: ________________________________________ Mayor Craig Newton

## K. Attest: ______________________________________ Monique Lang, City Clerk

# City of Norcross

## Legislation Details (With Details)

| | | | |
|---|---|---|---|
| **File #:** | 22-6499 | **Version:** | |
| **Type #:** | Agenda Item | **Status:** | Agenda Ready |
| **On Agenda:** | 6/21/2022 6:30 PM | **In Control:** | Policy Work Session |
| **Title:** | Dumpster Ordinance Clarification | | |
| **Sponsors:** | | | |
| **Code Sections:** | | | |

**Attachments:**

1. Agenda Report- Dumpster Item
2. Sec 36-207
3. Dumpster Item DRAFT ORDINANCE

**Title**
**Dumpster Ordinance Clarification**

**Drafter**
**Tracy Rye**

65 Lawrenceville ST., NORCROSS, GEORGIA 30071
(770) 448-2122 **FAX** (770) 242-0824
http://www.norcrossga.net

# Agenda Report

**To:** Mayor and Council

**From:** Tracy Rye, AICP

**Agenda:** June 21, 2022 Policy Work Session

**Agenda #:** 22-6499

**Item:** Dumpster Ordinance Clarification

**CC:** Eric Johnson

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**Recommendation**
*Staff:*
The Community Development and Planning Department in consultation with the Code Enforcement Department recommends editing Sec 36-207 regarding Storing of refuse to include a paragraph that clearly addresses that there is a time limit to the use of dumpsters on parcels within the City for purposes of cleaning a building or residence when the use of the dumpster is not tied to an active building or development permit. The suggestion is four weeks.

**Background**

The City has received a number of complaints this year on property owners who are cleaning out homes and other structures that necessitate the use of dumpsters, but are unrelated to any permitted construction. One such dumpster has been in use for at least six months. To mitigate the possible creation of a nuisance, especially in residential neighborhoods, the Department was asked to craft ordinance language to address this growing issue.

**Financial Impact**
None.

**Consistent with Comprehensive Plan?**

65 LAWRENCEVILLE STREET, NORCROSS, GEORGIA 30071
(678) 421-2027 **UPSTAIRS CITY HALL** (770) 242-0824 **FAX** (770) 448-2111 **POLICE DEPARTMENT**
***http://www.norcrossga.net***

This project is considered to be consistent with the City's adopted 2040 Comprehensive Plan in that managing noise addresses **Goal 1** of the Plan to "*Continue to Define Norcross' Sense of Place.*" and **Policy 1-11** *"Preserve an complement the traditional historic, architectural and landscape character of the Downtown core and surrounding neighborhoods, while guiding reasonable growth."*

**Attachments**
Proposed ordinance changes
Draft Ordinance

**Update**

## Sec. 36-207. - Storing of refuse.

(a)

*Public places.* No person shall place any refuse in any street, alley, or other public place, or upon any private property whether owned by such person or not, within the city unless it is in proper containers for collection or express approval has been granted by the city and the franchisee. No person shall throw or deposit any refuse in any stream, body of water, or other nondesignated area.

(b)

*Unauthorized accumulation.* Any unauthorized accumulation of refuse on any premises is hereby declared to be a nuisance and is prohibited. Such violation may be punishable under chapter 26, article III or under the terms of this article as the city may elect. Failure to remove any existing accumulation of refuse shall be deemed a violation of this article.

***A tenant or property owner may utilize a dumpster for purposes of cleaning out a building or property for a maximum period of four weeks when such project is not associated with an active building or construction permit. Said dumpster shall be emptied on a regular basis in conformance with this article.***

(c)

*Scattering of refuse.* No person shall cast, place, sweep, or deposit anywhere within the city any refuse in such a manner that it may be carried or deposited by animals or the elements upon any street, sidewalk, alley, sewer, parkway, or other public place or into any occupied premises within the city.

(d)

*Scattering of garbage.* When a producer places refuse at the curb and it is subsequently scattered by animals or the elements, the producer shall clean up the refuse. When the franchisee scatters refuse at the curb during its performance under its franchise, the franchisee shall clean up the refuse.

(e)

*Unauthorized collection.* No person other than the producer or franchisee may go through or remove refuse or recyclable items from the residential carts or bins located at the curbside of the residential units.

**PLEASE NOTE THIS IS A DRAFT VERSION DOCUMENT FOR REVIEW**

**Ordinance ________**

**An Amendment to the City Code or Ordinances**

Chapter and Purpose: Chapter 36, Utilities, Article VI, Solid Waste. Sec 36-207

Enacting Clause; The Mayor and City Council of the City of Norcross, Georgia hereby ordains that the adopted Code of Ordinances is hereby amended as more particularly set forth below. It is the intention of the Mayor and City Council, and it is hereby ordained that all following provisions shall become and be made part of the Code of the City of Norcross.

I. Amendment to edit the language as noted below, to add those items shown as underlined and to delete those items as shown by strikethrough, any items completely deleted are reserved:

## Sec. 36-207. - Storing of refuse.

(a) *Public places.* No person shall place any refuse in any street, alley, or other public place, or upon any private property whether owned by such person or not, within the city unless it is in proper containers for collection or express approval has been granted by the city and the franchisee. No person shall throw or deposit any refuse in any stream, body of water, or other nondesignated area.

(b) *Unauthorized accumulation.* Any unauthorized accumulation of refuse on any premises is hereby declared to be a nuisance and is prohibited. Such violation may be punishable under chapter 26, article III or under the terms of this article as the city may elect. Failure to remove any existing accumulation of refuse shall be deemed a violation of this article.

***A tenant or property owner may utilize a dumpster for purposes of cleaning out a building or property for a maximum period of four weeks when such project is not associated with an active building or construction permit. Said dumpster shall be emptied on a regular basis in conformance with this article.***

(c) *Scattering of refuse.* No person shall cast, place, sweep, or deposit anywhere within the city any refuse in such a manner that it may be carried or deposited by animals or the elements upon any street, sidewalk, alley, sewer, parkway, or other public place or into any occupied premises within the city.

(d) *Scattering of garbage.* When a producer places refuse at the curb and it is subsequently scattered by animals or the elements, the producer shall clean up the refuse. When the franchisee scatters refuse at the curb during its performance under its franchise, the franchisee shall clean up the refuse.

(e) *Unauthorized collection.* No person other than the producer or franchisee may go through or remove refuse or recyclable items from the residential carts or bins located at the curbside of the residential units.

II. Severability: If the provisions of any section, subsection, paragraph, subdivision or clause of his ordinance shall be judged invalid by a court of competent jurisdiction, such order of judgement shall not affect or invalidate the remainder of any ordinance, section, subsection, paragraph, subdivision or clause of this ordinance.

III. Repealer: All ordinances or parts thereof which are in conflict with any provision or any section, subsection, paragraph, subdivision or clause of this ordinance are hereby repealed to the extent of the conflict.

IN WITNESS WHEREOF, I have hereunto set my hand and cause this seal to be affixed this ____ day of ________________, 2022

________________________________________

Craig Newton, Mayor

ATTEST:

________________________________

Monique Lang, City Clerk

# City of Norcross

## Legislation Details (With Details)

| | | | |
|---|---|---|---|
| **File #:** | 22-6508 | **Version:** | |
| **Type #:** | Agenda Item | **Status:** | |
| **On Agenda:** | 6/21/2022 6:30 PM | **In Control:** | Policy Work Session |
| **Title:** | Unified Development Ordinance Text Amendment | | |

**Sponsors:**

**Code Sections:**

**Attachments:**

1. Agenda Report - TEXT20222-002
2. Proposed Text Amendments June 2022
3. TEXT2022-002 DRAFT ORDINANCE

**Title**
**Unified Development Ordinance Text Amendment**

**Drafter**
**Tracy Rye**

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(770) 448-2122 **FAX** (770) 242-0824
http://www.norcrossga.net

# Agenda Report

**To:** Mayor and Council

**From:** Tracy Rye, AICP

**Agenda:** June 21, 2022 Policy Work Session

**Agenda #:** 22-6508

**Item:** TEXT2022-002

**CC:** Eric Johnson

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**Recommendation**

*Planning and Zoning Board:*

Recommendation for approval as presented by a vote of 3-0 at the Planning and Zoning Board Meeting Wednesday, June 1, 2022.

*Staff:*

The Community Development and Planning Department in consultation with the Tree Preservation Board (TPB), City Arborist, and City Engineer recommend the attached changes to sections of the Unified Development Ordinance (UDO) that address Tree Preservation. In addition, the Community Development and Planning Department in consultation with the City Engineer recommend approval of the attached changes with respect to Combination Plats and Exemption Plats.

**Background**

The Community Development and Planning Department has worked with the TPB to develop the proposed changes attached for tree preservation regulations based on months of discussion internally and by researching other local jurisdiction ordinances to suggest the following:

1. Sec 104-7(o) This is an existing statement in this section of code that exempts single family detached and duplex zoning districts from the tree density units required in Chapter 200, Article V. Each new development is held to a

development standard of 16 TDU/acre, however, this exemption then in essence allows single family and duplex owners to remove those trees. We propose that the exemption be removed;

2. We propose in Chapter 200 Sec. 205-2 that tree topping as a pruning method be banned;

3. Also in Sec 205-(2) add in that dead and hazardous trees (along with diseased and infested trees) be exempt from the tree preservation article;

4. In Sec 205-5 provide for better protection of existing fair or better condition specimen trees by charging a premium tree removal fee of $500 for each tree density unit of healthy specimen tree to be removed. These fees would be placed within the Tree Bank to be used towards tree placement elsewhere throughout the City. While a carrot approach to preserving specimen trees is always preferred, the most prolific method is the stick approach that assigns a serious monetary penalty to the removal of specimen trees. It is worthy to note that the Tree Preservation Board is also looking toward incentivizing the preservation of specimen trees by developing a program for owners of specimen trees that have arboriculture prescriptions developed for their trees and possibly reimbursing them for the prescriptive treatment performed on the trees. Details are still being fleshed out for this proposed program;

5. In Sec 205-5, In concert with the change to Sec 104-7(o), we proposed to also revise language to establish that each new development maintain 16 TDU while requiring that established homes in all single family detached and duplex districts maintain at least 1.6 TDU per lot. In researching and discussing this issue, it was noted that as developed residential lots become smaller, maintaining a 16 TDU standard per lot is more difficult as trees mature into and towards utilities, water and sewer lines and foundations. However it does remain easier for developers overall to spread tree density units throughout a development;

6. Finally, in Sec. 205-5 provide that the prescribed list of invasive and nuisance species are exempt from the tree removal permit fee, but still subject to a $25 administrative review fee prior to removal.

Regarding Combination and Exemption Plats, the Staff propose the following:

1. In Section 403-9 combination plats need to be limited to parcels with the same zoning, and remove the platting exemption for when people aren't pursuing a building permit. For purposes of record keeping, all platting needs to be approved by the local government;

2. Sec 403-10, exemption plats should only be allowed where no new streets, whether public or private, are created. In addition, the Community Development Director is authorized the ability to allow exemption plats up to four total lots. Traditionally exemption plats are for the creation of no more than two lots. At the

point where more than two lots are created, the exemption plat process exempts developers from providing storm water improvements and these types of exemptions lead to long term downstream consequences that could easily be avoided, therefore the department no longer wishes to have this tool in our toolkit as it's counterintuitive to good development practices;

3. New Sec 403-11, barring existing platted subdivision lots from using the exemption and combination plat process and rather channeling them to the revised final plat process and requiring name and signature blocks for the property owners and City officials on combination and exemption plats.

**Financial Impact**
Some financial impact to the City's Tree Bank if healthy specimen trees are removed; lessening the financial impact to those proposing to remove invasive and nuisance tree species.

**Consistent with Comprehensive Plan?**
This project is considered to be consistent with the City's adopted 2040 Comprehensive Plan in that managing noise addresses **Goal 1** of the Plan to "*Continue to Define Norcross' Sense of Place."* and **Policy 1-7** *"Protect natural resources, mature tree canopy, environmentally sensitive areas, and valuable historic, archaeological or cultural resources from human encroachment through land development regulations and/or incentives."*

**Attachments**
Proposed ordinance changes
Draft Ordinance

**Update**

Chapter 100, Sec. 104-7,o,1,d.

**Edits to 104-7(o)(1)(d)**

**104-7(o)(1)(d)**

An application to remove trees with a DBH of six inches or greater that are not specimen trees and are not associated with land disturbing activity shall be accompanied by a site drawing and a statement from the property owner of the condition of the tree and the threat it poses. Photographs and other supporting information may be required by the Director. ~~In cases where such permit is requested on R100, R75, R60, or RD property, said request shall be exempt from chapter 200, article V, buffers, landscaping, and tree conservation.~~

## Sec. 205-2. - Applicability/exemptions.

**edits to 205-2(4)**

The provisions of this chapter shall apply to any land disturbing activity on real property within the corporate limits of the city and to any removal or destruction of a tree with a diameter breast height (DBH) of six inches or greater regardless of whether it is associated with land disturbing activity. ***Please note that the topping of a tree or trees is not an approved pruning method is not permitted by any entity or owner***.

The following activities shall be exempt from the provisions of this chapter.

(1) Activities performed by a federal, state, county, municipal or other governmental agency during the course of their daily work shall be exempt from this article. However, best management practices for tree care shall be incorporated into the activities.

(2) Activities performed by public utility companies conducting operations on public and utility rights-of-way and easements.

(3) When the Community Development Director or their designee finds that any tree presents a danger or hazard to the health, safety and welfare of the public, such tree may be removed immediately by the owner or the owner's agent upon written authorization by the Community Development Director or their designee.

(4) Removal of ***dead,*** diseased***, hazardous,*** or infested trees, after verification by a qualified forestry professional acceptable to the Community Development Director or their designee.

# Sec. 205-5. - Tree conservation.

**205-5(a)3(a) new item 3,**

**edits to 205-5(b)(1)(a),**

**and 205-5(b) new item 6**

**205-5(a)(3)(a)(3)**

*(a) Tree density requirements.*

(3) *Tree unit values for specimen trees or tree stands.*

a. Specimen trees and specimen tree stands; defined.

1. *Specimen tree*: any tree which qualifies for special consideration for preservation due to size, type and condition, as follows.

a) Any tree in fair or better condition which equals or exceeds the following diameter breast height (dbh) sizes:

1) 28-inch dbh—overstory hardwoods such as oaks, hickories, yellow poplars, sweetgums, etc.

2) 12-inch dbh—understory small trees such as dogwoods, redbuds, sourwoods, etc.

3) 30-inch dbh—pine trees (all species).

b) A tree in fair or better condition must meet the following minimum standards:

1) A life expectancy of greater than 15 years.

2) A structurally sound trunk, not hollow and having no extensive decay, and less than 20 percent radial trunk dieback.

3) No more than one major and several minor dead limbs (hardwoods only).

4) No major insect or pathological problem.

c) A lesser sized tree can be considered a specimen tree if it is a rare or unusual species, of exceptional or unique quality, or of historical significance, subject to approval of the Community Development Director or their designee.

d) A lesser size tree can be considered a specimen tree if it is specifically used by a builder, developer, or design professional as a focal point in a landscape project, subject to approval of the Community Development Director or their designee.

2. *Specimen tree stand:* A contiguous grouping of trees which has been determined to be of high value in the opinion of the Community Development Director or their designee. Determination is based upon the following criteria:

a) A relatively mature, even-aged stand.

b) A stand with purity of species composition or of a rare or unusual nature.

c) A stand of historical significance.

d) A stand with exceptional aesthetic quality.

b. The tree unit values shown in table 205-5(1) may be increased by 100 percent for an existing tree that meets the definition of a "specimen tree" or for a "specimen tree stand" as defined herein, provided that extraordinary measures as needed are taken to protect the tree and assure its survival. Such measures may include but are not limited to the provision of tree wells, retaining walls, aeration, or supplementary irrigation, as applicable to the site of the tree and as approved by the Director.

***3. Specimen tree removal specifications***

***A Specimen Tree is any tree, in fair or better condition, which qualifies for special consideration for preservation due to size, species, or condition, and which meets the DBH specifications outlined above. Calculate the Specimen Tree Removal fee at $500 for each Tree Density Unit of the Specimen Tree(s) removed. For example, one 28" DBH Oak = 6.2 units x $500.00/unit = a fee of $3,100. The Tree Removal Permit shall not be issued, nor shall the specimen(s) be removed, until funds are received by the City of Norcross. Tree removal without or prior to a lawfully issued tree removal permit will result in a penalty assessed at $1,000.00 per tree density unit of specimen(s) removed.***

(b) *Tree density standards.*

(1) *Tree retention.* On each property for which a tree preservation and/or replacement plan is required, existing trees shall be retained and new trees shall be planted such that the property shall attain or exceed a tree density standard as follows:

a. Residential—16 tree density units per acre ***for developments in the preliminary, final or exemption plat process***. ***For residential lots with established homes,*** ***see table below***

***Residential Tree Density Unit Requirements for lots with established homes***

| ***Zoning*** | ***Tree Density Units*** |
|---|---|
| ***R100*** | ***1.6 TDU*** |
| ***R75*** | ***1.6 TDU*** |
| ***R60*** | ***1.6 TDU*** |
| ***RD*** | ***1.6 TDU*** |

b. Office/commercial/mixed-use—16 tree density units per acre.

c. Industrial—16 tree density units per acre.

(2) *Distribution.* Trees, both existing and new, shall be reasonably distributed throughout the site, with emphasis on tree groupings to achieve aesthetic results following professional landscaping standards. Trees, including street trees, may be retained or planted for credit within a public street right-of-way.

(3) *Trees in stream buffer.* Trees located in a stream buffer may be counted toward fulfilling the tree density standard provided the acreage within the stream buffer is included in the calculations used to fulfill the tree density standard.

(4) *Easement exclusion.* Properties possessing natural gas, petroleum or electric power transmission easements, or major sanitary sewer main (greater than eight inches in diameter) or water main (greater than 16 inches in diameter) distribution easements, may exclude the land area contained in the easement from the total acreage of the property in fulfilling the tree density standard provided that no improvements (e.g. parking lots, tennis courts, driveways, greenways, storm water detention facilities, etc.) are proposed within the easement. If any improvements are proposed within the easement, then the land area so used within the easement for the improvements, plus an additional ten feet of land area surrounding the improvements, shall be included in the total acreage of the property to fulfill the tree density standard.

(5) *Lake and pond exclusion.* Properties with a lake or pond may exclude the land area contained in the lake or pond from the total acreage of the property in fulfilling the tree density standard.

***(6) Invasive and nuisance species exclusion. Invasive species and nuisance species are exempt from the tree removal permit fee but are subject to a $25 assessment fee by the Community Development designee. Invasive and nuisance species include Tree-of-Heaven, Mimosa, Chinaberry, Princesstree, Chinese Tallow Tree, Bradford Pear, and Leyland Cypress.***

**Edits to Section 403-9 and 403-10 and add new Sec 403-11, all addressing exemption plats**

**Sec. 403-9. - Combination plat.**

The combination or recombination of all of two or more buildable lots of record **which have the same zoning**, where the total number of lots is not increased and the resultant lots or parcels are in compliance with this UDO. ~~A final plat or exemption plat shall not be required for aggregations of properties for land assembly purposes where no building permit will be requested prior to issuance of a development permit~~

- **Sec. 403-10. - Exemption plat.**

The division of a buildable lot of record into two lots, provided:

(1) Each proposed lot complies with all requirements of this UDO and is limited to single-family detached residential use.

(2) Each proposed lot abuts **upon and derives access from** an existing public street.

(3) All project related slope and utility easements as well as necessary street right-of-way shall be provided at no cost to the city as determined by the Community Development Department based upon the officially adopted road classification map comprehensive plan.

(4) Each lot created may not be re-subdivided unless it complies with the provisions described herein for a period of at least two calendar years.

(5) Each proposed lot shall comply with any water and sewer requirements, as appropriate, whose approval shall be required prior to approval of the exemption plat by the Community Development Department.

~~(6) The Community Development Director is authorized to grant a modification from the two-lot maximum exemption; provided, however, modifications shall not be granted to exceed a total of four exempt lots. The Director may impose conditions of approval upon any modification thus granted as may be necessary to ensure the general public welfare.~~

New Section 403-11

**Sec. 403-11 Requirements that apply to both combination plats and exemption plats**

**(1) The use of a combination plat or exemption plat shall not apply to lots within an existing platted subdivision. A revised final plat will be required in those cases.**
**(2) Name and Signature block for the property owner of record to sign the plat.**
**(3) Name and Signature block for City of Norcross personnel to sign the plat.**

Attachment: Proposed Text Amendments June 2022 (22-6508 : Unified Development Ordinance Text Amendment)

**PLEASE NOTE THIS IS A DRAFT VERSION DOCUMENT FOR REVIEW**

**Ordinance TEXT2022-002**

**An Amendment to the City Code or Ordinances**

Chapter and Purpose: Subpart B Unified Development Ordinance, Section as noted.

Enacting Clause; The Mayor and City Council of the City of Norcross, Georgia hereby ordains that the adopted Code of Ordinances is hereby amended as more particularly set forth below. It is the intention of the Mayor and City Council, and it is hereby ordained that all following provisions shall become and be made part of the Code of the City of Norcross.

I. Amendment to edit the language as noted below, to add those items shown as underlined and to delete those items as shown by strikethrough, any items completely deleted are reserved:

**Sec. 104-7 Administrative Review**

**Sec. 104-7(o)(1)(d)**

An application to remove trees with a DBH of six inches or greater that are not specimen trees and are not associated with land disturbing activity shall be accompanied by a site drawing and a statement from the property owner of the condition of the tree and the threat it poses. Photographs and other supporting information may be required by the Director. ~~In cases where such permit is requested on R100, R75, R60, or RD property, said request shall be exempt from chapter 200, article V, buffers, landscaping, and tree conservation.~~

**Sec. 205-2. - Applicability/exemptions.**

The provisions of this chapter shall apply to any land disturbing activity on real property within the corporate limits of the city and to any removal or destruction of a tree with a diameter breast height (DBH) of six inches or greater regardless of whether it is associated with land disturbing activity. ***Please note that the topping of a tree or trees is not an approved pruning method is not permitted by any entity or owner***.

The following activities shall be exempt from the provisions of this chapter.

(1) Activities performed by a federal, state, county, municipal or other governmental agency during the course of their daily work shall be exempt from this article. However, best management practices for tree care shall be incorporated into the activities.

(2) Activities performed by public utility companies conducting operations on public and utility rights-of-way and easements.

(3) When the Community Development Director or their designee finds that any tree presents a danger or hazard to the health, safety and welfare of the public, such tree may be removed immediately by the owner or the owner's agent upon written authorization by the Community Development Director or their designee.

(4) Removal of ***dead,*** diseased***, hazardous,*** or infested trees, after verification by a qualified forestry professional acceptable to the Community Development Director or their designee.

**Sec. 205-5. - Tree conservation.**

*(a) Tree density requirements.*

(3) *Tree unit values for specimen trees or tree stands.*

a. Specimen trees and specimen tree stands; defined.

1. *Specimen tree*: any tree which qualifies for special consideration for preservation due to size, type and condition, as follows.

a) Any tree in fair or better condition which equals or exceeds the following diameter breast height (dbh) sizes:

1) 28-inch dbh—overstory hardwoods such as oaks, hickories, yellow poplars, sweetgums, etc.

2) 12-inch dbh—understory small trees such as dogwoods, redbuds, sourwoods, etc.

3) 30-inch dbh—pine trees (all species).

b) A tree in fair or better condition must meet the following minimum standards:

1) A life expectancy of greater than 15 years.

2) A structurally sound trunk, not hollow and having no extensive decay, and less than 20 percent radial trunk dieback.

3) No more than one major and several minor dead limbs (hardwoods only).

4) No major insect or pathological problem.

c) A lesser sized tree can be considered a specimen tree if it is a rare or unusual species, of exceptional or unique quality, or of historical significance, subject to approval of the Community Development Director or their designee.

d) A lesser size tree can be considered a specimen tree if it is specifically used by a builder, developer, or design professional as a focal point in a landscape project, subject to approval of the Community Development Director or their designee.

2. *Specimen tree stand:* A contiguous grouping of trees which has been determined to be of high value in the opinion of the Community Development Director or their designee. Determination is based upon the following criteria:

a) A relatively mature, even-aged stand.

b) A stand with purity of species composition or of a rare or unusual nature.

c) A stand of historical significance.

d) A stand with exceptional aesthetic quality.

b. The tree unit values shown in table 205-5(1) may be increased by 100 percent for an existing tree that meets the definition of a "specimen tree" or for a "specimen tree stand" as defined herein, provided that extraordinary measures as needed are taken to protect the tree and assure its survival. Such measures may include but are not limited to the provision of tree wells, retaining walls, aeration, or supplementary irrigation, as applicable to the site of the tree and as approved by the Director.

***3. Specimen tree removal specifications***

***A Specimen Tree is any tree, in fair or better condition, which qualifies for special consideration for preservation due to size, species, or condition, and which meets the DBH specifications outlined above. Calculate the Specimen Tree Removal fee at $500 for each Tree Density Unit of the Specimen Tree(s) removed. For example, one 28" DBH Oak = 6.2 units x $500.00/unit = a fee of $3,100. The Tree Removal Permit shall not be issued, nor shall the specimen(s) be removed, until funds are received by the City of Norcross. Tree removal without or prior to a lawfully issued tree removal permit will result in a penalty assessed at $1,000.00 per tree density unit of specimen(s) removed.***

(b) *Tree density standards.*

(1) *Tree retention.* On each property for which a tree preservation and/or replacement plan is required, existing trees shall be retained and new trees shall be planted such that the property shall attain or exceed a tree density standard as follows:

a. Residential—16 tree density units per acre ***for developments in the preliminary, final or exemption plat process***. ***For residential lots with established homes, see table below***

***Residential Tree Density Unit Requirements for lots with established homes***

| ***Zoning*** | ***Tree Density Units*** |
|---|---|
| ***R100*** | ***1.6 TDU*** |
| ***R75*** | ***1.6 TDU*** |
| ***R60*** | ***1.6 TDU*** |
| ***RD*** | ***1.6 TDU*** |

b. Office/commercial/mixed-use—16 tree density units per acre.

c. Industrial—16 tree density units per acre.

(2) *Distribution.* Trees, both existing and new, shall be reasonably distributed throughout the site, with emphasis on tree groupings to achieve aesthetic results following professional landscaping standards. Trees, including street trees, may be retained or planted for credit within a public street right-of-way.

(3) *Trees in stream buffer.* Trees located in a stream buffer may be counted toward fulfilling the tree density standard provided the acreage within the stream buffer is included in the calculations used to fulfill the tree density standard.

(4) *Easement exclusion.* Properties possessing natural gas, petroleum or electric power transmission easements, or major sanitary sewer main (greater than eight inches in diameter) or water main (greater than 16 inches in diameter) distribution easements, may exclude the land area contained in the easement from the total acreage of the property in fulfilling the tree density standard provided that no improvements (e.g. parking lots, tennis courts, driveways, greenways, storm water detention facilities, etc.) are proposed within the easement. If any improvements are proposed within the easement, then the land area so used within the easement for the improvements, plus an additional ten feet of land area surrounding the improvements, shall be included in the total acreage of the property to fulfill the tree density standard.

(5) *Lake and pond exclusion.* Properties with a lake or pond may exclude the land area contained in the lake or pond from the total acreage of the property in fulfilling the tree density standard.

***(6) Invasive and nuisance species exclusion. Invasive species and nuisance species are exempt from the tree removal permit fee but are subject to a $25 assessment fee by the Community Development designee. Invasive and nuisance species include Tree-of-Heaven, Mimosa, Chinaberry, Princesstree, Chinese Tallow Tree, Bradford Pear, and Leyland Cypress.***

**Sec. 403-9. - Combination plat.**

The combination or recombination of all of two or more buildable lots of record **which have the same zoning**, where the total number of lots is not increased and the resultant lots or parcels are in compliance with this UDO. ~~A final plat or exemption plat shall not be required for aggregations of properties for land assembly purposes where no building permit will be requested prior to issuance of a development permit~~

**Sec. 403-10. - Exemption plat.**

The division of a buildable lot of record into two lots, provided:

(1) Each proposed lot complies with all requirements of this UDO and is limited to single-family detached residential use.

(2) Each proposed lot abuts **upon and derives access from** an existing public street.

(3) All project related slope and utility easements as well as necessary street right-of-way shall be provided at no cost to the city as determined by the Community Development Department based upon the officially adopted road classification map comprehensive plan.

(4) Each lot created may not be re-subdivided unless it complies with the provisions described herein for a period of at least two calendar years.

(5) Each proposed lot shall comply with any water and sewer requirements, as appropriate, whose approval shall be required prior to approval of the exemption plat by the Community Development Department.

~~(6) The Community Development Director is authorized to grant a modification from the two-lot maximum exemption; provided, however, modifications shall not be granted to exceed a total of four exempt lots. The Director may impose conditions of approval upon any modification thus granted as may be necessary to ensure the general public welfare.~~

**Sec. 403-11 Requirements that apply to both combination plats and exemption plats**

**(1) The use of a combination plat or exemption plat shall not apply to lots within an existing platted subdivision. A revised final plat will be required in those cases.**

**(2)** **<u>Name and Signature block for the property owner of record to sign the plat.</u>**
**(3)** **<u>Name and Signature block for City of Norcross personnel to sign the plat.</u>**

II. Severability: If the provisions of any section, subsection, paragraph, subdivision or clause of his ordinance shall be judged invalid by a court of competent jurisdiction, such order of judgement shall not affect or invalidate the remainder of any ordinance, section, subsection, paragraph, subdivision or clause of this ordinance.

III. Repealer: All ordinances or parts thereof which are in conflict with any provision or any section, subsection, paragraph, subdivision or clause of this ordinance are hereby repealed to the extent of the conflict.

IN WITNESS WHEREOF, I have hereunto set my hand and cause this seal to be affixed this ____ day of _______________, 2022

_______________________________________
Craig Newton, Mayor

ATTEST:

______________________________
Monique Lang, City Clerk

MAYOR **CRAIG NEWTON** · MAYOR PRO TEM **MATT MYERS**· COUNCILMEMBER **ANDREW HIXSON** · COUNCILMEMBER **JOSH BARE**
COUNCILMEMBER **ARLENE BECKLES** · COUNCILMEMBER **BRUCE GAYNOR** · CITY MANAGER **ERIC JOHNSON** · CITY CLERK **MONIQUE LANG**

# City of Norcross

## Legislation Details (With Details)

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|---|---|---|---|
| **File #:** | 22-6500 | **Version:** | |
| **Type #:** | Agenda Item | **Status:** | Agenda Ready |
| **On Agenda:** | 6/21/2022 6:30 PM | **In Control:** | Policy Work Session |
| **Title:** | Employee Handbook Edits | | |
| **Sponsors:** | | | |
| **Code Sections:** | | | |

**Attachments:**

1. Agenda Report- Employee Handbook Revision
2. EmployeeHandbook Revision 6-2022

**Title**
**Employee Handbook Edits**

**Drafter**
**Camille Washington**

MAYOR **CRAIG NEWTON** · MAYOR PRO TEM **MATT MYERS** · COUNCILMEMBER **ANDREW HIXSON** ·COUNCILMEMBER **JOSH BARE** ·
COUNCILMEMBER **BRUCE GAYNOR** · COUNCILMEMBER **ARLENE BECKLES** · CITY MANAGER **ERIC JOHNSON** · CITY CLERK **MONIQUE LANG**

# Agenda Report

**To:** Mayor and Council

**From:** Camille Washington, Human Resources Manager

**Meeting Date:** June 21, 2022 – Policy Work Session

**Item No.:** 22 - 6500

**Title:** Employee Handbook Revision

**CC:** Eric Johnson

**Recommendation:** To adopt the revisions of the 2022 Employee Handbook. The Handbook is revised to update current policies, add policies that did not exist in the older version, and ensure compliance with current employment law. Our policies and procedures change as the City grows, and the Handbook should reflect the same.

**Background:** With the constant change in our environment and culture, particularly in the last two years, our handbook can quickly become outdated. While reviewing the handbook, certain sections were very critical to the process. I have highlighted the sections of the handbook to reflect the new policies and updates to existing policies in the attachment. They are three policies that are most relevant to this handbook revision. 1. **Political Activities. This** policy is not to prevent anyone from becoming involved in political activities but to help employees navigate the process without hindering their employment with the City of Norcross. 2. **Interim Appointment** by the city manager is established to give employees a clearer understanding of the eligibility, requirements, and responsibilities of the position. 3. **The Gossip Policy** implemented is not to enforce limitations on any employee's right to freedom of speech but instead aims to decrease the erosion of trust and employee morale.

**Financial Impact:** There is no financial impact attached to the revision of the employee handbook.

**Consistent with Comprehensive Plan?** Yes

**Next Steps:** Council approval of the City of Norcross 2022 Employee Handbook and distribute to all City employees.

**Attachments:**
Employee Handbook Revision

65 LAWRENCEVILLE STREET, NORCROSS, GEORGIA 30071
(678) 421-2027 **UPSTAIRS CITY HALL** (770) 242-0824 **FAX** (770) 448-2111 **POLICE DEPARTMENT**
*http://www.norcrossga.net*

# INTRODUCTION

## Purpose of the Handbook - Update

This Employee Handbook was developed to describe many of your responsibilities and expectations as an employee and outlines the policies, programs, and benefits available to eligible employees. Employees should familiarize themselves with the Employee Handbook's content as soon as possible, as it should answer many questions related to your employment with the City. (p. 8)

# EMPLOYMENT PRACTICES & POLICIES

## Core Business Hours - Update

Friday. Employees may be requested to work late evenings, weekends, and certain holidays.

Georgia law does not require that employers provide lunch periods. However, if possible, the City would like to encourage employees to take time to rejuvenate. This is limited to a one-hour lunch period each day. The City of Norcross does not compensate for meal periods of thirty minutes or more.

All Full-time employees are assigned to work a minimum of forty (40) hours per week. (p. 9)

### Political Activities – (new policy)

A. No employee shall participate in any political activity which would substantially compromise the ability of the employee to discharge with neutrality, efficiency, and integrity their duties and obligations to the City of Norcross or the citizens thereof.

B. No employee, without resigning from their City job effective on their date of qualification, shall run for an elected office or participate in political activities related to running for elected office (including publicizing their political aspirations, seeking endorsements or financial contributions, etc.), or hold any elected office in the City of Norcross.

C. Employees are encouraged to vote and participate as private citizens in our system of an elected government. (p. 11)

### Changes in Personal Information – Update

## Equal Employment Opportunity Policy - Update

The City provides equal opportunity to all employees and applicants for employment without regard to race, color, religion, gender, national origin, age, disability, sex (including pregnancy and gender identity), sexual orientation, parental status, family medical history, genetic information, political affiliation, military service, or status as covered veterans following applicable federal, state, and local laws. (p. 13)

## Harassment Defined - Update

The two major forms of sexual harassment are Quid Pro Quo (this for that) and Hostile Environment, as described below:

- A hostile or offensive working environment is determined based on the circumstances but shall include severe or pervasive written, verbal, or physical conduct directed toward an employee based on his/her sex, race, religion, national origin, disability, or age. (p. 15)

# Abusive behavior, and Malicious Gossip Policy (new policy)

## Nepotism - Update

Two (2) or more members of a family shall not be employed within the same department, unit, or section where undue influence or favoritism due to family relationships could exist.

The term "family" is defined as one of the following: spouse, husband, wife, domestic partner, parent, stepparent, child/stepchild, grandparent, grandchild, brother/brother-in-law, sister/sister-in-law, uncle, aunt, nephew, niece, first cousin, in-laws (father, mother, son daughter).

## Promotions - Update

When an employee is promoted to a position in a higher job grade, his or her salary shall be increased to the minimum rate for the higher grade, or to the rate in the pay range of the new position, which is immediately at or above his or her present rate of pay not to exceed 5%. Employees promoted to a new position will be placed on probationary status for six months, and twelve months for public safety employees. The probationary employee will be evaluated at the end of the probationary period. Upon completion of the evaluation, the employee will be notified of the change in status to a regular employee or terminated.

## Voluntary Demotion - New

An employee may request a voluntary demotion of a position to a lower pay grade shall receive the following decrease in pay:

- a 5% decrease or if employee's current salary is inside the demotion pay grade, they will receive the maximum of the lower grade.

## Disciplinary Demotion - New

Employees demoted to a position in a lower pay grade because of disciplinary action shall receive the following decrease in pay:

- a 5% decrease in pay or above the minimum of the lower pay grade.

The Department Head and City Manager may consider the circumstances surrounding the reasons for the demotion and longevity of employment and may make exceptions.

## Transfers - Update

Involuntary Transfer – An employee transferred to a position in a lower pay classification at the request of the City to meet the needs of the City may or may not remain at the same salary as before the transfer.

### Interim - New

An employee may be appointed to serve regularly appointed or temporarily in a higher class upon the recommendation of the Department Head and approval of the City Manager, provided that the employee meets the eligibility requirements of such higher classification. A temporary promotional appointment shall not exceed 12 weeks but may be extended upon approval by the City Manager. The employee salary shall be adjusted to the minimum of the pay grade for the new position or a rate of pay not to exceed (5%) whichever is greater. Employee shall receive the new pay after assuming responsibilities for a period greater than thirty (30) consecutive days.

(p. 22)

## Dual Employment - Update

Employees should disclose in writing to their department head or Human Resources before accepting outside employment, whether part-time, temporary, or permanent. Documentation pertaining to dual employment will be included in the employee's personnel record. The other occupation may not conflict or interfere with or give the appearance of a conflict with the employee's service to the City. Employees shall not engage in any private business or activity while on duty. (p. 23)

## Rehiring - Update

Employees who leave the City in good standing and are gone less than 6 months may return to the City at the same rate of pay as when they left. Service may also be bridged and considered continuous service at the discretion of the City Manager. (p. 23)

## CONDUCT AND BEHAVIOR

### Discipline Procedures - Update

- Format & Location of Documented Actions
- Progressive Discipline
- Disciplinary Options
- Employee Notice

(pp. 2-29)

### Grievance Policy & Procedures – Update

- Policy Statement
- General Provisions
- Areas Considered NON-Grievances
- Procedures
- Appeal Procedures
- Appeal to the City Manager
- Meeting with City Manager
- Evidence
- Administration

(pp 30-34)

### Lactation Accommodation - Update

The City of Norcross will provide a reasonable amount of break time for employees to express breast milk for a total of one year from the birth of the child. Employees wishing to express breast milk while at work are required to use paid rest periods already provided to all employees for that purpose. (p. 48)

## Compensation – Update

#### Employee Performance Evaluation

The City has adopted an employee performance analysis system and evaluation process to help the supervisor and employee understand their goals to accomplish the job more efficiently. The performance evaluation is intended to ensure all employees are aware of what duties and responsibilities are expected and that they understand the level of performance expected. The supervisor may use it to determine eligibility for incentive pay considerations as approved by City Manager and Mayor and Council.

***Employees Subject to Evaluation***

Performance evaluations are conducted for all employees in the classified service of the City. Performance evaluations are conducted every six (6) months from July to December and January to June.

## Evaluating During Probationary Period - New

The probationary employee will be evaluated *halfway into* and *at the end of the probationary period.* The Police department may evaluate on a monthly or quarterly basis. Upon completion of the evaluation, the employee will be notified of the change in status to a regular employee or terminated. It is expected that informal evaluations will be conducted during the probationary period to assess performance and to advise employees of expectations regarding performance.

## Merit Increases - Update

Merit increases are not guaranteed and are based upon employees' performance and are subject to funding. The amount of an increase should be consistent with the approved merit budget. All merit increases should be discussed and approved by City Manager before a discussion with the employee. Employees that have capped out on their salary will receive a percentage based on their performance review score in place of a merit increase.

## Eligibility - New

Regular full-time employees with at least one (1) year of continuous service and a favorable performance review score are considered eligible. Newer employees that have not completed their probationary period are not eligible.

(pp. 49-53)

## BENEFITS - Update

## Retirement Plans - Update

***Defined Benefit Retirement Plan (Pension)***

The City provides a Defined Benefits Plan (pension) for employees. Employees are required to participate in the plan. Employees are eligible to participate in the defined benefits plan on the first day of employment. Employees become vested and eligible for pension benefits under the pension plan upon completion of five (5) years of employment. Employees hired after November 1, 2011, will contribute three percent (3%) of gross salary toward their Defined Benefit and the city will contribute seven percent (7%). Employees hired after March 8, 2022, are not eligible for post-retirement health benefits.

(p. 64)

## Vacation - Update

**Eligibility-**Full-time Regular and Police Department Employees**.** Newly hired department heads may receive a vacation accrual rate of 4.62 as determined by the City Manager.
(p. 65)

## Holidays - New

Juneteenth
Two Personal Holidays
(p. 67)

### LEAVES OF ABSENCE - New

## Administrative Leave Policy

(p. 69)

## COVIID-19 Sick Leave - New

(pp. 75-76)

## Military Leave Policy - Update

### Eligibility for Leave – Update

(p. 77)

**Re-employment Rights and Employment Benefits - Update**
(p. 79)

### SAFETY, HEALTH, AND THE ENVIRONMENT - Update

Family Members as Passenger in City Vehicles
(p. 82)

# City of Norcross

## Legislation Details (With Details)

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|---|---|---|---|
| **File #:** | 22-6501 | **Version:** | |
| **Type #:** | Agenda Item | **Status:** | Agenda Ready |
| **On Agenda:** | 6/21/2022 6:30 PM | **In Control:** | Policy Work Session |
| **Title:** | SureLock/Rubrik - Cloud Backup Solution | | |

**Sponsors:**

**Code Sections:**

**Attachments:**

1. Agenda Report- Rubrik Backup Solution
2. EULA-Rubrik
3. City of Norcross 04.15.2022 Rubrik Solution

**Title**
**SureLock/Rubrik - Cloud Backup Solution**

**Drafter**
**Dr. James Trent**

65 Lawrenceville ST., NORCROSS, GEORGIA 30071
(770) 448-2122 **FAX** (770) 242-0824
http://www.norcrossga.net

# Agenda Report

**To:** Mayor and Council

**From:** Dr. James Trent

**Meeting Date:** June 21, 2022 – Policy Work Session

**Item No.:** 22-6501

**Title:** Rubrik Backup Solution Contract – 2nd Floor City Hall

**CC:** Eric Johnson

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**Recommendation**
Install Rubrik Backup Solution (local appliance onsite that transfers data to a restricted cloud-based platform).

**Background**
The current Managed Service Provider (MSP), Rocket IT, used Veeam as their preferred backup solution. With Rocket IT dropping the City of Norcross as a client effective 8/31/2022; the IT Department made the expeditious decision to find a more sustainable and reliable backup solution. The IT Department was proactive in selecting Rubrik. Based on verbal feedback received from different cities and the higher-ed industry their feedback was overwhelmingly positive.

**Financial Impact**
There is no impact. IT Department Budget approved this spending as part of the 2022 budget cycle.

**Consistent with Comprehensive Plan?**
The installation and implementation of the Rubrik backup appliance are in line with the Comprehensive Plan in that the IT Department is continually updating the infrastructure. In addition, the IT Risk Assessment performed last year by VC3 listed a cloud-based backup solution that would enhance our security posture.

**Next Steps**

The decision by Mayor and Council to ratify the agreement currently in place has been reviewed and signed by the IT Director. The severe impact of not moving forward with Rubrik can be both costly and detrimental to the city. To remove the existing appliance from the server room is estimated at $25K (hardware removal and labor). Should this occur, without a solution such as Rubrik here is the immediate impact:

(1) The city will not be able to provide a solid backup solution after seven days.
(2) Without current backups, the Police Department data would be immediately impacted, and there will be no access to historical body cam & dash cam videos.
(3) The City would not be able to backup Police, Financials, Public Works, HR data.
(4) Most detrimental, there would be nothing to recover should we have a disaster.

**Attachments**

EULA from Rubrik
An invoice detailing the 3-year deal

**Update**

rubrik

# RUBRIK, INC. END USER LICENSE AGREEMENT

**IMPORTANT: READ THIS END USER LICENSE AGREEMENT ("AGREEMENT") BEFORE INSTALLING OR USING THE RUBRIK PRODUCTS (AS DEFINED BELOW). THIS IS A LEGAL AGREEMENT BETWEEEN RUBRIK, INC. ("RUBRIK") AND YOU OR THE ENTITY THAT YOU REPRESENT ("CUSTOMER"). THIS AGREEMENT GOVERNS CUSTOMER'S USE, INCLUDING ANY FREE TRIAL USE, OF RUBRIK'S PRODUCTS AND SERVICES. BY ACCEPTING THIS AGREEMENT, EITHER BY CLICKING A BOX OR BUTTON INDICATING YOUR ACCEPTANCE, BY EXECUTING AN ORDER THAT REFERENCES THIS AGREEMENT, OR BY DOWNLOADING, INSTALLING, USING OR ACCESSING THE RUBRIK PRODUCTS, YOU AGREE TO THE TERMS OF THIS AGREEMENT. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THIS AGREEMENT. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT COPY, INSTALL, USE OR ACCESS THE RUBRIK PRODUCTS.**

## 1. DEFINITIONS.

1.1 **"Affiliate"** means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity. For purposes of this definition, "control" means direct or indirect ownership or control of more than fifty percent (50%) of the voting interests of the subject entity.

1.2 "**Effective Date**" means the date Customer accepts the terms of this Agreement.

1.3 "**Business Contact Data**" means the names, email addresses, phone numbers and all other business-related information of each Party's personnel, that may be collected or exchanged between the Parties in the ordinary course of maintaining the business relationship, such as contract management, sales and ordering, and business development as further described in Section 16.2 (Use of Business Contact Data).

1.4 "**Customer Personal Data**" means Personal Data (defined below) that is owned or controlled by Customer and which Rubrik, a Rubrik Affiliate or subcontractor may process in the course of providing the Products, Support Services and Professional Services under the Agreement.

1.5 "**Documentation**" means the Rubrik documentation shipped with the Products or made available in electronic form to Customer, excluding advertising and marketing materials.

1.6 "**Hardware**" means Rubrik hardware purchased by Customer.

1.7 "**Order**" means the purchase order or other agreed upon legally binding document placed by Customer which specifies the applicable term, quantities and description of the Products, Support Services and Professional Services purchased by Customer from a Rubrik authorized reseller.

1.8 "**Personal Data**" means (i) any information relating to an identified or identifiable national person, and/or (ii) any information that identifies, relates to, describes, or could reasonably be linked, directly or indirectly, with a particular consumer or household. Unless prohibited or specifically governed by applicable Data Protection Laws, Personal Data shall not include information or data that is anonymized, de-identified and/or compiled on a generic basis and which does not name or identify a specific person.

1.9 "**Product(s)**" means, collectively, Rubrik Hardware, Software and SaaS Services.

1.10 **"SaaS Services**" means a Rubrik cloud-based software-as-a-service offering purchased by Customer as specified in the applicable Order.

1.11 "**Professional Services**" means the implementation, configuration and training services as specified in an applicable Order.

1.12 "**Software**" means, collectively, Rubrik's software and embedded firmware downloaded or accessed by Customer in object code form, as set out in the applicable Order. Software also includes all Updates, Upgrades, copies and alterations, modifications and derivative works thereof.

1.13 "**Term**" means the period of time from the Effective Date until the end of the applicable license term as set forth on the Order(s), including any renewal thereof.

1.14 "**Updates**" means patch releases, "bug" fixes, and maintenance updates for the Software or the SaaS Services.

1.15 "**Upgrades**" means new features included in Software or SaaS Services which Customer may purchase during the Term and which are subject to an additional charge. For clarity, if Customer purchases an Upgrade of Software, the entitlement to use the original Software terminates.

## 2. SOFTWARE LICENSE.

2.1 **Software License.** Subject to Customer's compliance with the terms and conditions of this Agreement and Customer's payment of all fees due, Rubrik grants Customer a limited, non-exclusive, non-sublicensable, non-transferable (except as may be expressly permitted herein) license to use the Software and Documentation only for Customer's internal business purposes on Hardware or Rubrik-approved third-party hardware and in accordance with the Documentation. Unless otherwise specified in applicable Product Specific Terms, Customer may use the Products for the benefit of its Affiliates, and Affiliates may use the Products for their own benefit, but only in the quantities and capacity as set out in the applicable Order and subject to compliance with all terms of this Agreement. Customer guarantees that each Affiliate will fully perform its obligations hereunder and Customer is responsible for any breach of this Agreement by its Affiliates.

2.2 **Term of License.** Software is licensed for the time period set forth in the applicable Order and either: (i) on a device basis, meaning Customer's right to use the Software is tied to the life of the Hardware on which it was originally installed (for clarity, the Software is not portable to new Hardware or third-party hardware) ("**Life of Device License**"); or (ii) on a subscription basis, meaning Customer has the right to use the Software or SaaS Services for the period of time set forth in the applicable Order and any renewals thereof ("**Subscription License**").

2.3 **Hardware Refresh Policy.** Certain Subscription Licenses may be eligible for a Hardware refresh or transfer to replacement Hardware in accordance with Rubrik's then-current Hardware Refresh Policy at https://www.rubrik.com/en/legal or as otherwise authorized by Rubrik in writing.

2.4 **SaaS Services Additional Terms**. If Customer acquires SaaS Services, subject to Customer's compliance with this Agreement and payment of all fees due, Rubrik grants Customer the limited, non-exclusive, non-transferable right to access and use the SaaS Services for the Term, solely for Customer's internal business purposes and for the number of users and/or the capacity specified in the applicable Order. Customer is solely responsible for maintaining the confidentiality of all usernames and passwords required for use of the SaaS Services and for all activities conducted in connection with the use of such passwords or access to the SaaS Services. Rubrik will use commercially reasonable efforts to provide consistent site availability for the SaaS Services during the Term (excluding scheduled maintenance and downtime, connectivity problems, Customer actions or misuse, or other matters outside Rubrik's reasonable control). Rubrik does not warrant or guarantee uninterrupted availability. Customer's use of the SaaS Services is subject to the Acceptable Use Policy ("**AUP**") at https://www.rubrik.com/en/legal. Rubrik reserves the right to suspend or terminate Customer's use of the SaaS Services if Rubrik becomes aware that Customer or any of its users use the SaaS Services in violation of the AUP, a material term of this Agreement, or any applicable law or regulations. Rubrik may also impose temporary limits on certain features and services or temporarily restrict Customer's access to parts of the SaaS Services for maintenance, support or system administration purposes without notice or liability. Rubrik agrees to provide commercially reasonable notice under the circumstances of any such suspension before its implementation. Customer is solely responsible for the accuracy, quality, integrity, and legality, of all Customer data stored or uploaded to the SaaS Services. Upon the termination of this Agreement or expiration of the Term, Customer will have no further rights to access the SaaS Services hereunder. For a period of thirty (30) days after such termination or expiration, upon Customer's prior written request, Rubrik will allow Customer limited access to retrieve any Customer data remaining on the SaaS Services. After such thirty (30) day period, Customer will have no further rights to access the SaaS Services.

2.5 **Product Specific Terms; Open Source.** Customer acknowledges and agrees that certain Products are subject to different or additional terms ("**Product Specific Terms**") available at https://www.rubrik.com/en/legal which may apply if purchased by Customer. The Software may contain or be provided with components subject to the terms and conditions of open source software licenses ("**Open Source Software**"). Nothing in this Agreement limits Customer's rights under, or grants Customer rights that supersede, the terms and conditions of any applicable Open Source Software end user license; however, the license to the Software in Section 2.1 (Software License) includes the right to use the Open Source Software incorporated in the Software in the same manner and to the same extent as the Software.

## 3. USE RESTRICTIONS. 
Customer will not, nor will Customer encourage or assist others to:

i. Copy, modify, encumber or distribute the Software, SaaS Services or Documentation (except for a reasonable number of copies of the Documentation for internal use);
ii. Reverse engineer, disassemble, decompile or otherwise attempt to discover the source code or structure, sequence and organization of the Products or create any derivative works including, without limitation, customization, translation or localization;
iii. Sell, license, sublicense, rent, lease, lend or transfer the Software or SaaS Services or use the Software or SaaS Services for the benefit of any third party, including but not limited to timesharing or service bureau purposes;

iv. Remove or obscure any proprietary notices on the Products or Documentation;
v. Publish or disclose to any third party any technical features, performance or benchmark tests, or comparative o competitive analyses relating to the Software or SaaS Services and Trial Products unless authorized in writing by Rubrik;
vi. Use any software without first purchasing the applicable license; or
vii. Use the Software or the SaaS Services for any purpose or in any manner not authorized by this Agreemen (including, without limitation, for any purpose competitive with Rubrik).

**4. PROPRIETARY RIGHTS**. Software, SaaS Services and Documentation are licensed to Customer and not sold. Rubril and its licensors retain all title, ownership rights, and intellectual property rights in and to the Software, SaaS Services and Documentation, in any form or format, along with all copies, and all tools, routines, programs and other technology used o provided in the provision of Support Services. The Software, SaaS Services and Documentation are protected by copyrigh and other intellectual property laws and by international treaties. This Agreement does not grant Customer any rights no expressly granted herein. All trademarks used in connection with the Software, Documentation and SaaS Services are ownec by Rubrik, its affiliates, licensors and other suppliers, and no license to use any such trademarks is provided hereunder Customer may elect to provide suggestions, comments for enhancements or functionality, or other feedback to Rubrik witl respect to the Products (including Trial Products), Support Services, and Professional Services ("**Feedback**"). Customer is no required to provide Feedback to Rubrik, but if Customer in its sole discretion provides Feedback, Customer hereby grants Rubrik a royalty-free, worldwide, transferable, sublicensable, irrevocable, perpetual license to use or incorporate into its products and services any Feedback as it sees fit without obligation or restriction of any kind. Customer will not provide any Feedback subject to any terms that would impose any obligation on or require attribution by Rubrik.

**5. ORDERS; FEES.** Customer will purchase Products from a Rubrik authorized reseller pursuant to a separate agreement between Customer and such reseller ("**Partner Agreement**"). Customer shall pay the reseller all amounts due and owing under an Order (along with all taxes, tariffs, and duties) in accordance with the Partner Agreement. The Partne Agreement is between Customer and the reseller and is not binding on Rubrik. In the event Customer places an Order in a third-party cloud marketplace in which Rubrik has agreed to participate: (i) Customer is responsible for payment of all fees (along with all taxes, tariffs, and duties) in accordance with the terms of the Order placed in such cloud marketplace; and (ii Hardware title will transfer upon delivery to Customer, FCA Origin (Rubrik or Rubrik's manufacturing facility), for shipment to the location specified in the Order.

**6. AUDIT.** During the Term and for a period of one (1) year thereafter, Rubrik (or its independent third-party auditors has the right to reasonably audit Customer's relevant facilities, systems, and records to confirm Customer's compliance witl this Agreement. Rubrik may conduct no more than one (1) audit per twelve (12) month period and Customer shall reasonably cooperate with Rubrik (or its independent third-party auditors) for such audit. If an audit discloses Customer has installed accessed, used, or otherwise permitted use and access to the Software or SaaS Services in a manner that is not permittec expressly by this Agreement, Customer agrees to reimburse the applicable channel partner, or Rubrik, promptly for any unpaic fees (if applicable). In addition, if such audit reveals underpayment or non-compliance in excess of 10% of fees payable by Customer, Customer agrees to reimburse Rubrik for all of Rubrik's reasonable expenses related to such audit.

**7. TRIAL PRODUCTS.**

7.1 **Trial Product Use.** Rubrik may provide certain Software, SaaS or Hardware products to Customer at no charge specifically for trial purposes ("**Trial Products**"). Subject to Customer's compliance with this Section 7 (Trial Products), Rubril grants Customer a limited, personal, non-exclusive, non-transferable, non-assignable, revocable right to install and use the Trial Products solely for internal, non-commercial evaluation purposes for thirty (30) days from Customer's receipt of the Tria Products, unless otherwise extended by Rubrik in writing in its sole discretion ("**Trial Term**"). In the event the Trial Products are not yet generally available and provided to Customer in an beta or other pre-release format, Customer acknowledges, as a condition of their use: (i) such Trial Products are under development and not at the level of performance or compatibility o generally available products; (ii) may not operate correctly, may contain errors, bugs, and design flaws; (iii) may be modifiec by Rubrik prior to being made generally available; (iv) may not be made available for general release; and (v) do not include Support Services. Customer agrees to use reasonable efforts to notify Rubrik of any bugs or problems in the Trial Products.

7.2 **Restrictions**. Customer will not upload or store Customer Personal Data or Customer Confidential Information into any Trial Product, and Customer will only use the Trial Products with non-production data in a non-production environment. I Customer elects to upload or store production data, Customer assumes all risk in doing so, and Rubrik shall have no liability with regard thereto, including for any loss or corruption of Customer data. Upon expiration or termination of the Trial Term Customer's right to use the Trial Product ends, and Customer's access to SaaS Services Trial Products will cease. Custome will email returns@rubrik.com for Trial Product return instructions. Customer shall securely delete all Customer data from the Trial Products upon termination or expiry of the Trial Term. Notwithstanding the foregoing, Customer is responsible for the Trial Products (except for reasonable wear and tear), until the Trial Products are back within Rubrik's possession and control

Customer acknowledges that any data remaining on any Trial Product returned to Rubrik may be disposed of or destroyed by Rubrik without any liability to Rubrik. At all times, Rubrik retains title and ownership to the Trial Products. RUBRIK, ITS SUPPLIERS, AND LICENSORS SHALL HAVE NO LIABILITY UNDER ANY LEGAL OR EQUITABLE THEORY IN RELATION TO TRIAL PRODUCTS FOR LOSSES, COSTS, OR DAMAGES OF ANY KIND IN EXCESS OF ONE THOUSAND DOLLARS ($1000).

**8. CONFIDENTIALITY.** Customer and Rubrik may disclose Confidential Information to each other during the Term. "**Confidential Information**" means all proprietary business and technical information disclosed by one Party ("**Disclosing Party**") to the other Party ("**Receiving Party**") which is in tangible form and labeled "confidential" or the like, or that reasonably should be understood to be confidential given the circumstances of disclosure and the nature of the information. Confidential Information includes, but is not limited to, the Products, Trial Products, Documentation, strategic roadmaps, product plans, product designs and architecture, technology and technical information, security processes, security audit reviews and business and marketing plans. Confidential Information will not include information that: (i) was already in Receiving Party's possession without confidentiality obligations; (ii) is rightfully received by Receiving Party without confidentiality obligations; (iii) is independently developed by the Receiving Party without use of or reference to the Disclosing Party's Confidential Information; or (iv) is publicly disclosed by the Disclosing Party. The Receiving Party will protect Confidential Information received from the Disclosing Party using the same degree of care as it uses to protect its own similar confidential materials, but in no event using less than reasonable care. The Receiving Party will disclose Confidential Information only to its employees, alliance partners or contractors who have a need to know for purposes of this Agreement and who are under a written obligation of confidentiality no less protective than this Agreement. Confidential Information may be disclosed in response to a subpoena or order of a court or governmental agency, provided however, that if not otherwise prohibited, the Receiving Party will notify the Disclosing Party promptly of such disclosure to enable the Disclosing Party to seek an appropriate protective order. The Parties' obligations with respect to Customer Personal Data are set forth in Section 9 (Security; Protection of Personal Data) rather than in this Section 8 (Confidentiality). Upon expiration or termination of this Agreement for any reason, the Receiving Party will, upon request, return or destroy the Disclosing Party's Confidential Information. Notwithstanding the foregoing, the Receiving Party may retain such copies of Disclosing Party's Confidential Information stored electronically on data archives or back-up systems or to comply with the laws or regulations applicable to the Receiving Party, provided that such copies shall at all times be subject to the terms of this Agreement while in Receiving Party's possession or control.

**9. SECURITY; PROTECTION OF PERSONAL DATA.** During the Term of this Agreement, Rubrik will implement and maintain commercially reasonable administrative, physical and technical safeguards and measures designed to address the security, confidentiality and availability of the Products, Support Services and Professional Services as more fully set forth in the Data Security Schedule to the Data Processing Addendum ("**DPA**") available at https://www.rubrik.com/en/legal. Customer acknowledges and agrees that the DPA will apply to the extent Rubrik is required to process Customer Personal Data in connection with the SaaS Services, Professional Services and Support Services. Customer must promptly notify Rubrik of any unauthorized use of or access to the Products purchased by Customer.

**10. SUPPORT.** Support Services for the Products are covered in the then-current Rubrik Hardware Warranty (if applicable) and Support Services Policy at https://www.rubrik.com/en/legal, which is incorporated by reference into this Agreement.

**11. PROFESSIONAL SERVICES**. Customer may place an Order for Professional Services. Professional Services may be performed by Rubrik or sub-contractors acting on Rubrik's behalf. In regard to Professional Services, Rubrik warrants that (i) it and each of its employees, consultants and subcontractors, if any, have the necessary knowledge, skills, experience, qualifications and resources to provide and perform the Professional Services; and (ii) the Professional Services will be performed in a professional and workmanlike manner in accordance with industry standards. Rubrik shall own all rights, title and interest in and to any deliverables provided to Customer and all related intellectual property rights (excluding Customer's Confidential Information), unless otherwise set forth in a mutually agreed upon Statement of Work ("**SOW**"). Except for those Professional Services with a term specified in an Order or SOW, all training Professional Services must be used within twelve (12) months of the date of the Order, and all other Professional Services must be used within six (6) months of the date of the Order, after which, all unused Professional Services will expire. Orders for Professional Services are not transferable to any other Product or Service. As a condition to Rubrik providing Professional Services hereunder, Customer shall: (a) provide good faith cooperation and access to such information, facilities, and equipment as may be reasonably required in order to provide the Professional Services; and (b) provide such personnel assistance as may be reasonably requested from time to time. If through no fault or delay by Customer, or any failure by Customer or Customer's representatives to perform in accordance with this Section 11 (Professional Services), the Professional Services do not conform to the foregoing warranty, and Customer notifies Rubrik within ten (10) days of Rubrik's completion of the Professional Services, Rubrik will re-perform the non-conforming portion(s) of the Professional Services at no additional cost to Customer.

**12. WARRANTIES AND DISCLAIMER.**

12.1 **Software Warranty.** Rubrik warrants to Customer, for ninety (90) days from the date of delivery ("**Software Warranty Period**"), the Software will conform in all material respects to the applicable Documentation ("**Software Warranty**"). Rubrik's delivery of any Update does not extend the Software Warranty Period applicable to the Software.

12.2 **SaaS Services Warranty.** Rubrik warrants to Customer during the Term ("**SaaS Services Warranty Period**"), the SaaS Services will conform in all material respects to the applicable Documentation ("**SaaS Services Warranty**").

12.3 **Remedy; Exclusions**. Rubrik's sole obligation under the Software Warranty or SaaS Services Warranty (as applicable), and Customer's exclusive remedy, is to use commercially reasonable efforts to correct the non-conformity during the applicable Software or SaaS Services Warranty Period. If Rubrik is not able to correct the non-conformity in the Software or SaaS Services (as applicable) such that it complies with the applicable Warranty, Rubrik will process a refund of the unused prepaid fees for such non-conforming Software or SaaS Services via the applicable channel partner. In the event of a refund in accordance with the foregoing, Customer's right to use the Software or SaaS Services for which the refund was processed terminates. Customer's obligation is to provide all information reasonably requested to enable Rubrik to cure the deficiencies. The foregoing warranties do not apply to any Software or SaaS Services (as applicable): (i) that are installed, operated, maintained, stored or used improperly, or in any manner not in accordance with the Documentation, this Agreement or Rubrik's written instructions; (ii) that are repaired, altered or modified other than by Rubrik or its authorized service provider; or (iii) where the issue is caused by any failure of third-party software or cloud services not supplied by Rubrik.

12.4 **Disclaimer of Warranties.** EXCEPT AS PROVIDED IN THIS AGREEMENT, AND TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW, RUBRIK AND ITS LICENSORS DISCLAIM ALL CONDITIONS, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. RUBRIK DOES NOT WARRANT AGAINST LOSS OR INACCURACY OF DATA, THAT THE OPERATION OF THE PRODUCTS WILL BE UNINTERRUPTED OR ERROR FREE OR THAT THE PRODUCTS WILL BE COMPATIBLE WITH ANY THIRD-PARTY SOFTWARE OR HARDWARE. RUBRIK, ITS SUPPLIERS AND LICENSORS ARE NOT LIABLE OR RESPONSIBLE FOR ANY WARRANTIES, EXPRESS OR IMPLIED, PROVIDED BY A CHANNEL PARTNER OR OTHER THIRD PARTY. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, TRIAL PRODUCTS ARE PROVIDED AND LICENSED TO CUSTOMER ON AN "AS IS" BASIS, AND ALL WARRANTIES AND INDEMNITIES WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, ARE EXCLUDED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAWS.

## 13. INDEMNIFICATION.

13.1 **Intellectual Property Indemnification.** Rubrik agrees to defend or settle, at Rubrik's option, a third-party claim or cause of action against Customer alleging that the Products infringe or misappropriate a U.S. patent or copyright of such third party ("**Claim**") and to pay damages finally awarded against Customer by a court of competent jurisdiction or as agreed to in a settlement. Rubrik's obligations hereunder do not apply with respect to any Claim that arises out of: (i) any unauthorized use, reproduction or distribution of the Products; (ii) use of the Products in combination with any other software or equipment not specified by the Documentation if such Claim would have been avoided without such combination; (iii) Products that were modified after delivery without Rubrik's prior written authorization; or (iv) Customer's continued use of the allegedly infringing Product after Rubrik supplied a modified or replacement non-infringing Product. If any Claim arises, Rubrik may, at its sole option and expense: (a) replace or modify the affected Product to make it non-infringing; (b) procure a license for Customer's continued use of the affected Product; or if (a) and (b) are not commercially viable (as determined by Rubrik in its sole discretion), accept return of the affected Products and terminate Customer's rights thereto, in which case Rubrik will process a pro-rated refund for the applicable prepaid unused fees for such Product covering the remainder of the Term via the applicable channel partner. For Life of the Device licensed Software and Hardware, the refund will be based on a straight-line amortization over a three (3) year term beginning on the date of initial delivery of the Software and Hardware. This Section 13.1 (Intellectual Property Indemnity) states Customer's sole and exclusive remedy, and Rubrik's sole liability, with respect to infringement of intellectual property rights.

13.2 **SaaS Services Indemnity**. Customer agrees to defend and indemnify Rubrik from and against any loss, damage, or cost arising from a third-party claim that Customer data stored or uploaded into the SaaS Services, or Customer's use of the SaaS Services (i) infringes an intellectual property right or misappropriates a trade secret of a third party; or (ii) violates the AUP or this Agreement.

13.3 **Indemnification Process**. As a condition of receiving indemnity as described in Section 13 (Indemnification), the party seeking the indemnity will provide the other party with: (i) prompt written notice of the claim, provided, however, that the failure to give such notice shall not relieve the indemnifying party of its obligations hereunder except to the extent that the indemnifying party is prejudiced by such failure; (ii) complete control over the defense and settlement of the claim (provided that the indemnifying party will not settle any claim without the other party's prior written permission if the settlement fails to unconditionally release the indemnified party from all liability pertaining to the claim, such permission not to be unreasonably withheld, delayed or conditioned); and (iii) reasonable assistance in connection with the defense and settlement of the claim.

**14. LIMITATION OF LIABILITY.**

14.1 **Disclaimer of Consequential Damages.** EXCEPT FOR CUSTOMER'S BREACH OF SECTIONS 2.1 (SOFTWARE LICENSE) AND 3 (USE RESTRICTIONS) OF THIS AGREEMENT, IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, LOST PROFITS OR REVENUE, LOSS OR CORRUPTION OF DATA OR THE COST OF COVER, HOWEVER CAUSED, WHETHER BASED IN CONTRACT, TORT, WARRANTY, NEGLIGENCE OR ANY OTHER THEORY OF LIABILITY, EVEN IF SUCH PARTY HAS BEEN ADVISED AS TO THE POSSIBILITY OF SUCH DAMAGES. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF INCIDENTAL, CONSEQUENTIAL OR OTHER DAMAGES. IN SUCH AN EVENT, THIS EXCLUSION WILL NOT APPLY TO THE EXTENT THE EXCLUSION IS PROHIBITED BY LAW.

14.2 **Limitation of Liability.** IN NO EVENT WILL RUBRIK'S, ITS AFFILIATES' AND ITS LICENSORS' TOTAL AND CUMULATIVE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE TOTAL FEES PAID BY CUSTOMER TO RUBRIK (OR TO THE APPLICABLE CHANNEL PARTNER) FOR THE PRODUCTS IN THE TWELVE (12) MONTHS PRECEDING THE DATE OF THE FIRST EVENT GIVING RISE TO LIABILITY UNDER THIS AGREEMENT. THE FOREGOING LIMITATION DOES NOT LIMIT OR EXCLUDE ANY LIABILITY FOR DEATH OR PERSONAL INJURY CAUSED BY NEGLIGENCE.

**15. TERM AND TERMINATION.**

15.1 **Term; Termination for Cause.** This Agreement begins on the Effective Date and continues until the end of the Term. Notwithstanding the foregoing, a Party may terminate this Agreement if the other Party: (i) materially breaches this Agreement and such breach is not cured within thirty (30) days of such Party's receipt of written notice describing the breach; or (ii) becomes insolvent, admits in writing of its inability to pay its debts as they mature, makes an assignment for the benefit of creditors, becomes subject to control of a trustee, receiver or similar authority, or becomes subject to any bankruptcy or insolvency proceeding.

15.2 **Post-Termination Obligations.** Upon expiration or termination of this Agreement, including if Customer does not renew its applicable Subscription License, the license granted hereunder will immediately terminate and Customer will stop using the Software. Customer will uninstall and destroy the Software and Documentation or undertake such actions as to ensure that the Software and Documentation will not be used after the effective date of termination. For clarity, upon termination or expiration, Customer loses entitlement to all Software features; however, Customer data will remain on the Hardware for archival purposes.

15.3 **Surviving Provisions.** Upon expiration or termination of this Agreement, the following sections will survive: Sections 1 (Definitions), 4 (Proprietary Rights), 5 (Orders; Fees), 6 (Audit), 7.2 (Restrictions) 8 (Confidentiality), 12.4 (Disclaimer of Warranties), 13 (Indemnification), 14 (Limitation of Liability), 15.2 (Post-Termination Obligations) 16 (General).

**16. GENERAL.**

16.1 **Independent Contractors.** The Parties are independent contractors under this Agreement and nothing herein shall authorize one Party to have, or hold itself out as having, any right or authority to incur any obligation on behalf of the other.

16.2 **Use of Business Contact Data.** Each Party consents to the use of its Business Contact Data by the other Party for the purposes of developing and maintaining the business relationship, and each Party will process the other Party's Business Contact Data consistent with applicable data protection laws and internal policies. Unless otherwise prohibited by applicable data protection laws, the receiving Party may transfer such data to, or access such data from, any country in which such Party or its Affiliates conduct business relating to this Agreement. Each Party will use reasonable and appropriate security measures to protect such Business Contact Data; and each Party undertakes to notify its personnel of the other Party's proposed use of such data, and other purposes as set out in the using Party's global data privacy policy. Customer may access Rubrik's privacy notice at https://www.rubrik.com/en/legal/privacy-policy.

16.3 **Assignment.** Customer will not, directly, indirectly, by operation of law or otherwise, assign all or any part of this Agreement or Customer's rights hereunder or delegate performance of any of Customer's duties hereunder without the prior written consent of Rubrik. Rubrik may assign this Agreement without obtaining Customer's consent: (i) to an Affiliate of Rubrik or (ii) to a successor in interest in connection with a merger, reorganization or a sale of all or substantially all of the assets of Rubrik. Any assignment in violation of the foregoing shall be void and without effect. Subject to the foregoing restrictions, this Agreement will be fully binding upon, inure to the benefit of and be enforceable by the parties and their permitted successors and assigns.

16.4 **Export Controls and Trade Laws.** Customer will comply with all applicable laws and regulations, including the Export Administration Regulations, the International Traffic in Arms Regulations, and economic sanctions programs implemented by the Office of Foreign Assets Control. Without limiting the foregoing, Customer agrees that Customer will not export, re-export download, or otherwise transmit Confidential Information or the Products: (i) to any country or region subject to a U.S. embargo or comprehensive trade sanctions; (ii) to any individual or entity identified on any U.S. Government restricted party lists (including the Consolidated Sanctions, Specially Designated Nationals, Denied Persons, Entity, or Unverified Lists); or (iii) to any end user with knowledge or reason to know that the Products or Confidential Information will be used for nuclear, chemical or biological weapons proliferation, or for missile-development purposes.

16.5 **Enhancement Data.** Rubrik may collect machine data generated by the Software and SaaS Services, together with Customer's usage metrics (collectively, "**Enhancement Data**"). Rubrik uses Enhancement Data to operate, manage, debug improve and secure the Software and SaaS Services and for internal analytical purposes. Enhancement Data include, but are not limited to, the amount of data scanned and moved, performance characteristics, and administrative user actions with the Products. For the avoidance of doubt, backups Customer creates using the Products are not Enhancement Data collected by Rubrik.

16.6 **Third Party Beneficiaries.** Nothing in this Agreement shall confer, or is intended to confer, on any third party any benefit or the right to enforce any term of this Agreement.

16.7 **U.S. Federal Government Users.** This Section 16.7 (U.S. Federal Government Users) applies only if Customer is a U.S. Federal Government Customer. The Software, SaaS Services and Documentation are "commercial" computer software and documentation, and are licensed in accordance with the rights articulated in applicable U.S. government acquisition regulations (e.g., FAR, DFARs) pertaining to commercial computer software and documentation. U.S. Federal Government customers will not be subject to Rubrik's applicable expenses associated with the cost of audit specified in Section 6 (Audit) of this Agreement. Disputes will be subject to resolution pursuant to the Contract Disputes Act of 1978. Nothing contained in this Agreement is meant to derogate the rights of the U.S. Department of Justice as identified in 28 U.S.C §516. All other terms remain in effect as written.

16.8 **Use of Name**. During the Term of the Agreement, Rubrik may refer to Customer as a Rubrik customer in sales and marketing materials and public statements, subject to Customer's trademark and logo usage guidelines if Customer provides such guidelines to Rubrik. Customer may send an email to Rubrik at stories@rubrik.com with its trademark and logo usage guidelines, or if Customer does not wish to be referred to as a Rubrik customer.

16.9 **Anti-corruption.** Each Party will comply with all applicable laws relating to anti-corruption or anti-bribery, including but not limited to the U.S. Foreign Corrupt Practices Act, as amended, the UK Bribery Act 2010, and legislation implementing the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. Customer agrees that it has not received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from any of Rubrik's employees, agents, resellers or subcontractors in connection with this Agreement and that Customer will use reasonable efforts to promptly notify Rubrik should Customer learn of any violation of this restriction.

16.10 **Severability**. In the event that any provision of this Agreement is declared by a court of competent jurisdiction to be illegal, void or unenforceable, such provision will be limited or eliminated to the extent necessary so that the remainder of this Agreement will continue in full force and effect.

16.11 **Nonwaiver.** The failure of Customer or Rubrik to enforce any provision of this Agreement will not be construed as a waiver of such provision or of any other provision of this Agreement.

16.12 **Force Majeure.** Neither Party shall be liable hereunder by reason of any failure or delay in the performance of its obligations under this Agreement to the extent caused by circumstances beyond the reasonable control of the Party including (without limitation) pandemics, strikes, shortages, riots, insurrection, fires, flood, storm, explosions, acts of God, internet service provider failures or delays, denial of services attacks or other similar causes, war, terrorism, governmental action, labor conditions, earthquakes, volcanic eruptions or material shortages.

16.13 **Integration; Order of Precedence.** This Agreement constitutes the entire agreement between Customer and Rubrik and supersedes any and all prior agreements or communications between the parties with regard to the subject matter hereof. In the event of any conflict or inconsistency between the terms of the Agreement and the Product Specific Terms, the Product Specific Terms shall prevail. This Agreement may not be amended or modified except by a writing that specifically refers to this Agreement and is signed by an authorized representative of both Customer and Rubrik. The terms of this Agreement shall supersede and control over any conflicting or additional terms and conditions of any purchase order, acknowledgement, confirmation or other document issued by or on behalf of Customer, and such documents are of no force or effect. Notwithstanding any agreement Customer may have previously accepted during the installation of any prior versions of the Products, this Agreement applies to the Software, SaaS Terms and any Updates or Upgrades (except to the extent such Updates or Upgrades are accompanied by new or additional terms, in which case the different terms apply prospectively and do not alter Customer's or Rubrik's rights relating to pre-updated Software).

16.14 **Ambiguities and Notices.** Customer and Rubrik have participated in the review of this Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting Party shall not apply in interpreting this

Agreement. The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against any Party. Any notices under this Agreement shall be delivered in writing. For Rubrik, notices shall be sent to legal@rubrik.com.

16.15 **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California, U.S.A., without applying conflict of law rules. With respect to all disputes and actions arising from or related to this Agreement, the Parties irrevocably consent to exclusive jurisdiction and venue in the state and federal courts located in Santa Clara County. The United Nations Convention of Contracts for the International Sale of Goods (1980) is hereby excluded in its entirety from application to this Agreement. Nothing in this Section 16.15 (Governing Law) will limit or restrict either Party from seeking injunctive or other equitable relief from a court of competent jurisdiction.

16.16 **Electronic Signature**. The Parties expressly agree that this Agreement may be signed electronically. In the event of a dispute where the law is unclear as to the treatment of electronic signatures, the U.S. Electronic Signatures in Global and National Commerce Act (“ESIGN”) controls.

**SURELOCK TECHNOLOGY**
320 S. Perry Street
Lawrenceville, GA 30046
Telephone: (678) 712-5346

# INVOICE

SURELOCK TECHNOLOGY

**BILL TO:**
**City of Norcross**
65 Lawrenceville St NW
Norcross, GA 30071

**SHIP TO:**
**City of Norcross**
65 Lawrenceville St NW
Norcross, GA 30071

| Printed | Order DT: | Cust # | Cust P.O. | Terms | Ship Via |
|---|---|---|---|---|---|
| 4/22/22 | 4/15/22 | | | DUE UPON RECEIPT | OTHER |

| QTY | U/M | ITEM/DESCRIPTION | LIST | UNIT PRICE | AMOUNT |
|---|---|---|---|---|---|
| | | **Rubrik R6408S APPL 4NODE 96TB PERP w/ Complete Pro, NASCD, M365 & Cld Vault** | | | |
| 1 | EA | **RUBRIK**<br>R6408S APPL 4NODE 96TB PERP | | $ 21,281.00 | $ 21,281.00 |
| 1 | EA | **RUBRIK**<br>1MO OF RUBRIK COMPLETE EDITION CLDS PRO FOR R6408 INCL RCDM<br>36 month support term billed upfront | | $ 62,315.00 | $ 62,315.00 |
| 2 | EA | **RUBRIK**<br>FIBER OPTIC OM3 LC/LC CABLE 3M CABL | | $ 86.00 | $ 172.00 |
| 2 | EA | **RUBRIK**<br>10G/1G DUAL RATE SFP+ TRANSCEIVCPNT | | $ 589.00 | $ 1,178.00 |
| 1 | EA | **RUBRIK**<br>BASIC SUP FOR HW PREPAY SVCS M-F 8AM-8PM SUP<br>36 month support term billed upfront | | $ 7,183.00 | $ 7,183.00 |
| 5 | EA | **RUBRIK**<br>RUBRIK CLOUD VAULT - BACKUP LICS TIER PER BETB BASIC SUP PREPAY<br>36 month support term billed upfront | | $ 1.00 | $ 5.00 |
| 1 | EA | **RUBRIK**<br>REMOTE CONSULTING FOR COMPLETE SVCS ED MUST BE USED WITHIN 6M OF SALE | | $ 1,449.00 | $ 1,449.00 |
| 14 | EA | **RUBRIK**<br>1MO OF RUBRIK NAS CLOUD DIRECT CLDS FOR 10 FETB INCL BASIC<br>12 month support term billed upfront | | $ 1,822.00 | $ 25,508.00 |
| 15 | EA | **RUBRIK**<br>1MO OF RUBRIK HOSTED LICS POLARIS FOR OFFICE 365 10 USERS 2<br>12 month support term billed upfront | | $ 164.00 | $ 2,460.00 |
| 100 | EA | **RUBRIK**<br>RUBRIK CLOUD VAULT ARCHIVE TIERLICS PER BETB BASIC SUPPORT PREPAY | | $ 94.00 | $ 9,400.00 |
| 1 | EA | **SURELOCK TECHNOLOGY PROFESSIONAL SERVICES**<br>Pre-Installaion and Configuration per Statement of Work (SOW) | | $ - | $ - |
| 1 | EA | **WASABI TECHNOLOGIES - 1 Year**<br>1st Year included for 175TB next year renewal will be $12,342 | | $ - | $ - |

**Annual Renewal for Software and cloud storage for police video**
1MO OF RUBRIK NAS CLOUD DIRECT CLDS FOR 10 FETB INCL BASIC12 month support term billed upfront 1MO OF RUBRIK HOSTED LICS POLARIS FOR OFFICE 365 10 USERS 2
RUBRIK CLOUD VAULT ARCHIVE TIERLICS PER BETB BASIC SUPPORT PREPAY
WASABI TECHNOLOGIES - 1 Year 175TB
$49,710 EST YRLY COST OF 2 & 3

| | |
|---|---|
| **Subtotal** | **$ 130,951.00** |
| **Sales Tax** | |
| **Quote Total** | **$ 130,951.00** |

**Sales Person: ALVIN JACOBS SR.**

**FREIGHT NOT INCLUDED - PRICES AND AVAILABILITY SUBJECT TO CHANGE**

# City of Norcross

## Legislation Details (With Details)

| | | | |
|---|---|---|---|
| **File #:** | 22-6502 | **Version:** | |
| **Type #:** | Agenda Item | **Status:** | Agenda Ready |
| **On Agenda:** | 6/21/2022 6:30 PM | **In Control:** | Policy Work Session |
| **Title:** | Noise Ordinance Text Amendment | | |
| **Sponsors:** | | | |
| **Code Sections:** | | | |

**Attachments:**

1. Agenda Report Cover Noise Ord Text Amend 062122
2. Norcross Noise Control Ordinance - Text Amendment June 2022 PWS

**Title**
**Noise Ordinance Text Amendment**

**Drafter**
**Bill Grogan**

65 Lawrenceville ST., NORCROSS, GEORGIA 30071
(770) 448-2122 **FAX** (770) 242-0824
http://www.norcrossga.net

MAYOR CRAIG NEWTON · MAYOR PRO TEM MATT MYERS · COUNCILMEMBER ANDREW HIXSON · COUNCILMEMBER JOSH BARE
COUNCILMEMBER BRUCE GAYNOR · COUNCILMEMBER ARLENE BECKLES · CITY MANAGER ERIC JOHNSON · CITY CLERK MONIQUE LANG

# Agenda Report

**To:** Mayor and Council

**From:** Bill Grogan, Chief of Police

**Meeting Date:** June 21, 2022 – Policy Work Session

**Item No.:** 22-6502

**Title:** Noise Ordinance Text Amendment

**CC:** Eric Johnson

**Recommendation**
Approve a minor text amendment correcting two days of the week in subsection 26-21(b) of the recently revised and adopted noise ordinance.

**Background**
In February, Council approved revisions to the noise ordinance. Since adoption, staff identified an error in the first sentence of subsection 26-21(b). The error, "Saturday and Sunday", should be "Friday and Saturday" to reflect the intended daily restrictions in that subsection of the ordinance.

Currently:
( b) Restrictions of 100 feet for 10:00 p.m. through 7:00 a.m. Sunday through Thursday and 11:00 p.m. through 7:00 a.m. on Saturday and Sunday.

Corrected:
( b) Restrictions of 100 feet for 10:00 p.m. through 7:00 a.m. Sunday through Thursday and 11:00 p.m. through 7:00 a.m. on Friday and Saturday.

**Financial Impact :** None

**Consistent with Comprehensive Plan?** NA

**Next Steps:** Council vote/approval.

**Attachment:** Amended Norcross City Ordinance Article II – Noise Control

**ORDINANCE NO. ___ -2022**

**AN AMENDMENT TO THE CITY CODE OF ORDINANCES, ARTICLE II OF CHAPTER 26 ENTITLED "NOISE CONTROL,"**
**TO REPEAL CONFLICTING ORDINANCES; TO PROVIDE FOR AN EFFECTIVE DATE, AND FOR OTHER PURPOSES AS STATED HEREIN:**

**WHEREAS,** the City Council of the City of Norcross, Georgia recognizes that excessive community noise is detrimental to individuals and the community in the enjoyment of life and property and in the conduct of business; and

**WHEREAS**, the City Council also recognizes that excessive noise negatively impacts tourism, economic development, and residents making it difficult for visitors, workers, and residents to enjoy places and activities; and

**WHEREAS**, the City Council recognizes that there has been much research concerning the effects of excessive noise which has been shown to have significant medical, social, and economic impacts; and

**WHEREAS**, the City Council further recognizes that uncontrolled excessive noise could be a hazard to the public health, welfare, safety, and quality of life of those living, working, and visiting the City of Norcross; and

**WHEREAS**, the City Council is authorized to adopt ordinances for the purpose of protecting and preserving the public health, safety, and welfare of the City and its residents; and

**WHEREAS**, the City Council has not undertaken an extensive review of the current Noise Control Ordinance since at least 2005; and

**WHEREAS**, since 2005, growth and urbanization of the City has continued, and the population has continued to increase, resulting in more individuals residing more closely together and businesses being conducted in closer proximity to residential neighborhoods; and

**WHEREAS**, since 2005, the City has experienced a growth in mixed-use developments where residential and commercial activities are conducted in close proximity within developments; and

**WHEREAS**, the City is more likely to attract and retain commercial enterprises and permanent residents if the City has ordinances in place to improve and maintain appropriate noise quality; and

**WHEREAS**, the City Council believes that it is necessary to the public health, welfare, safety, quality of life, and economic vitality of the City of Norcross and its residents and businesses to appropriately balance the rights of individuals to derive pleasure from various sources of sound with the rights of individuals to a peaceful and healthful environment; and

**WHEREAS**, the City Council believes that it is in the best interest of the City to revise the Noise Control Ordinance to more appropriately balance these interests and better meet the needs of residents and businesses within the City; and

**WHEREAS**, the Federal Government has long recognized the importance of promoting an environment free from noise that jeopardizes health and welfare of its citizens and businesses through the passage of the Noise Control Act of 1972; and

**WHEREAS**, the State of Georgia has also recognized the importance of noise control through the enactment of O.C.G.A. § 40-6-14(a), which regulates sound from cars and provides that "[i]t is unlawful for any person operating or occupying a motor vehicle on a street or highway to operate or amplify the sound produced by a radio, tape player, or other mechanical sound-making device or instrument from within the motor vehicle so that the sound is plainly audible at a distance of 100 feet or more from the motor vehicle;" and

**WHEREAS**, the City Council desires to protect the health, safety, and welfare of those residing in, visiting, or doing business in the City of Norcross through the reasonable regulation of certain noises; and

**WHEREAS**, the City Council desires to adopt reasonable regulations concerning noise that are clear to follow and can be effectively and efficiently enforced; and

**WHEREAS**, the adoption of the proposed Noise Control Ordinance has been duly noticed and advertised in accordance with Official Code of Georgia Annotated Section 25-10-2(c); and

**WHEREAS**, the City Council finds that the adoption of a new and revised Noise Control Ordinance is in the best interest of the City of Norcross to protect the health, safety, and welfare of its residents, visitors, and workers.

**ENACTING CLAUSE.** The Mayor and City Council of the City of Norcross, Georgia, hereby ordain that the adopted Code of Ordinances is hereby amended as more particularly set forth below. It is the intention of the Mayor and City Council, and it is hereby ordained that the following provisions shall become and be made a part of the Code of the City of Norcross, and the Sections in the Code in the Ordinance be numbered to accomplish that intention.

**I. AMENDMENT.**

Article II of Chapter 26 of the Code of Ordinances of the City of Norcross entitled "Noise Control" is hereby amended as follows:

By deleting Sec. 26-19 through Sec. 26-45 of Article II of Chapter 26, entitled “Noise Control,” in their entirety and substituting a new Article II, Sections 26-19 through 26-23, which sections read as follows:

“**ARTICLE II. – NOISE CONTROL.**

**Sec. 26-19. Purpose and standards.**

(a) *Purpose.* This article is enacted to protect, preserve and promote the health, safety and welfare of the citizens of the city through the control of noise. It is the intent of this article to establish standards that will reduce excessive community noises, which are harmful and otherwise detrimental to individuals and to the community in the enjoyment of life and property and in the conduct of business.

(b) *Sound measurement standards for law enforcement personnel.* For the purposes of this article, "plainly audible" shall mean any sound emanating from the specific sound-producing sources set forth below which can be heard from the distances set forth below, using the following sound measurement standards: Measurement shall be by the auditory senses of a person standing at a distance no less than the required minimum distance from the source of the sound. For music and other noise, words and phrases need not be discernable. For music and other noise, bass reverberations are included.

**Sec. 26-21. Prohibited Conduct.**

(a) Restrictions of 300 feet for 7:00 a.m. through 10:00 p.m. Sunday through Thursday and 7:00 a.m. through 11:00 p.m. on Friday and Saturday.

1. *Mechanical sound-making devices.* It is unlawful for any person or persons to play, use, operate, or permit to be played, used, or operated any radio receiving device, television, stereo, musical instrument, phonograph sound amplifier or other machines or devices for the producing, reproducing or amplifying of sound and/or noise at such a volume and in such a manner so as to create, or cause to be created, any noises or sounds which are plainly audible at a distance of 300 feet or more from the building, structure or vehicle, or in the case of real property, beyond the property limits, in which it is located, whichever is farthest, between the hours of 7:00 a.m. and 10:00 p.m. Sunday through Thursday and between the hours of 7:00 a.m. and 11:00 p.m. on Friday and Saturday.

2. *Human-produced sounds.* It is unlawful for any person or persons to yell, shout, hoot, whistle, or sing on the public streets or sidewalks or on private property so as to create, or cause to be created, any noises or sounds which are plainly audible at a distance of 300 feet or more from the place, building, structure, or in the case of real property, beyond the property limits, in which the person is located, whichever is farthest, between the hours of 7:00 a.m. and 10:00 p.m. Sunday through Thursday and between the hours of 7:00 a.m. and 11:00 p.m. on Friday and Saturday.

3. *Commercial advertising.* It is unlawful for any person or persons to use, operate, or permit to be used or operated any radio receiving device, musical instrument,

phonograph, loud speaker, sound amplifier or other machine or device for the production or reproduction of sound which is cast upon the public streets or other public property for the purpose of commercial advertising or which serves to attract the attention of the public to any building, structure or vehicle in such a manner so as to create, or cause to be created, any noises or sounds which are plainly audible at a distance of 300 feet or more from the source of the sound cast upon the public streets or other public property or from the building, structure, or in the case of real property, beyond the property limits, in which it is located, whichever is farthest, between the hours of 7:00 a.m. and 10:00 p.m. Sunday through Thursday and between the hours of 7:00 a.m. and 11:00 p.m. on Friday and Saturday.

4. *Party noise.* It is unlawful for any person or persons in charge of a party or other social event that occurs on any private property to allow that party or social event to produce noise in such a manner that such noise is plainly audible at a distance of 300 feet or more from the building or structure from which the noise is emanating or in the case of real property, beyond the property limits, on which the party or social event is located, whichever is farthest, between the hours of 7:00 a.m. and 10:00 p.m. Sunday through Thursday and between the hours of 7:00 a.m. and 11:00 p.m. on Friday and Saturday. For the purposes of this subsection, a "person in charge of a party or other social event" shall mean any adult person who resides in or on the premises involved in such party or social event and is present at such party or social event. For the purposes of this subsection, "noise" shall mean the same sounds, or any combination thereof, as described in subsections 1. or 2. above.

( b) Restrictions of 100 feet for 10:00 p.m. through 7:00 a.m. Sunday through Thursday and 11:00 p.m. through 7:00 a.m. on ~~Saturday~~ Friday and ~~Sunday~~Saturday.

1. *Mechanical sound-making devices.* It is unlawful for any person or persons to play, use, operate, or permit to be played, used, or operated any radio receiving device, television, stereo, musical instrument, phonograph sound amplifier or other machines or devices for the producing, reproducing or amplifying of sound and/or noise at such a volume and in such a manner so as to create, or cause to be created, any noises or sounds which are plainly audible at a distance of 100 feet or more from the building, structure, or motor vehicle or in the case of real property, beyond the property limits, in which it is located, whichever is farthest, between the hours of 10:00 p.m. and 7:00 a.m. Sunday through Thursday and between the hours of 11:00 p.m. and 7:00 a.m. on Saturday and Sunday.

2. *Human-produced sound.* It is unlawful for any person or persons to yell, shout, hoot, whistle, or sing on the public streets or sidewalks or on private property so as to create, or cause to be created, any noises or sounds which are plainly audible at a distance of 100 feet or more from the place on public streets and sidewalks, or in the case of private real property, beyond the property limits, on which the person is located, whichever is farthest, between the hours of 10:00 p.m. and 7:00 a.m. Sunday through Thursday and between the hours of 11:00 p.m. and 7:00 a.m. on Saturday and Sunday.

3. *Commercial advertising.* It is unlawful for any person or persons to use, operate, or permit to be used or operated any radio receiving device, musical instrument, phonograph, loud speaker, sound amplifier or other machine or device for the production or reproduction of sound which is cast upon the public streets or other public property for the purpose of commercial advertising or which serves to attract the attention of the public to any building, structure or vehicle in such a manner so as to create, or cause to be created, any noises or sounds which are plainly audible at a distance of 100 feet or more from the source of the sound cast upon the public streets or other public property or from the building, structure, or in the case of real property, beyond the property limits, in which it is located, whichever is farthest, between the hours of 10:00 p.m. and 7:00 a.m. Sunday through Thursday and between the hours of 11:00 p.m. and 7:00 a.m. on Saturday and Sunday.

4. *Party noise.* It is unlawful for any person or persons in charge of a party or other social event that occurs on any private property to allow that party or event to produce noise in such a manner so as to such noise is plainly audible at a distance of 100 feet or more from the building or structure from which the party noise is emanating or in the case of real property, beyond the property limits, on which the party or social event is located, whichever is farthest, between the hours of 10:00 p.m. and 7:00 a.m. Sunday through Thursday and between the hours of 11:00 p.m. and 7:00 a.m. on Saturday and Sunday. For the purposes of this subsection, a "person in charge of a party or other social event" shall mean any adult person who resides in or on the premises involved in such party or social event and is present at such party or social event. For the purposes of this subsection, "noise" shall mean the same sounds, or any combination thereof, as described in subsections 1. or 2. above.

(c) Restrictions for areas within apartments, condominiums, townhouses, duplexes, or other such residential dwelling units.

1. Except for persons within commercial enterprises that have an adjoining property line or boundary with a residential dwelling unit, it is unlawful for any person to make, continue, or cause to be made or continued any noise in such a manner as to be plainly audible to any other person a distance of five feet beyond the adjoining property line wall or boundary of any apartment, condominium, townhouse, duplex, or other such residential dwelling units with adjoining points of contact.

2. For the purposes of this subsection, "noise" shall mean human-produced sounds of yelling, shouting, hooting, whistling, singing, or mechanically produced sounds made by radio-receiving device, television, stereo, musical instrument, phonograph sound amplifier or other machines or devices for the producing, reproducing, or amplifying of sound, or any combination thereof.

3. For the purposes of this subsection (c), "property line or boundary" shall mean an imaginary line drawn through the points of contact of (1) adjoining apartments, condominiums, townhouses, duplexes, or other such residential dwelling units with adjoining points owned, rented, or leased by different persons; or (2)

adjoining common areas or adjoining exterior walls. Said property line or boundary includes all points of a plane formed by projecting the property line or boundary including the ceiling, the floor, and the walls.

(d) *Restrictions regarding noise produced by consumer fireworks*. The use or ignition of consumer fireworks as defined in O.C.G.A. § 25-10-1 that willfully make, continue, or cause to be made or continued any excessive, or unusually loud noise, except during the following dates and times:

1. On January 1, the last Saturday and Sunday in May, July 3, July 4, the first Monday in September and December 31 beginning at the time of 10:00 a.m. and up to and including the ending time of 11:59 p.m.; and

2. On January 1 of each year beginning at the time of 12:00 midnight and up to and including the ending time of 1:00 a.m.

3. For the purposes of this section, the term "consumer fireworks" shall have the meaning set forth in O.C.G.A. § 25-10-1(a)(1), but such term shall not include those items excluded therefrom in O.C.G.A. § 25-10-1(b) as such code section is enacted or as may be amended in the future.

(e) *Exclusions.* The prohibitions of this section shall not apply to the following:

1. Noises and/or sounds caused to be made by manufacturing, governmental, or commercial entities in the normal course of their business;

2. Noises and/or sounds emanating from any official private school event at a private school located in the city or any official county school district event on county school district property;

3. Noises or sounds made by domestic animals, which noises or sounds are controlled by section 6-1;

4. Sound volumes produced by radio, tape player, or other mechanical sound making device or instrument from within a motor vehicle on a street or highway, which sound is controlled by the O.C.G.A. § 40-6-14; or

5. Noises or sounds made by law enforcement and other public safety officials performing their public functions.

(f) *Landscape maintenance devices.* Time restrictions on use of landscape maintenance motorized devices such as leaf blowers, lawn mowers, or chain saws. It is unlawful for any person to use or operate any noise- generating, motorized landscape maintenance devices, including, but not limited to, leaf blowers, lawn mowers, or chain saws, within any residential zoning district or in areas within 300 feet of any residential zoning district from 9:00 p.m. to 8:00 a.m.

(g) *Construction noise.*

1. Noises from exterior site and building construction activity are exempt from this section between the hours of 8:00 a.m. and 10:00 p.m. on weekdays and 10:00

a.m. and 8:00 p.m. on Saturdays and holidays. Exterior site and building construction activity may occur on Sundays and outside of hours specified above on other days of the week when the contractor applies for, and is granted, a variance by the Director of Community Development and Planning as outlined below.

2. Interior construction activity may take place between the hours of 7:00 a.m. and 10:00 p.m. weekdays and Saturdays. Interior construction may take place between the hours of 10:00 a.m. and 10:00 p.m. on Sunday and holidays when the contractor applies for, and is granted, a permit by the Director of Community Development and Planning.

(h) *Variances.* A variance from the above-referenced hours/days of operation for construction noise may be requested, in writing, at least 48 hours prior to the proposed construction operation, for consideration by the Community Development Director or his/her designee. Such a request shall state:

1. The reasons that support a claim of need based on specific loss or inconvenience or weather-related considerations for such a variation from the allowable workdays/hours;
2. The impact that the denial of this request would have on the applicant's project and the surrounding properties;
3. The steps which have been taken by the applicant to communicate those needs and impacts to owners of surrounding and nearby properties;
4. The steps that have or will be taken to limit the impact of the proposed activity upon surrounding and nearby properties; and
5. The possible risks to public health and safety.

If the Director finds that the application adequately demonstrates the need for a variance from the above allowable workdays/hours, adequately provides for mitigation of the impact upon surrounding and nearby properties and poses no additional risk to public health and safety, then permission shall be granted for a variance to alter the allowable workdays/hours during one ten-day period. There shall be no more than three requests in any calendar year approved administratively for any one construction project. Each new request must be a minimum of 30 days from the end date of the most recently approved request.

The prohibitions of this subsection (h) shall not apply to government road, water, sewer, stormwater construction or maintenance projects or other government construction projects or to utility company construction or maintenance projects.

(i) *Commercial entities near single-family residential zoning districts.*

1. Notwithstanding any provisions of this section concerning noises and/or sounds caused to be made by commercial entities in the normal course of their business, the provisions and prohibitions of Sec. 26-21, entitled “Prohibited Conduct,” subsection (a), concerning "restrictions of 300 feet for 7:00 a.m. through 11:00 p.m. Sunday through Thursday and 7:00 a.m. through 12:00 midnight on Friday and Saturday" and its subparts 1. through 4. shall apply to noises and/or sounds

generated by a commercial entity that are plainly audible within any single-family residential zoning district more than 300 feet beyond the property boundary of the property from which the noises and/or sounds emanate.

2. Notwithstanding any provisions of this section concerning noises and/or sounds caused to be made by commercial entities in the normal course of their business, the provisions and prohibitions of Sec. 26-21 entitled “prohibited Conduct,” subsection (b), concerning "restrictions of 100 feet for 11:00 p.m. through 7:00 a.m. Sunday through Thursday and 12:00 midnight through 7:00 a.m. on Friday and Saturday," and its subparts a. through c. shall apply to noises and/or sounds generated by a commercial entity that are plainly audible within any single-family residential zoning district more than 100 feet beyond the property boundary of the property from which the noises and/or sounds emanate.

(j) *Engine, muffler and/or exhaust system noise*. No person shall use, operate, or cause to be used or operated any motor vehicle equipped (or the failure to be equipped) with an engine, muffler, muffler cutout, muffler bypass, bypass, muffler system, exhaust system, or similar device which causes a noise or sound which is plainly audible at a distance of 100 feet or more from the motor vehicle.

**Sec. 26-22. - Penalties.**

Any person violating the provisions of this article may, upon conviction, be punished in accordance with section 10-17.

**Sec. 26-23. - Responsibility for enforcement.**

The city police department shall have the responsibility for the enforcement of this article.”

**II. SEVERABILITY.**

In the event that any section, subsection, sentence, clause, or phrase of this Ordinance shall be declared or adjudged invalid or unconstitutional, such adjunction shall in manner affect the other sections, sentences, clauses, or phrases of this Ordinance, which shall remain in full force and effect, as if the section, subsection, sentence, clause, or phrase so declared or adjudged invalid or unconstitutional were not originally part thereof.

**III. REPEALER.**

All ordinances and parts of ordinances in conflict with this Ordinance are hereby repealed.

**IV. EFFECTIVE DATE.**

This Ordinance shall become effective immediately and shall remain in effect until revised or repealed by further action the Mayor and Council of the City of Norcross.

IN WITNESS WHEREOF, I have hereunto set my hand and cause this seal to be affixed this _____ day of ________________, 2022.

______________________________________

Craig Newton, Mayor

ATTEST:

______________________________

Monique Lang, City Clerk

# City of Norcross

## Legislation Details (With Details)

| | | | |
|---|---|---|---|
| **File #:** | 22-6503 | **Version:** | |
| **Type #:** | Agenda Item | **Status:** | Agenda Ready |
| **On Agenda:** | 6/21/2022 6:30 PM | **In Control:** | Policy Work Session |
| **Title:** | Bolton Circle Pavement Resurfacing Private Agreement with CarMax | | |

**Sponsors:**

**Code Sections:**

**Attachments:**

1. Agenda Report - Bolton Circle
2. CarMax Private Development Agreement
3. GC GIS Map
4. Norcross Carmax Site Plan

**Title**
**Bolton Circle Pavement Resurfacing Private Agreement with CarMax**

**Drafter**
**Matthew Zaki**

65 Lawrenceville ST., NORCROSS, GEORGIA 30071
(770) 448-2122 **FAX** (770) 242-0824
http://www.norcrossga.net

**UPON RECORDING RETURN TO:**
**Thompson, O'Brien, Kappler & Nasuti, P.C.**
**2 Sun Court, Ste 400**
**Peachtree Corners, GA 30092**
**Attention: J. Patrick O'Brien**

**STATE OF GEORGIA**

**COUNTY OF GWINNETT**

# PRIVATE DEVELOPMENT AGREEMENT

**WHEREAS**, the Georgia Development Impact Fee Act, O.C.G.A. §§ 36-71-1 through 36-71-13 (the "Impact Fee Act"), neither prevents nor prohibits private agreements between private entities and cities regarding the construction or installation of transportation system improvements as defined by the Impact Fee Act; and

**WHEREAS**, the City of Norcross adopted its Unified Development Ordinance on June 3, 2019; and

**WHEREAS**, Norcross' Unified Development Ordinance allows a developer to enter into a private development agreement with the City providing for the developer to pay its fair share of the cost of system improvements that are reasonably attributed to the subject development as determined by the City; and

**WHEREAS**, CarMax Auto Superstores, Inc. ("CarMax"), operates a business on certain property consisting of two parcels of land identified as Parcel R6212 151 (owned by Daboo LLC and leased to CarMax) and Parcel R6212 001 (owned by CarMax Auto Superstores, Inc.) in the property records of Gwinnett County, Georgia (together, the "Property"), which is located in the City of Norcross, a municipal corporation (the "City") and described in Exhibit "A," the Property and a proposed development of the "Norcross CarMax Lot Expansion" on the Property (the "Development") being the subject of a Commercial Development Permit application previously approved by the City (the "Application"); and

**WHEREAS**, the City and the CarMax, their respective successors and assigns, desire to provide certain improvements to portions of a city-owned street, Bolton Circle, (the "Road Improvements") contemporaneously with the construction of the Development; and

**WHEREAS**, the City and CarMax desire the Road Improvements be limited to the existing pavement width and right-of-way and that the pavement cross-section be equivalent to that currently in place; and

**WHEREAS**, the City and CarMax have voluntarily agreed to enter into this Private Development Agreement (the "Agreement") pursuant to O.C.G.A. § 36-71-13 to support the construction of such Road Improvements; and

**WHEREAS**, in the interest of public safety and convenience, in the event the Development is constructed by CarMax, CarMax desires to provide its reasonable share of the funding for such Road Improvements; and

**WHEREAS**, the City has determined the public interest is best served by the City having responsibility for designing and constructing the Road Improvements described herein in full cooperation with CarMax; and

**WHEREAS**, the City and CarMax agree that the construction and occupancy of the Development shall be contingent on CarMax's agreement to pay its reasonable share of the cost of the design and construction of the Road Improvements; and

**WHEREAS**, the City and CarMax agree it is necessary for the Road Improvements to be designed and constructed in a timely manner, as set forth herein; and

**WHEREAS,** the City and CarMax now desire to set forth their mutual understandings concerning the contemplated funding, design, and construction of the Road Improvements.

**NOW, THEREFORE**, for and in consideration of Ten and 00/100 Dollars ($10.00), the receipt and sufficiency of which are hereby acknowledged, the City and CarMax, their successors, and assigns, do hereby agree as follows:

**I. Road Improvements to Bolton Circle to be Completed by City.**

A. The City agrees to construct certain Road Improvements on Bolton Circle from Beaver Ruin Road past the proposed ingress/egress to the CarMax Development the intersection with Beaver Ruin Road approximately 880 LF past the ingress/egress to the CarMax Development (the "Road Improvements") in return for CarMax's payment for its reasonable share of the Cost of such Road Improvements as provided in Section II, below.

B. The City shall advertise for competitive sealed bids ("CSB") to construct the Road Improvements no later than two (2) months after the City issues CarMax all necessary permits for the construction of Development in substantial conformance with the

Conceptual Site Plan attached hereto as Exhibit "B" which depicts a parking expansion that will connect to CarMax's existing parking lot (the "CarMax Development"), or such earlier time as the parties may agree.

C. The City shall issue a notice to proceed ("NTP") to its contractor to begin construction within thirty (30) days after the selection of the lowest responsive, responsible bidder to construct the Road Improvements based on the responses to the CSB. The parties acknowledge that the City reserves the right to reject all bids and readvertise for competitive sealed bids to construct the Road Improvements in its sole discretion.

D. The Road Improvements shall be constructed pursuant to drawings and specification acceptable to the City. Attached hereto as Exhibit "C" is the Geotechnical Report and Pavement Assessment prepared by the City's consultant which is anticipated to be the basis of the design of said Road Improvements. The City anticipates that the Road Improvements will involve a full depth reclamation cross section that is equivalent to pavement replacement.

E. The City intends to construct the entirety of the Road Improvements within the existing right of way and does not anticipate the need to acquire any property rights from any adjacent landowners, including but not limited to CarMax or Daboo LLC.

F. Should the City need to acquire any additional right of way from any adjacent property owners, the parties agree that the cost of acquiring such right-of-way, private easement agreements, and any other rights required from adjoining property owners in connection with the construction of the Road Improvements shall be included in the cost of the Road Improvements described in Sections II and III below, but shall be borne by the City should such costs exceed the CarMax Contribution as such term is defined in Section II. B. below.

G. The City and its Contractor will coordinate its construction with CarMax so as to minimize any disruption to CarMax's business operations to the extent practicable and economically feasible.

H. Any cost overrun above the amount of the CarMax Contribution shall be borne by the City.

**II. CarMax Payment for Cost of Road Improvements.**

A. CarMax shall contribute toward the cost of the design and construction of the Road Improvements as provided in this Section II.

B. Within 30 days following the date the City issues all necessary permits for the Development depicted on the Conceptual Site Plan attached hereto as Exhibit "B," but for the land disturbance permit ("LDP") and the certificate of development conformance ("CDC"), CarMax will escrow into an interest-bearing account funds (the "CarMax Contribution") in an amount equal to $175,000.00 (One Hundred Seventy-

Five Thousand Dollars), such amount being estimated to be sufficient to cover CarMax's reasonable share of the cost of the Road Improvements.

C. The CarMax Contribution will be escrowed with the law firm of Thompson, O'Brien, Kappler & Nasuti, P.C., 2 Sun Court, Ste 400, Peachtree Corners, GA 30092. The amount of the CarMax Contribution as determined by this Section II will be CarMax's total contribution towards the construction of the Road Improvements.

D. The term of the escrow agreement will be two (2) years after the date the escrow agreement is signed, and the CarMax Contribution is deposited with the escrow holder (the "Deposit Date"). Should the City not complete construction of the Road Improvements by the end of the escrow term, the remaining amount of the CarMax Contribution, including interest, shall be returned to CarMax.

E. In the event the actual cost of the Road Improvements is less than the amount of the CarMax Contribution, the City shall refund all excess funds and interest on such funds to CarMax within thirty (30) days of the completion of the Road Improvements and acceptance of the same by the City.

F. In the event that the actual cost of the Road Improvements exceeds the amount of the CarMax Contribution, such costs shall be borne by the City and CarMax shall not be required to pay any portion of the cost overrun.

**III. Release of the Land Disturbance Permit ("LDP").**

A. After CarMax and its contractor have complied with all Federal, State and Local laws, including but not limited to the Norcross Unified Development and Stormwater Management Ordinances, and have received approval from the Georgia Soil Water Conservation Commission (GSWCC) for the CarMax Development pertaining to the issuance of the LDP, the City shall release the LDP within five (5) business days of the deposit of the CarMax Contribution to the Escrow Account.

B. CarMax acknowledges and agrees that the City makes no other promise or guarantees of issuing a certificate of development conformance or any other permits in return for the CarMax Contribution, other than the issuance of the LDP upon the satisfaction of the conditions set forth in Section III. A above.

C. CarMax acknowledges and agrees that it is solely responsible for compliance with all Federal, State and Local laws, including but not limited to the Norcross Unified Development and Stormwater Management Ordinances, pertaining to the issuance of any permits or certificates.

D. Upon the completion of the CarMax Development, CarMax acknowledges that it shall provide all information necessary for the City to issue a Certificate of Development Conformance confirming that the development was constructed in conformance with the City of Norcross Code and that all infrastructure is in place according to the construction plans approved by the City.

E. As long as CarMax performs its obligations under this Agreement in good faith, the City agrees that the design and construction of the Road Improvements, in whole or in part, shall not be a condition precedent to the issuance of any permits or other approvals required to construct or occupy the Development other than the LDP set forth in this Agreement.

**IV. Construction of the CarMax Development.**

A. By this Agreement, the parties hereto acknowledge, understand, and agree that, if CarMax constructs the Development, CarMax shall remain responsible for completing at its own expense all project improvements as may be required pursuant to the plans and drawings approved by the City of Norcross.

B. CarMax and City further agree that CarMax shall diligently pursue the construction and completion of the Development upon issuance by the City of all necessary permits for the construction of such Development.

C. Upon completion of construction of the Development, CarMax shall submit all necessary information for the City to issue a Certificate of Development Conformance ("CDC") confirming that the Development was built in conformance with the City of Norcross Code and that all infrastructure is in place according to the construction plans approved by the City as required by Norcross Code Section 402-25.

**V. Miscellaneous.**

A. Interpretation. In this Agreement the neuter gender includes the feminine and masculine, and the singular number includes the plural, and the words "person" and "party" include corporation, partnership, individual, form, trust, or association wherever the context so requires.

B. Time of Essence. The parties hereby agree that this Agreement was entered into with the understanding that time is of the essence.

C. Severability. In the event any provision, or any portion of any provision, of this Agreement shall be deemed to be invalid, illegal, or unenforceable by a court of competent jurisdiction, such invalid, illegal or unenforceable provision or portion of a provision shall not alter the remaining portion of any provision or any other provision, as each provision of this Agreement shall be deemed to be severable from all other provisions.

D. Inurement. This Agreement shall be binding upon and inure to the benefit of the successors and assigns, if any, of the respective parties hereto.

E. Date of Agreement. The date of this Agreement shall be the date the last party signs a fully executed copy of the Agreement.

**VI. Modification of Agreement.**

No modification of this Agreement shall be deemed effective unless in writing and signed by the parties hereto, and any waiver granted shall not be deemed effective except for the instance and in the circumstances particularly specified therein and unless in writing and executed by the party against whom enforcement of the waiver is sought.

**VII. Entire Contract.**

This Agreement constitutes the entire agreement between the parties for the lease of the respective properties. All terms and conditions contained in any other writings previously executed by the parties regarding the respective properties shall be deemed to be superseded.

**VIII. Mutual Drafting.**

Each party has participated in the drafting of this Agreement and the provisions of this Agreement shall not be construed against or in favor of either party.

**IX. Governing Law.**

This Agreement and the rights and obligations of the parties hereto shall be governed, construed, and interpreted according to the laws of the State of Georgia.

**X. Notices.**

Any notices required or permitted to be given under this Agreement to the other party shall be in writing, postage pre-paid and will be sent by fax transmission, overnight delivery by courier of choice or registered or certified mail to:

Notices will be given as follows:

**IF TO CITY:**
Eric Johnson
City Manager
City of Norcross
65 Lawrenceville Street
Norcross, Georgia 30071

With copy to: J. Patrick O'Brien Esq.
City of Norcross City Attorney

Thompson, O'Brien, Kappler & Nasuti, P.C.
2 Sun Court, Suite 400
Peachtree Corners, Georgia 30092

**IF TO CARMAX:**
Mr. Douglass Moyers-
Vice President - Real Estate
CarMax Auto Superstores, Inc.
12800 Tuckahoe Creek Parkway
Richmond, Virginia 23238

With copy to: David C. Kirk, Esq.
Troutman Pepper Hamilton Sanders LLP
600 Peachtree Street, NE
Suite 3000
Atlanta, Georgia 30308

Each party may, in its sole discretion, designate alternate or additional notice recipients by providing written notice of such designation to the other party.

**XI. APPROVAL BY MAYOR AND CITY COUNCIL.**

Approval of this Agreement by the City is contingent on an affirmative vote by the Mayor and Council of the City of Norcross in a public meeting consistent with the requirements of the Georgia Open Meetings Act, O.C.G.A. § 50-14-1 *et seq.* and shall be authenticated by the subsequent execution of this Agreement by the Mayor of the City of Norcross after such affirmative vote.

**SO AGREED** this ______ day of ________________, 2022.

**[SIGNATURES START NEXT PAGE]**

**NOTARY:**

**CARMAX AUTO SUPERSTORES, INC.,**

Sworn to and subscribed before me this _____ day of _______________, 2022.

By:_________________________________________

Name: ______________________________________

______________________________
NOTARY PUBLIC

Title: _______________________________________

My Commission Expires:_________

**[SIGNATURES CONTINUED NEXT PAGE]**

**CITY OF NORCROSS, GEORGIA**

BY:____________________________________
CRAIG NEWTON
MAYOR, CITY OF NORCROSS

DATE:__________________________________

**APPROVED AS TO FORM:**

ATTEST:________________________
CITY CLERK

BY:____________________________________
CITY ATTORNEY

DATE:__________________________________

**EXHIBIT "A"**
**(to Private Development Agreement)**

**DESCRIPTION OF PROPERTY**

******************************

TO BE ADDED

**EXHIBIT "B"**
**(to Private Development Agreement)**

**CONCEPTUAL SITE PLAN OF DEVELOPMENT**

TO BE ADDED

# EXHIBIT "C"
## (to Private Development Agreement)

## GEOTECHNICAL REPORT AND PAVEMENT ASSESSMENT

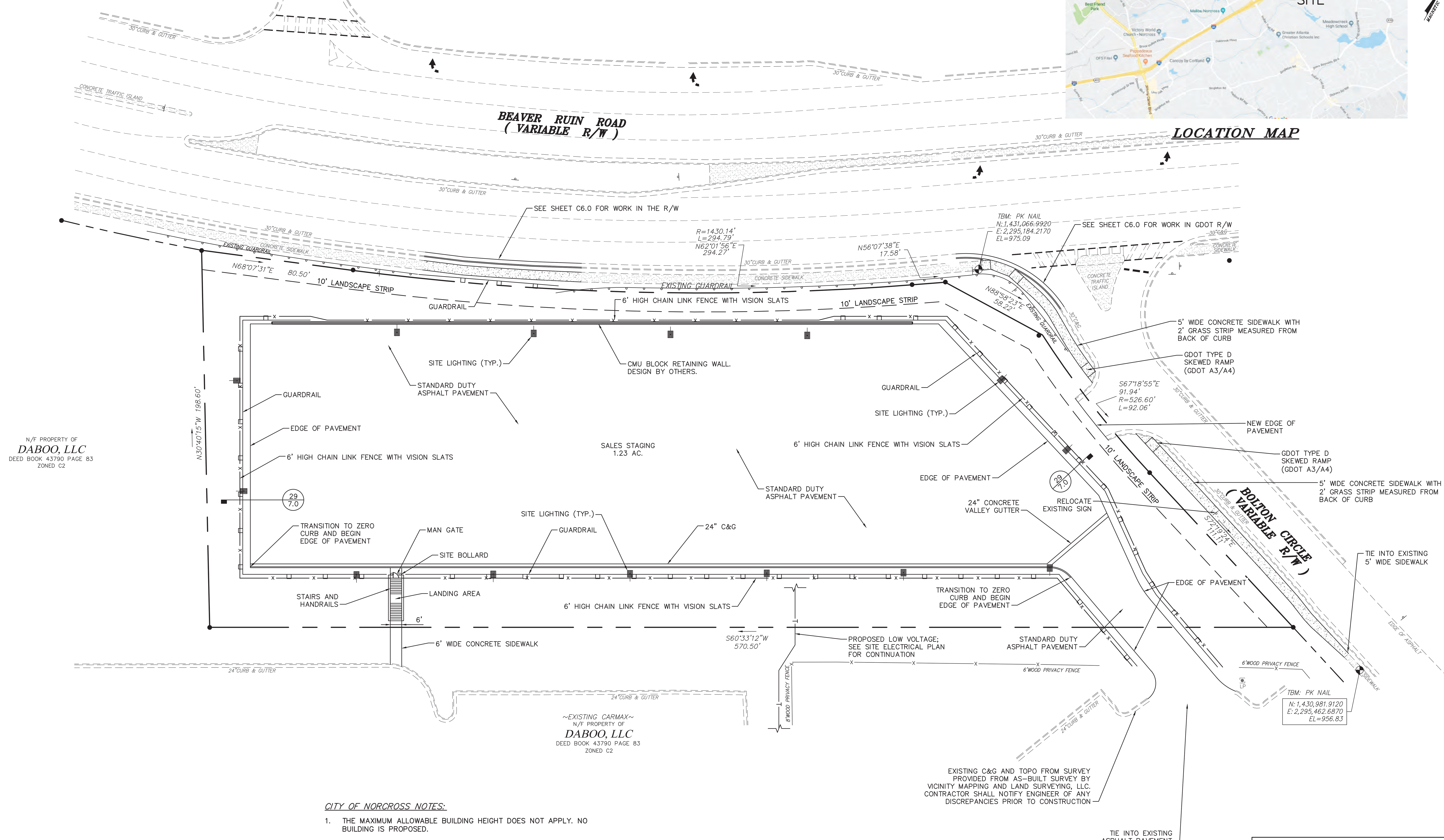
TO BE ADDED

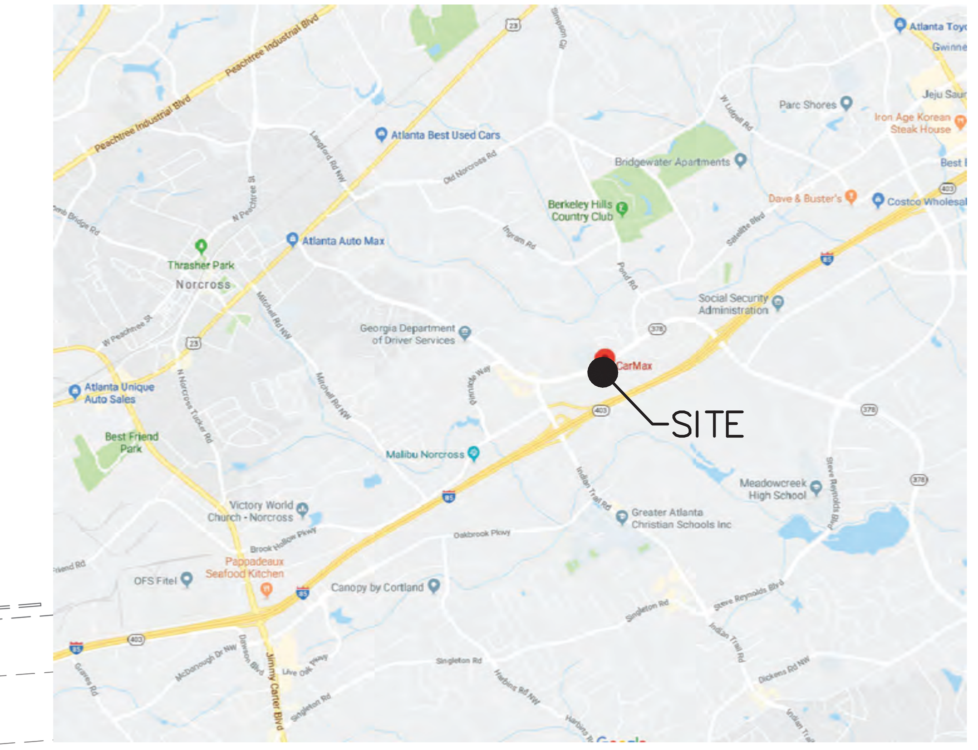
2481530_1.docx

# Aerial Map

Norcross Proposed Lot Expansion


Attachment: GC GIS Map (22-6503 : Bolton Circle Pavement Resurfacing Private Agreement with CarMax)




LOCATION MAP

HAINES GIPSON & ASSOCIATES
Civil • Structural • Bridge

# NORCROSS CARMAX LOT EXPANSION

GEORGIA REGISTERED PROFESSIONAL ENGINEER No. 034662 JOSEPH C. McCOY

GSWCC CERT. #72084

LATEST DA/PC

DRAWN BY: JCM

CHECKED BY: RCL

REVISIONS

| REV # | DATE | DESCRIPTION | BY |
|---|---|---|---|
| | 6/15/21 | REVIEW COMMENTS | JCM |

CARMAX THE AUTO SUPERSTORE
CARMAX THE AUTO SUPERSTORE WEST COAST, INC.
12800 TUCKAHOE CREEK PARKWAY, RICHMOND, VA 23238
(804) 747-0422

STORE NO. 7104
1951 BEAVER RUIN ROAD
NORCROSS, GA 30093

PROJECT NO

DATE 05/06/21

SHEET TITLE SITE PLAN

SHEET NO C1.0

## CITY OF NORCROSS NOTES:

1. THE MAXIMUM ALLOWABLE BUILDING HEIGHT DOES NOT APPLY. NO BUILDING IS PROPOSED.
2. A SEPARATE BUILDING PERMIT SHALL BE OBTAINED FOR ALL RETAINING WALLS GREATER THAN 4 FEET IN HEIGHT AND ALL RETAINING WALLS USED AS A DAM PRIOR TO CONSTRUCTION OF THE WALLS.
3. NO SIGNAGE IS PROPOSED AT THIS TIME. APPROPRIATE SIGN PERMITS ARE TO BE OBTAINED AT A LATER DATE.
4. NO DRIVE–UP WINDOWS ARE TO BE INSTALLED.
5. HIGH INTENSITY LIGHTING FACILITIES SHALL BE SO ARRANGED THAT THE SOURCE OF ANY LIGHTS IS CONCEALED FROM PUBLIC VIEW AND FROM ADJACENT PROPERTY AND DOES NOT INTERFERE WITH TRAFFIC.
6. PARKING LOTS SHALL BE MAINTAINED IN GOOD CONDITION, FREE OF POTHOLES, WEEDS, DUST, TRASH, AND DEBRIS.
7. PROPOSED BUILDING USE IS NOT APPLICABLE. NO BUILDING IS PROPOSED.
8. NO ROOF OVERHANGS OR CANOPIES ARE PROPOSED.
9. SIDEWALKS SHALL BE LOCATED 2 FEET FROM THE BACK OF CURB* AND SHALL BE CONSTRUCTED OF CONCRETE A MINIMUM 5' IN WIDTH AND 4" THICK. SIDEWALKS SHALL BE CONSTRUCTED WITH A CROSS SLOPE OF .25 IN./FT. CONCRETE SHALL BE CLASS "B" AND HAVE A STRENGTH OF 2200 PSI AT 28 DAYS."(D.R. 900–90.2.E, OR 900–90.3.A–F) *2 'FROM BACK OF CURB EXCEPTION: IN CONSERVATION SUBDIVISIONS AND DEVELOPMENTS IN WHICH STREET TREES ARE REQUIRED SIDEWALKS SHALL BE LOCATED AT LEAST 6' FROM BACK OF CURB (B.O.C)
10. NO TRUCK DOCK/LOADING AND UNLOADING AREA IS PROPOSED.

## SITE PLAN NOTES:

1. ALL DIMENSIONS AND RADII ARE TO/FROM THE FACE OF CURB, EDGE OF ASPHALT, AND/OR THE OUTSIDE FACE OF THE BUILDING WALL UNLESS OTHERWISE STATED. ALL RADII DIMENSION ADJACENT TO PARKING SPACES ARE 3' UNLESS OTHERWISE NOTED.
2. ALL NEW CONSTRUCTION SHALL CONFORM TO THE LATEST REQUIREMENTS OF THE AMERICAN DISABILITIES ACT (A.D.A.). SEE ARCHITECTURAL DWGS. FOR STRUCTURE COMPLIANCE.
3. UNLESS OTHERWISE NOTED, ALL PAVEMENT IS TO BE STANDARD DUTY ASPHALT.
4. TYPICAL PAVEMENT SECTION FOR THE NEW PAVEMENTS ARE INCLUDED IN THE CONSTRUCTION DETAIL SHEETS.
5. ALL CONSTRUCTION TO CONFORM TO CITY OF NORCROSS STANDARDS AND SPECIFICATIONS WHETHER OR NOT REVIEW COMMENTS WERE MADE.
6. SITE IS CURRENTLY ZONED M–1.
7. ALL PAVEMENT MARKINGS, STRIPING, AND SIGNAGE SHALL CONFORM TO THE STANDARDS AND SPECIFICATIONS OF THE LOCAL JURISDICTION, THE STATE D.O.T., AND THE MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES.
8. THERE SHALL BE NO GAP GREATER THAN 48" BETWEEN THE GUARDRAIL AND ANY OTHER OBJECTS SUCH AS BUILDINGS, SITE WALLS, ORNAMENTAL FENCE OR ANY OTHER OBJECTS SECURITY GATES CONCRETE AT THE SALES LOT AND THE WIP AREAS.
9. MASONRY OR CONCRETE SITE WALLS TO BE 6'–0" IN MIN. HEIGHT (UNLESS OTHERWISE NOTED)

LEGEND

| | |
|---|---|
| EXISTING FEATURES | |
| PROPERTY LINES | |
| PROPOSED FEATURES | |
| PROPOSED GUARDRAIL | |
| PROPOSED CHAIN LINK FENCE | |
| SETBACK/ LS STRIP LINE | |
| SIDEWALK | |

# SITE PLAN

GRAPHIC SCALE

30' 0 30' 60' 120'

(IN FEET)
1 inch = 30 ft.

Attachment: Norcross Carmax Site Plan (22-6503 : Bolton Circle Pavement Resurfacing Private Agreement with CarMax)

# Agenda Report

**To:** Mayor and Council

**From:** **Matthew Zaki**

**Agenda:** June 21, 2022 – Policy Work Session

**Agenda #:** 22-6503

**Item:** **Bolton Circle Pavement resurfacing Private agreement with CarMax**

**CC:** Eric Johnson

## Recommendation

Approve the Private Development Agreement between the City and CarMax to improve the existing Bolton Circle simultaneously with the construction of the development of the CarMax parking expansion at the corner of Beaver Ruin Road and Bolton Circle in accordance with the City of Norcross adopted Unified Development Ordinance in June 3, 2019.

## Background

During the Land Disturbance Permit application process by the applicant's Engineer for the proposed development located at 1951 Beaver Ruin Road, the proposed development consisted of a parking lot expansion along with the associated stormwater improvements to meet the City's stormwater ordinance. It was noticed that an existing sign limits the weight on that Road (36,000 lbs, after careful review, it was determined that most of the car transporters exceed that threshold, however, it was requested that CarMax provide the Gross Vehicle Weight Rating (GVWR) of the trailers and the approximate number of trailers per day to determine if the threshold is violated, the city did not receive that information at the time, and proceeded at the time and completed a pavement assessment at the city's expense using one of the city's on-call professionals. The result of the assessment based the report on information collected from energy.gov to obtain the GVWR which ranged from 26,000 to 80,000 pounds, also, based on the site visit and observations, it was determined that the posted GVWR is likely exceeded and that the site representative observed 15 loaded trailers/tow trucks driving in and out of the CarMax facility between 8:15 am and 12:45 pm on Wednesday September 15, 2021.

The report presented by the consultant indicated that based on the asphalt and GAB thickness observed from the core samples collected during the evaluation, it was determined that the existing pavement section (combined asphalt and GAB) thickness is under designed to handle the current traffic conditions. The asphalt thickness ranged from 2-7 inches with a base ranging from 5-10 inches, the calculated structural number (SN) ranged from 2.12 -3.87with that cross section, the heavy traffic loads from the continual use of the road contributed to the pavement deterioration and the current pavement conditions.

The recommendation by the consultant is to provide a Structural Number (SN) of at least 3.88 for the future pavement repairs at the section of roadway assessed. The pavement section below provides a SN 0f 3.88

| Material Type | Layer Thickness |
|---|---|
| AC Surface Course Type II Superpave – 9.5mm | 1.5 inches |
| AC Base Course Superpave – 25mm | 4.0 inches |
| Graded Aggregate Base (GAB) | 10.0 inches |

Within 30 days following the date the City issues all necessary permits for the Development depicted on the Conceptual Site Plan attached hereto as Exhibit "B," but for the land disturbance permit ("LDP") and the certificate of development conformance ("CDC"), CarMax will escrow into an interest-bearing account funds (the "CarMax Contribution") in an amount equal to $175,000.00 (One Hundred Seventy-Five Thousand Dollars), such amount being estimated to be sufficient to cover CarMax's reasonable share of the cost of the Road Improvements.

## Financial Impact

CarMax shall contribute towards the cost of the design and construction of the road improvements an amount equal to $175,000 (One Hundred Seventy-Five Thousand Dollars). CarMax will escrow that amount into an interest-bearing account funds (the "CarMax Contribution"), such amount being estimated to be sufficient to cover CarMax's reasonable share of the cost of the Road Improvements.

## Consistent with Comprehensive Plan?

Proceeding forward with this agreement enforces Goal 2 of the Community Vision outlined in the 2040 Norcross Comprehensive Plan: Continue to strength Norcross as a livable, inclusive, and safe Environment as well as Goal 3 to promote safe and efficient transportation for pedestrians, cyclists.

## Next Steps

Upon direction from Mayor and City Council, City staff will proceed accordingly with the completion of the concepts and with the different processes to advance to complete construction plans and with the opinion of probable costs.

## Attachments

1) Private Development agreement
2) GC GIS map
3) CarMax parking expansion site plan.

**Update**
N/A



65 LAWRENCEVILLE STREET, NORCROSS, GEORGIA 30071
(678) 421-2027 **UPSTAIRS CITY HALL** (770) 242-0824 **FAX** (770) 448-2111 **POLICE DEPARTMENT**
*http://www.norcrossga.net*

# City of Norcross

## Legislation Details (With Details)

| | | | |
|---|---|---|---|
| **File #:** | 22-6504 | **Version:** | |
| **Type #:** | Agenda Item | **Status:** | Agenda Ready |
| **On Agenda:** | 6/21/2022 6:30 PM | **In Control:** | Policy Work Session |
| **Title:** | Amendment to FY22 Operating Budget | | |

**Sponsors:**

**Code Sections:**

**Attachments:**

1. Agenda Report- Amended FY22 Budgets
2. Budget Resolution
3. Proposed Budget Amendments

**Title**
**Amendment to FY22 Operating Budget**

**Drafter**
**Paul Hanebuth**

65 Lawrenceville ST., NORCROSS, GEORGIA 30071
(770) 448-2122 **FAX** (770) 242-0824
http://www.norcrossga.net

# Agenda Report

**To:** Mayor and Council

**From:** Paul Hanebuth

**Meeting Date:** June 21, 2022 – Policy Work Session

**Item No.:** 22-6504

**Title:** Amendments to the fiscal 2022 budgets

**CC:** Eric Johnson

---

**Recommendation:** Approve amendments to the FY22 budget appropriate to changes in macroeconomic conditions, council priorities, staffing levels and compensation plans, and other factors since the original FY22 budget was presented in July 2021.

**Background:** Over time, the needs of the City change, as do revenue flows from various sources. During fiscal 22, some these changes represent significant variances from the budgets approved last summer; therefore staff recommends that the Mayor and Council amend the appropriations authorized a year ago to account for changing real-world conditions. Monitoring the city's budget plans throughout the year ensures compliance with state and federal laws and regulations as well as assuring residents, lenders, vendors, and other stakeholders that public funds are responsibly appropriated and managed.

**Financial Impact:** In some cases, budget amendments reflect changing priorities of the elected officials throughout the year. In others, changes to the budget plan are needed because of macroeconomic and other changes outside the control of city staff and officials; e.g., gasoline costs for the city during FY22 are significantly higher than was anticipated a year ago. Therefore, budget amendments have little impact on actual expenditures but provide increased clarity and transparency regarding city finances. The budget plans presented here will likely be the last holistic presentation of city revenues and expenditures until the audit report is complete in February 2023.

**Consistent with Comprehensive Plan?** Budget documents encapsulate the city's financial plan to prioritize and fund the goals enumerated in the comprehensive plan.



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(678) 421-2027 UPSTAIRS CITY HALL (770) 242-0824 FAX (770) 448-2111 POLICE DEPARTMENT
http://www.norcrossga.net

**Next Steps:** The attached budget resolution will be offered for adoption at the regular meeting on July 5, 2022, subject to any changes desired by the governing body to the resolution or budget plans described therein.

**Attachments:** Budget resolution; proposed budget amendments

**Update**

MAYOR **CRAIG NEWTON** · MAYOR PRO TEM **MATT MYERS** · COUNCILMEMBER **ANDREW HIXSON** · COUNCILMEMBER **JOSH BARE**
COUNCILMEMBER **BRUCE GAYNOR** · COUNCILMEMBER **ARLENE BECKLES** · CITY MANAGER **ERIC JOHNSON** · CITY CLERK **MONIQUE LANG**

**CITY OF NORCROSS**
**Resolution to Amend 2021-2022 Budgets**
**General Operating, Capital Improvement, Enterprise, and Special Revenue Funds**
**July 5, 2022**

**WHEREAS** the City Manager and Finance Director have prepared an submitted to the Mayor and Council amended General Operating, Capital Improvement, Enterprise, and Special Revenue Funds Budgets for the fiscal year 2021-2022, and

**WHEREAS** the Mayor and Council have determined that revision of the original Fiscal Year 2022 General Operating, Capital Improvement, Enterprise and Special Revenue Fund Budgets, as shown in the attached documents so labeled, is in the best interest of the citizens of the City of Norcross:

**THEREFORE, BE IT RESOLVED** by the Mayor and Council that the General Operating, Capital Improvement, Enterprise, and Special Revenue Fund Budgets attached hereto and made a part hereof for the year 2022 are approved.

This day, the 5th of July 2022.



65 LAWRENCEVILLE STREET, NORCROSS, GEORGIA 30071
(678) 421-2027 **UPSTAIRS CITY HALL** (770) 242-0824 **FAX** (770) 448-2111 **POLICE DEPARTMENT**
***http://www.norcrossga.net***

# General Fund

| | | 2021 actual | 2022 adopted | 2022 amended |
|---|---|---|---|---|
| REVENUES | | | | |
| | Taxes | 10,736,051 | 11,172,276 | 11,255,500 |
| | Licenses and Permits | 623,545 | 562,250 | 817,900 |
| | Fines, fees, and forfeitures | 1,219,616 | 1,321,900 | 1,476,300 |
| | Charges for services | 75,805 | 115,990 | 99,100 |
| | Intergovernmental | 3,088,275 | 674,307 | 476,800 |
| | Interest | 10,920 | 9,600 | 3,700 |
| | Other | 146,906 | 141,062 | 441,000 |
| | Total Revenues | 15,901,118 | 13,997,385 | 14,570,300 |
| EXPENDITURES | | | | |
| | General Government | 2,901,130 | 4,571,485 | 3,733,600 |
| | Judicial | 395,341 | 570,199 | 488,500 |
| | Public Safety | 6,313,873 | 6,103,111 | 6,756,200 |
| | Public Works | 2,147,960 | 2,531,672 | 2,446,300 |
| | Culture and Recreation | 804,951 | 865,523 | 1,000,800 |
| | Housing and Development | 915,137 | 1,261,076 | 1,060,000 |
| | Debt Service | 322,500 | 130,000 | 130,000 |
| | Total Expenditures | 13,800,892 | 16,033,066 | 15,615,400 |
| Excess (deficiency) | | 2,100,226 | (2,035,681) | (1,045,100) |
| Other financing sources (uses) | | | | |
| | Transfers in | 538,840 | 923,065 | 1,235,200 |
| | Transfers out | 0 | | (2,190,100) |
| | Sale of capital assets | 41,767 | | |
| | Total other financing | 580,607 | 923,065 | (954,900) |
| Net change in fund balance | | 2,680,833 | (1,112,616) | (2,000,000) |
| Fund balance beginning | | 8,269,453 | 10,950,286 | 10,950,286 |
| Fund balance ending | | 10,950,286 | 9,837,670 | 8,950,286 |

# Enterprise Funds

| Electric Fund | 2021 actual | 2022 adopted | 2022 amended |
| --- | --- | --- | --- |
| Operating Revenues | | | |
| Charges for sales and services | 13,824,737 | 14,068,958 | 13,052,400 |
| Other | 34,798 | 30,000 | 61,200 |
| Total operating revenues | 13,859,535 | 14,098,958 | 13,113,600 |
| Operating Expenses | | | |
| Cost of sales and services | 10,735,384 | 11,217,478 | 9,361,900 |
| Personal Services | 1,391,071 | 1,621,029 | 1,390,600 |
| Depreciation | 249,511 | - | 275,000 |
| Total operating expenses | 12,375,966 | 12,838,507 | 11,027,500 |
| Operating Income (loss) before other financing sources/uses | 1,483,569 | 1,260,451 | 2,086,100 |
| Other financing sources (uses) | | | |
| Capital Outlay | | (708,786) | |
| Transfers in (out) | (538,840) | (801,665) | (788,800) |
| Gain (loss) on investment | 11,155 | 250,000 | (1,061,400) |
| Total other financing | (527,685) | (1,260,451) | (1,850,200) |
| Change in net position | 955,884 | - | 235,900 |
| Beginning net position | 26,138,297 | 27,094,181 | 27,094,181 |
| Ending net position | 27,094,181 | 27,094,181 | 27,330,081 |

# Enterprise Funds

| **Stormwater Fund** | 2021 actual | 2022 adopted | 2022 amended |
|---|---|---|---|
| Operating Revenues | | | |
| Charges for sales and services | 823,045 | 1,130,000 | 1,102,600 |
| Miscellaneous | | 1,146,071 | |
| Total operating revenues | 1,118,146 | 2,276,071 | 1,102,600 |
| Operating Expenses | | | |
| Cost of sales and services | 314,408 | 303,127 | 204,700 |
| Personal Services | 306,551 | 538,045 | 420,200 |
| Depreciation | 38,427 | 40,000 | 40,000 |
| Total operating expenses | 659,386 | 881,172 | 664,900 |
| Operating Income (loss) | 458,760 | 1,394,899 | 437,700 |
| Other financing sources (uses) | | | |
| Capital Outlay | | (1,354,871) | (1,200,000) |
| Transfers in (out) | | | |
| Beginning net position | 2,616,855 | 3,075,615 | 3,075,615 |
| Ending net position | 3,075,615 | 3,115,643 | 2,313,315 |

| **Solid Waste Fund** | 2021 actual | 2022 adopted | 2022 amended |
|---|---|---|---|
| Operating Revenues | | | |
| Charges for sales and services | 3,602,693 | 3,206,388 | 3,494,400 |
| Other | 301 | | |
| Total operating revenues | 3,602,994 | 3,206,388 | 3,494,400 |
| Operating Expenses | | | |
| Costs of sales and services | 3,627,124 | 2,869,428 | 3,860,600 |
| Personal services | 73,281 | 334,460 | 124,000 |
| Depreciation | 2,388 | 2,500 | 2,500 |
| Total operating expenses | 3,702,793 | 3,206,388 | 3,987,100 |
| Operating income (loss) | (99,800) | - | (492,700) |
| Beginning net position | 1,031,099 | 923,051 | 923,051 |
| Ending net position | 923,051 | 923,051 | 430,351 |

# Special Revenue Funds

| | Confiscated Assets | | | American Rescue Plan Act | | | Hotel/Motel Tax | | |
|---|---|---|---|---|---|---|---|---|---|
| | 2021 actual | 2022 adopted | 2022 amended | 2021 actual | 2022 adopted | 2022 amended | 2021 actual | 2022 adopted | 2022 amended |
| REVENUES | | | | | | | | | |
| Taxes | | | | | | | 736,699 | 1,027,207 | 990,700 |
| Fines, fees, and forfeitures | 5,229,472 | 2,000,000 | 3,032,800 | | | | | | |
| Intergovernmental | | | | | | 3,000,000 | | | |
| Interest | 118 | 100 | 300 | | | | | | |
| Total revenues | 5,229,590 | 2,000,100 | 3,033,100 | 0 | 0 | 3,000,000 | 736,699 | 1,027,207 | 990,700 |
| EXPENDITURES | | | | | | | | | |
| General Government | | | | | | | | | |
| Public Safety | 1,952,030 | 2,000,000 | 658,900 | | 0 | 0 | | | |
| Housing and Development | | | | | | | 530,978 | 899,548 | 566,200 |
| Capital Outlay | | | 404,208 | | | 3,000,000 | | | |
| Total expenditures | 1,952,030 | 2,000,000 | 1,063,108 | 0 | 0 | 3,000,000 | 530,978 | 899,548 | 566,200 |
| Excess (deficiency) of revenues over (under) expenditures | 3,277,560 | 100 | 1,969,992 | | 0 | 0 | 205,721 | 127,659 | 424,500 |
| Transfers in (out) | (5,000) | 0 | 0 | 0 | | | | (121,400) | (424,500) |
| Excess (deficiency) of revenues over (under) expenditures after transfers | 3,272,560 | 100 | 1,969,992 | | 0 | 0 | 205,721 | 6,259 | 0 |
| Fund balance beginning | 21,535 | 3,294,095 | 3,294,095 | | 0 | 0 | 418,389 | 624,110 | 624,110 |
| Fund balance ending | 3,294,095 | 3,294,195 | 5,264,087 | | 0 | 0 | 624,110 | 630,369 | 624,110 |

# Special Revenue Funds (NM)

| | Federal Seized Drug | | | Technology Surcharges | | | Rental Motor Vehicle Excise Tax | | |
|---|---|---|---|---|---|---|---|---|---|
| | 2021 actual | 2022 adopted | 2022 amended | 2021 actual | 2022 adopted | 2022 amended | 2021 actual | 2022 adopted | 2022 amended |
| REVENUES | | | | | | | | | |
| Taxes | | | | | | | 155,506 | | 107,200 |
| Fines, fees, and forfeitures | 3,244 | | | 71,060 | 80,000 | 71,000 | | | |
| Intergovernmental | | | | | | | | | |
| Interest | 1 | | | | | | | | |
| Total revenues | 3,245 | 0 | 0 | 71,060 | 80,000 | 71,000 | 155,506 | 0 | 107,200 |
| EXPENDITURES | | | | | | | | | |
| General Government | | | | 72,218 | 80,000 | 77,200 | | | |
| Public Safety | 500 | 0 | 40,264 | | | | | | |
| Housing and Development | | | | | | | 250,219 | | |
| Capital Outlay | | | | | | | | | |
| Total expenditures | 500 | 0 | 40,264 | 72,218 | 80,000 | 77,200 | 250,219 | 0 | 0 |
| Excess (deficiency) of revenues over (under) expenditures | 2,745 | 0 | (40,264) | (1,158) | 0 | (6,200) | (94,713) | | 107,200 |
| Other financing sources | | | | | | | | | |
| Sale of property | | | 32,500 | | | | | | |
| Transfers in (out) | 5,000 | | | | | | | | |
| Total other | 5,000 | 0 | 32,500 | 0 | 0 | 0 | 0 | 0 | 0 |
| Excess (deficiency) of revenues over (under) expenditures after transfers | 7,745 | 0 | (7,764) | (1,158) | 0 | (6,200) | (94,713) | 0 | 107,200 |
| Fund balance beginning | 19 | 7,764 | 7,764 | 160,348 | 159,190 | 159,190 | 537,001 | 442,288 | 442,288 |
| Fund balance ending | 7,764 | 7,764 | 0 | 159,190 | 159,190 | 152,990 | 442,288 | 442,288 | 549,488 |

# Capital Funds

| | 2017 SPLOST | | | 2017 REVENUE BONDS | | | CAPITAL PROJECTS FUND | | |
|---|---|---|---|---|---|---|---|---|---|
| | 2021 actual | 2022 adopted | 2022 amended | 2021 actual | 2022 adopted | 2022 amended | 2021 actual | 2022 adopted | 2022 amended |
| REVENUES | | | | | | | | | |
| Taxes | | | | | | | | | |
| Fines, fees, and forfeitures | | | | | | | | | |
| Intergovernmental | 3,231,555 | 2,264,232 | 3,367,000 | 43,999 | | | | | |
| Interest | 159 | | 100 | 1,500 | | 200 | 0 | | 14 |
| Total revenues | 3,231,714 | 2,264,232 | 3,367,100 | 45,499 | 0 | 200 | 0 | 0 | 14 |
| EXPENDITURES | | | | | | | | | |
| Capital Outlay | 546,038 | 701,858 | | 2,236,750 | | | | | |
| Beaver Ruin Greenway | | | 900,000 | | | 1,301,000 | | | |
| JD Park Design | | | 40,000 | | | | | 40,000 | |
| County-managed F-1234 | | | 100,000 | | | | | | |
| LWP Sod Replacement | | | | | | | | 85,000 | 84,700 |
| Library Landscaping | | | | | | | | | 77,000 |
| Public Works Equipment | | | | | | | | 101,267 | 101,300 |
| Document Digitization | | | | | | | | 83,898 | 83,900 |
| Pergola Swings | | | 68,000 | | | | | 47,000 | |
| Ped. RR crossing const. | | | 141,000 | | | | | | |
| Facility Upgrades | | | | | | | | 207,741 | |
| Buford/JCB intersection | | | 489,580 | | | | | | |
| Debt Service | 1,562,916 | 1,562,374 | 1,562,400 | | | | | | |
| Total expenditures | 2,108,954 | 1,562,374 | 3,300,980 | 2,236,750 | 0 | 1,301,000 | 0 | 564,906 | 346,900 |
| Excess (deficiency) of revenues over (under) expenditures | 1,122,760 | 701,858 | 66,120 | (2,191,251) | 0 | (1,300,800) | 0 | (564,906) | (346,886) |
| Transfers in (out) | (950,406) | | | 950,406 | | | | 1,000,000 | 1,000,000 |
| Excess (deficiency) of revenues over (under) expenditures after transfers | 172,354 | 701,858 | 66,120 | (1,240,845) | 0 | (1,300,800) | 0 | 435,094 | 653,114 |
| Fund balance beginning | 2,179,521 | 2,351,875 | 2,351,875 | 3,631,297 | 2,390,452 | 2,390,452 | 0 | 0 | 0 |
| Fund balance ending | 2,351,875 | 3,053,733 | 2,417,995 | 2,390,452 | 2,390,452 | 1,089,652 | 0 | 435,094 | 653,114 |

# Capital Funds (NM)

| | 2009 SPLOST | | | 2014 SPLOST | | |
|---|---|---|---|---|---|---|
| | 2021 actual | 2022 adopted | 2022 amended | 2021 actual | 2022 adopted | 2022 amended |
| REVENUES | | | | | | |
| Taxes | | | | | | |
| Fines, fees, and forfeitures | | | | | | |
| Interest | 1 | | 14 | 77 | | 16 |
| Total revenues | 1 | 0 | 14 | 77 | 0 | 16 |
| EXPENDITURES | | | | | | |
| Capital Outlay | | | | 28,900 | | |
| Facility Upgrades | | | | | | 215,700 |
| LMIG 20-21 match | | | 10,550 | | | 200,000 |
| RR crossing design | | | | | | 40,600 |
| Buford/JCB intersection | | | | | | 510,420 |
| Ped. RR crossing const. | | | | | | 259,400 |
| Total expenditures | 0 | 0 | 10,550 | 28,900 | 0 | 1,226,120 |
| Excess (deficiency) of revenues over (under) expenditures | 1 | 0 | (10,536) | (28,823) | 0 | (1,226,104) |
| Transfers in (out) | 0 | 0 | 0 | 0 | 0 | 0 |
| Excess (deficiency) of revenues over (under) expenditures after transfers | 1 | 0 | (10,536) | (28,823) | 0 | (1,226,104) |
| Fund balance beginning | 10,535 | 10,536 | 10,536 | 1,744,507 | 1,715,684 | 1,715,684 |
| Fund balance ending | 10,536 | 10,536 | 0 | 1,715,684 | 1,715,684 | 489,580 |

**2014 SPLOST ending fund balance restricted to Admin Facilities**

MAYOR **CRAIG NEWTON** · MAYOR PRO TEM **MATT MYERS**· COUNCILMEMBER **ANDREW HIXSON** · COUNCILMEMBER **JOSH BARE**
COUNCILMEMBER **ARLENE BECKLES** · COUNCILMEMBER **BRUCE GAYNOR** · CITY MANAGER **ERIC JOHNSON** · CITY CLERK **MONIQUE LANG**

# City of Norcross

## Legislation Details (With Details)

| | | | |
|---|---|---|---|
| **File #:** | 22-6505 | **Version:** | |
| **Type #:** | Agenda Item | **Status:** | |
| **On Agenda:** | 6/21/2022 6:30 PM | **In Control:** | Policy Work Session |
| **Title:** | Financial Advisor Contract | | |
| **Sponsors:** | | | |
| **Code Sections:** | | | |

**Attachments:**

1. Agenda Report - Financial Advisor Contract
2. Financial Advisor Contract

**Title**
**Financial Advisor Contract**

**Drafter**
**Eric Johnson**

65 Lawrenceville ST., NORCROSS, GEORGIA 30071
(770) 448-2122 **FAX** (770) 242-0824
http://www.norcrossga.net

# Agenda Report

**To:** Mayor and Council

**From:** Eric Johnson, City Manager

**Agenda:** June 21, 2022 – Policy Work Session

**Agenda #:** 22-6505

**Item:** Approval of financial advisory services contract with Piper Sandler

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**Recommendation:** Approve a financial advisory services contract with Piper Sandler for the period compatible with a newly executed contract approved by the Downtown Development Authority (DDA) at its June meeting.

**Background:** Piper Sandler has served as the City's financial advisor (FA). Last year, the City approved a contract to match the expiration of an existing DDA contract. There is value in having the same FA assist the City and DDA rather than potentially pay two different firms to assess the same financial issues. Through experience, Piper Sandler has an understanding of existing commitments such as the one involving The Brunswick. Earlier this year, Piper Sandler provided guidance on debt capacity and has, and will, provide guidance on other financial policies as well as potential for bond ratings. There is no best practice that suggests that a jurisdiction's FA should be rotated after some period of years. Services under this contract are generally provided by, or at the direction of, Edmund Wall, Managing Director.

**Financial Impact:** Hourly services are provided at the rate of $250 per hour. For issuance of debt, a fee of $10.00 per $1,000 principal amount of debt issued plus out of pocket expenses approved by the City. That fee is contingent upon the closing of the bond(s).

**Consistent with Comprehensive Plan?** Yes.

**Next Steps:**

**Attachments:**
Contract

PIPER | SANDLER

**FINANCIAL SERVICES AGREEMENT**

This Financial Services Agreement, (the Agreement) is entered into on May ____, 2022 by and between City of Norcross, Georgia (the Client) and Piper Sandler & Co. (Piper Sandler or the Financial Services Provider). This Agreement will serve as our mutual agreement with respect to the terms and conditions of our engagement as your financial services provider, effective on the date this Agreement is executed by all Parties (the Effective Date).

***I. Scope of Services.***

(A) ***Services to be provided*.** Piper Sandler is engaged by the Client to provide services with respect to the planned issuance of the Client's bonds to be issued from time to time during the term of this Agreement (the Issue(s)).

(B) ***Scope of Services***. The Scope of Services to be provided respecting the Issue(s) may consist of the following, if directed by the Client:

1. Evaluate options or alternatives with respect to the proposed new Issue(s),
2. Review recommendations made by other parties to the Client with respect to the new Issue(s).
3. Consult with and/or advise the Client on actual or potential changes in market place practices, market conditions or other matters that may have an impact on the Issues or Products.
4. Assist the Client in establishing a plan of financing
5. Assist the Client in establishing the structure, timing, terms and other similar matters concerning the Issue
6. Prepare the financing schedule
7. Provide assistance as to scheduling, coordinating and meeting procedural requirements relating to any required bond referendum
8. Consult and meet with representatives of the Client and its agents or consultants with respect to the Issue
9. Attend meetings of the Client's governing body, as requested
10. Advise the Client on the manner of sale of the Issue
11. Make arrangements for printing, advertising and other vendor services necessary or appropriate in connection with the Issue
12. In a competitive bid sale, prepare the bid package, obtain CUSIP numbers, assist the Client in collecting and analyzing bids submitted by underwriters and in connection with the Client's selection of a winning bidder
13. At the time of sale, provide the Client with relevant data on comparable issues recently or currently being sold nationally and by comparable Clients
14. In a negotiated sale, coordinate pre-pricing discussions, supervise the sale process, advise the Client on matters relating to retail or other order periods and syndicate priorities, review the order book, and if directed by the Client, advise on the acceptability of the underwriter's pricing and offer to purchase
15. Assist the Client in identifying an underwriter in a negotiated sale or other deal participants such as an escrow agent, accountant, feasibility consultant, etc. to work on the Issue
16. Respond to questions from underwriters
17. Arrange and facilitate visits to, prepare materials for, and make recommendations to the Client in connection with credit ratings agencies, insurers and other credit or liquidity providers
18. Coordinate working group sessions, closing, and delivery of the new Issue and transfer of funds.
19. Prepare a closing memorandum or transaction summary
20. Advise Client on potential refunding or other refinancing opportunities of its outstanding Issue(s)

21. If directed by the Client, review recommendations made by third parties with respect to outstanding issue(s)
22. Consult with and/or advise Client on actual or potential changes in market place practices, market conditions or other matters that may have an impact on Client's outstanding Issue(s)
23. Advise Client on post-issuance disclosure compliance matters, including specific issues that may arise from time to time and the preparation, review and revision of applicable policies and procedures, relating to outstanding Issue(s)
24. Assist Client in responding to inquiries from investors or other market participants in connection with Client's outstanding Issue(s)
25. Advise on the City's budget and other financial issues.
26. Assist with economic incentives to include tax abatement calculations and meeting with economic development prospects.

***For Services Respecting Official Statement***. Piper Sandler has not assumed responsibility for preparing or certifying as to the accuracy or completeness of any preliminary or final official statement, other than with respect to written information about Piper Sandler as the municipal advisor if provided by Piper Sandler in writing for inclusion in such documents.

***II. Limitations on Scope of Services*.** In order to clarify the extent of our relationship, Piper Sandler is required under MSRB Rule G-42[1] to describe any limitations on the scope of the activities to be performed for you. Accordingly, the Scope of Services are subject to the following limitations:

The Scope of Services is limited solely to the services described herein and is subject to limitations set forth within the descriptions of the Scope of Services. Any duties created by this Agreement do not extend beyond the Scope of Services or to any other contract, agreement, relationship, or understanding, if any, of any nature between the Client and the Financial Services Provider.

To assist us in complying with our duties to our regulators, you agree that if we are asked to evaluate the advice or recommendations of third parties, you will provide us written direction to do so.

The Scope of Services does not include tax, legal, accounting or engineering advice with respect to any Issue or Product or in connection with any opinion or certificate rendered by counsel or any other person at closing and does not include review or advice on any feasibility study unless directed by the client.

***III. Amending Scope of Services***. The Scope of Services may be changed only by written amendment or supplement. The parties agree to amend or supplement the Scope of Services promptly to reflect any material changes or additions to the Scope of Services.

***IV. Compensation***. As full compensation for the services rendered pursuant to this Agreement, the City shall pay the Financial Services Provider a fee of $250.00 per hour.

For issuance of debt, where Financial Services Provider serves as Financial Advisor, a fee of $10.00 per $1,000 principal amount of debt issued plus out of pocket expenses approved by the Authority. This fee is contingent upon the closing of the Bond(s).

For tax abatement transactions, the fee will be mutually agreed to by the parties.

***V. IRMA Matters***. If the Client has designated Piper Sandler as its independent registered municipal advisor ("IRMA") for purposes of SEC Rule 15Ba1-1(d)(3)(vi) (the "IRMA exemption"), the extent of the IRMA exemption is limited to the Scope of Services and any limitations thereto. Any reference to Piper Sandler, its personnel and its role as IRMA in the written representation of the Client contemplated under SEC Rule 15Ba1-1(d)(3)(vi)(B) is subject to prior approval by Piper Sandler and Client agrees not to represent, publicly or to any specific person, that Piper Sandler is Client's IRMA with respect to any aspect

[1] See MSRB Rule G-42(c)(v).

Attachment: Financial Advisor Contract (22-6505 : Financial Advisor Contract) of municipal financial products or the issuance of municipal securities, or with respect to any specific municipal financial product or any specific issuance of municipal securities, outside the Scope of Services without Piper Sandler's prior written consent.

***VI. Piper Sandler's Regulatory Duties When Servicing the Client.*** MSRB Rule G-42 requires that Piper Sandler undertake certain inquiries or investigations of and relating to the Client in order for Piper Sandler to fulfill certain aspects of the fiduciary duty owed to the Client. Such inquiries generally are triggered: (a) by the requirement that Piper Sandler know the essential facts about the Client and the authority of each person acting on behalf of the Client so as to effectively service the relationship with the Client, to act in accordance with any special directions from the Client, to understand the authority of each person acting on behalf of the Client, and to comply with applicable laws, regulations and rules; (b) when Piper Sandler undertakes a determination of suitability of any recommendation made by Piper Sandler to the Client, if any or by others that Piper Sandler reviews for the Client, if any; (c) when making any representations, including with regard to matters pertaining to the Client or any Issue or Product; and (d) when providing any information in connection with the preparation of the preliminary or final official statement, including information about the Client, its financial condition, its operational status and its municipal securities or municipal financial products. Specifically, Client agrees to provide to Piper Sandler any documents on which the Client has relied in connection with any certification it may make with respect to the accuracy and completeness of any Official Statement for the Issue.

Client agrees to cooperate, and to cause its agents to cooperate, with Piper Sandler in carrying out these duties to inquire or investigate, including providing to Piper Sandler accurate and complete information and reasonable access to relevant documents, other information and personnel needed to fulfill such duties.

In addition, the Client agrees that, to the extent the Client seeks to have Piper Sandler provide advice with regard to any recommendation made by a third party, the Client will provide to Piper Sandler written direction to do so as well as any information it has received from such third party relating to its recommendation.

***VII. Expenses*****.** Piper Sandler will be responsible for all of Piper Sandler's out-of-pocket expenses unless otherwise agreed upon or if travel is directed by Client. If travel is directed by the Client, Client will reimburse Piper Sandler for their expenses. In the event a new issue of securities is contemplated by this Agreement, Client will be responsible for the payment of all fees and expenses commonly known as costs of issuance, including but not limited to: publication expenses, local legal counsel, bond counsel, ratings, credit enhancement, travel associated with securing any rating or credit enhancement, printing of bonds, printing and distribution of required disclosure documents, trustee fees, paying agent fees, CUSIP registration, and the like.

***VIII.Term of Agreement***.

The initial term of this Agreement shall begin on the Effective Date and shall terminate absolutely and without further obligation on the part of the Client at the close of the fiscal year in which it was executed and at the close of each succeeding fiscal year for which it may be automatically renewed unless the Client gives notice of its intent to terminate the this Agreement thirty (30) days prior to the end of each fiscal year, or unless earlier terminated in mid-term as provided below.

This Agreement may be terminated with or without cause by either party upon the giving of at least thirty (30) days prior written notice to the other party of its intention to terminate, specifying in such notice the effective date of such termination. All fees due to Piper Sandler shall be due and payable upon termination. Upon termination, the obligations of Piper Sandler under this Agreement, including any amendment shall terminate immediately and Piper Sandler shall thereafter have no continuing fiduciary or other duties to the Client. The provisions of Sections IV, VII, XII, XIV, XV and XVII shall survive termination of this Agreement.

This Agreement is authorized pursuant to O.C.G.A. § 36-60-13 and shall be construed to be in compliance therewith; if any provision hereof is adjudicated to be violative of such statute, the provision shall be reformed to the extent permitted by law, or severed if necessary, to be in compliance.

*VIII.IX.* ***Independent Contractor***. The Financial Services Provider is an independent contractor and nothing herein contained shall constitute or designate the Financial Services Provider or any of its employees or agents as employees or agents of the Client.

*IX.X.* ***Entire Agreement/Amendments***. This Agreement, including any amendments and Appendices hereto which are expressly incorporated herein, constitute the entire Agreement between the parties hereto and sets forth the rights, duties, and obligations of each to the other as of this date. Any prior agreements, promises, negotiations, or representations not expressly set forth in this Agreement are of no force and effect. This Agreement may not be modified except by a writing executed by both the Financial Services Provider and Client.

*X.XI.* ***Required Disclosures*****.** MSRB Rule G-42 requires that Piper Sandler provide you with disclosures of material conflicts of interest and of information regarding certain legal events and disciplinary history. Such disclosures are provided in Piper Sandler's Disclosure Statement attached as Appendix A to this Agreement.

*XI.XII.* ***Limitation of Liability*****.** In the absence of misconduct, bad faith, negligence or reckless disregard of obligations or duties hereunder on the part of Piper Sandler or any of its associated persons, Piper Sandler and its associated persons shall have no liability to the Client for any act or omission in the course of, or connected with, rendering services hereunder, or for any error of judgment or mistake of law, or for any loss arising out of any issuance of municipal securities, any municipal financial product or any other investment, or for any financial or other damages resulting from the Client's election to act or not to act, as the case may be, contrary to any advice or recommendation provided by Piper Sandler to the Client. No recourse shall be had against Piper Sandler for loss, damage, liability, cost or expense (whether direct, indirect or consequential) of the Client arising out of or in defending, prosecuting, negotiating or responding to any inquiry, questionnaire, audit, suit, action, or other proceeding brought or received from the Internal Revenue Service in connection with any Issue or Product, if any or otherwise relating to the tax treatment of any Issue or Product if any, or in connection with any opinion or certificate rendered by counsel or any other party. Notwithstanding the foregoing, nothing contained in this paragraph or elsewhere in this Agreement shall constitute a waiver by Client of any of its legal rights under applicable U.S. federal securities laws or any other laws whose applicability is not permitted to be contractually waived, nor shall it constitute a waiver or diminution of Piper Sandler's fiduciary duty to Client under Section 15B(c)(1), if applicable, of the Securities Exchange Act of 1934, as amended, and the rules thereunder.

*XII.XIII.* ***Indemnification.*** Unless prohibited by law, the Client hereby indemnifies and holds harmless the Financial Services Provider, each individual, corporation, partnership, trust, association or other entity controlling the Financial Services Provider, any affiliate of the Financial Services Provider or any such controlling entity and their respective directors, officers, employees, partners, incorporators, shareholders, trustees and agents (hereinafter the "Indemnitees") against any and all liabilities, penalties, suits, causes of action, losses, damages, claims, costs and expenses (including, without limitation, fees and disbursements of counsel) or judgments of whatever kind or nature (each a "Claim"), imposed upon, incurred by or asserted against the Indemnitees arising out of or based upon any allegation that any information in the Preliminary Official Statement or Final Official Statement contained (as of any relevant time) an untrue statement of a material fact or omitted (as of any relevant time) or omits to state any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

*XIII.XIV.* ***Official Statement.*** The Client acknowledges and understands that state and federal laws relating to disclosure in connection with municipal securities, including but not limited to the Securities Act of 1933 and Rule 10b-5 promulgated under the Securities Exchange Act of 1934, may apply to the Client and that the failure of the Financial Services Provider to advise the Client respecting these laws shall not constitute a breach by the Financial Services Provider or any of its duties and responsibilities under this

Attachment: Financial Advisor Contract (22-6505 : Financial Advisor Contract)

Agreement. The Client acknowledges that any Official Statement distributed in connected with an issuance of securities are statements of the Client and not of Piper Sandler.

*XIV.XV.* ***Notices***. Any written notice or communications required or permitted by this Agreement or by law to be served on, given to, or delivered to either party hereto, by the other party shall be in writing and shall be deemed duly served, given, or delivered when personally delivered to the party to whom it is addressed or in lieu of such personal services, when deposited in the United States' mail, first-class postage prepaid, addressed to the Client at:

City of Norcross
65 Lawrenceville Street
Norcross, GA 30071

Craig Newton, Mayor
678-421-2065
cnewton@norcrossga.net

Eric Johnson, City Manager
eric.johnson@norcrossga.net

J. Patrick O'Brien, Norcross City Attorney
Thompson, O'Brien, Kappler & Nasuti, P.C.
2 Sun Court, Suite 400
Peachtree Corners, GA 30092

Or to the Financial Services Provider at:

Piper Sandler & Co.
1442 Dresden Drive, Suite 257
Atlanta, GA 30319

Edmund Wall, Managing Director
404-405-1567
Edmund.Wall@psc.com

With a copy to:

Piper Sandler & Co.
Legal Department
800 Nicollet Mall, Suite 1000
Minneapolis, MN 55402

*XV.XVI.* ***Consent to Jurisdiction; Service of Process***. The parties each hereby (a) submits to the jurisdiction of any State or Federal court sitting in the state of Georgia for the resolution of any claim or dispute with respect to or arising out of or relating to this Agreement or the relationship between the parties (b) agrees that all claims with respect to such actions or proceedings may be heard and determined in such court, (c) waives the defense of an inconvenient forum, (d) agrees not to commence any action or proceeding relating to this Agreement other than in a State or Federal court sitting in the state of Georgia and (e) agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

*XVI.XVII.* ***Choice of Law***. This Agreement shall be construed and given effect in accordance with the laws of the state of Georgia.

*XVII.XVIII.* ***Counterparts; Severability***. This Agreement may be executed in two or more separate counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Any term or provision of this Agreement which is invalid or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement or affecting the validity or enforceability of any of the terms or provisions of this Agreement in any other jurisdiction.

*XVIII.XIX.* ***Waiver of Jury Trial***. THE PARTIES EACH HEREBY AGREES TO WAIVE ANY RIGHT TO A TRIAL BY JURY WITH RESPECT TO ANY CLAIM, COUNTERCLAIM OR ACTION ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THE RELATIONSHIP BETWEEN THE PARTIES. PARTIES AGREE TO WAIVE CONSEQUENTIAL AND PUNITIVE DAMAGES.

*XIX.XX.* ***No Third Party Beneficiary***. This Agreement is made solely for the benefit of the parties and their respective successors and permitted assigns. Nothing in this Agreement, express or implied, is intended to confer on any person, other than the parties and their respective successors and permitted assigns, any rights, remedies, obligations or liabilities under or by reason of this Agreement.

*XXI.* ***Authority***. The undersigned represents and warrants that they have full legal authority to execute this Agreement on behalf of the Client.

Formatted

Craig Newton, Mayor

The following individual(s) of the Client have the authority to direct Piper Sandler's performance of its activities under this Agreement:

Craig Newton, Mayor
Eric Johnson, City Manager

The following individuals at Piper Sandler have the authority to direct Piper Sandler's performance of its activities under this Agreement:

Edmund Wall, Managing Director

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first above written. By the signature of its representative below, each party affirms that it has taken all necessary action to authorize said representative to execute this Agreement.

PIPER SANDLER & CO.
By:
Edmund Wall
Its: Managing Director
Date: ___June 2022

ACCEPTED AND AGREED:

**CITY OF NORCROSS**

By: ___________________________
Craig Newton
Its: Mayor

Date: ___________________________

Piper Sandler & Co. is registered with the U.S. Securities and Exchange Commission and the Municipal Securities Rulemaking Board ("MSRB"). A brochure is posted on the website of the MSRB, at www.msrb.org that describes the protections that may be provided by MSRB rules and how to file a complaint with an appropriate regulatory authority.

## APPENDIX A – DISCLOSURE STATEMENT

Municipal Securities Rulemaking Board Rule G-42 (the Rule) requires that Piper Sandler provide you with the following disclosures of material conflicts of interest and of information regarding certain legal events and disciplinary history. Accordingly, this Appendix A provides information regarding conflicts of interest and legal or disciplinary events of Piper Sandler required to be disclosed to pursuant to MSRB Rule G-42(b) and (c)(ii).

(A) ***Disclosures of Conflicts of Interest*.** The Rule requires that Piper Sandler provide to you disclosures relating to any actual or potential material conflicts of interest, including certain categories of potential conflicts of interest identified in the Rule, if applicable. If no such material conflicts of interest are known to exist based on the exercise of reasonable diligence by us, Piper Sandler is required to provide a written statement to that effect.

Accordingly, we make the following disclosures with respect to material conflicts of interest in connection with the Scope of Services under the Agreement, together with explanations of how we address or intend to manage or mitigate each conflict. To that end, with respect to all of the conflicts disclosed below, we mitigate such conflicts through our adherence to our fiduciary duty to you in connection with municipal advisory activities, which includes a duty of loyalty to you in performing all municipal advisory activities for the Client. This duty of loyalty obligates us to deal honestly and with the utmost good faith with you and to act in your best interests without regard to our financial or other interests. In addition, as a broker dealer with a client oriented business, our success and profitability over time is based on assuring the foundations exist of integrity and quality of service. Furthermore, Piper Sandler's supervisory structure, utilizing our long-standing and comprehensive broker-dealer supervisory processes and practices, provides strong safeguards against individual representatives of Piper Sandler potentially departing from their regulatory duties due to personal interests. The disclosures below describe, as applicable, any additional mitigations that may be relevant with respect to any specific conflict disclosed below.

***Compensation-Based Conflicts***. The fees due under the Agreement are based on the size of the Issue and the payment of such fees is contingent upon the successful delivery of the Issue. While this form of compensation is customary in the municipal securities market, this may present the appearance of a conflict or the potential for a conflict because it could create an incentive for Piper Sandler to recommend unnecessary financings or financings that are disadvantageous to the Client, or to advise the Client to increase the size of the issue. We believe that the appearance of a conflict or potential conflict is mitigated by our duty of care and fiduciary duty and the general mitigations related to our duties to you, as described above.

The fees due under the Agreement are in a fixed amount established at the outset of the Agreement. The amount is usually based upon an analysis by the Client and Piper Sandler of, among other things, the expected duration and complexity of the transaction and the Scope of Services to be performed by Piper Sandler. This form of compensation presents the appearance of a conflict or a potential conflict of interest because, if the transaction requires more work than originally contemplated, Piper Sandler may suffer a loss. Thus, Piper Sandler may have an incentive to recommend less time-consuming alternatives, or fail to do a thorough analysis of alternatives. In addition, contingent-based compensation, i.e. based upon the successful delivery of the Issue while customary in the municipal securities market, may present the appearance of a conflict or the potential for a conflict because it could create an incentive for Piper Sandler to recommend unnecessary financings or financings that are disadvantageous to the Client. This conflict of interest is mitigated by our duty of care and fiduciary duty and the general mitigations related to our duties to you, as described above.

The fees due under the Agreement are based on hourly fees of Piper Sandler's personnel, with the aggregate amount equaling the number of hours worked by such personnel times an agreed-upon hourly billing rate. This form of compensation presents the appearance of a conflict or a potential conflict of interest if the Client and Piper Sandler do not agree on a reasonable maximum amount at the outset of the engagement, because Piper Sandler does not have a financial incentive to recommend alternatives that would result in fewer hours worked.[In addition, contingent-based compensation, i.e. based upon the successful delivery of the Issue while customary in the municipal securities market, may present the appearance of a conflict or the potential for a conflict because it could create an incentive for Piper Sandler to recommend unnecessary financings or financings that are disadvantageous to the Client. ]This conflict of interest is mitigated by our duty of care and fiduciary duty and general mitigations related to our duties to you, as described above.

***Transactions in Client's Securities***. As a municipal advisor, Piper Sandler cannot act as an underwriter in connection with the same issue of bonds for which Piper Sandler is acting as a municipal advisor. From time to time, Piper Sandler or its affiliates may submit orders for and acquire your securities issued in an Issue under the Agreement from members of the underwriting syndicate, either for its own trading account or for the accounts of its customers. Again, while we do not believe that this activity creates a material conflict of interest, we note that to mitigate any perception of conflict and to fulfill Piper Sandler's regulatory duties to the Client, Piper Sandler's activities are engaged in on customary terms through units of Piper Sandler that operate independently from Piper Sandler's municipal advisory business, thereby eliminating the likelihood that such investment activities would have an impact on the services provided by Piper Sandler to you under the Agreement.

***Piper Sandler Also Advising Others***. In addition to serving as municipal advisor to the Client Piper Sandler serves as municipal advisor to the Downtown Development Authority of the City of Norcross, which is another municipal entity with respect to an Issue under the Agreement. The Client and the municipal entities may have conflicting interests with regard to fees, terms of the issuance, and other matters. Such conflict is mitigated by our commitment not to represent adverse parties in any document review and only represent separate parties where their interests are aligned. To the extent their interests become adverse, we may be required to resign our engagement with both parties.

***Other Conflict***. Contributions to bond ballot campaign or referendums for the issue or if a refunding, the issue to be refunded.

(B) ***Disclosures of Information Regarding Legal Events and Disciplinary History***. The Rule requires that all municipal advisors provide to their clients certain disclosures of legal or disciplinary events material to a client's evaluation of the municipal advisor or the integrity of the municipal advisor's management or advisory personnel. Accordingly, Piper Sandler sets out below required disclosures and related information in connection with such disclosures.

I. Material Legal or Disciplinary Event. There are no legal or disciplinary events that are material to the Client's evaluation of Piper Sandler or the integrity of Piper Sandler's management or advisory personnel disclosed, or that should be disclosed, on any Form MA or Form MA-I filed with the SEC.

II. Most Recent Change in Legal or Disciplinary Event Disclosure. Piper Sandler has not made any material legal or disciplinary event disclosures on Form MA or any Form MA-I filed with the SEC.

(C) ***How to Access Form MA and Form MA-I Filings***. Piper Sandler's most recent Form MA and each most recent Form MA-I filed with the SEC are available on the SEC's EDGAR system at http://www.sec.gov/edgar/searchedgar/companysearch.html. The Form MA and the Form MA-I include information regarding legal events and disciplinary history about municipal advisor firms and their personnel, including information about any criminal actions, regulatory actions, investigations, terminations, judgments, liens, civil judicial actions, customer complaints, arbitrations and civil litigation. The SEC permits certain items of information required on Form MA or MA-I to be provided by reference to such required information already filed by Piper Sandler in its capacity as a broker-dealer on Form BD or Form U4 or as an investment adviser on Form ADV, as applicable. Information provided by Piper Sandler on Form BD or Form U4 is publicly accessible through reports generated by BrokerCheck at http://brokercheck.finra.org, and Piper Sandler's most recent Form ADV is publicly accessible at the Investment Adviser Public Disclosure website at http://www.adviserinfo.sec.gov. For purposes of accessing such BrokerCheck reports or Form ADV, Piper Sandler's CRD number is 665.

(D) ***Future Supplemental Disclosures***. As required by the Rule, this Section 5 may be supplemented or amended, from time to time as needed, to reflect changed circumstances resulting in new conflicts of interest or changes in the conflicts of interest described above, or to provide updated information with regard to any legal or disciplinary events of Piper Sandler. Piper Sandler will provide you with any such supplement or amendment as it becomes available throughout the term of the Agreement.

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# City of Norcross

## Legislation Details (With Details)

| | | | |
|---|---|---|---|
| **File #:** | 22-6506 | **Version:** | |
| **Type #:** | Agenda Item | **Status:** | Agenda Ready |
| **On Agenda:** | 6/21/2022 6:30 PM | **In Control:** | Policy Work Session |
| **Title:** | Demolition of Former Norcross Library | | |

**Sponsors:**

**Code Sections:**

**Attachments:**

1. Agenda Report- Old Norcross Library

**Title**
**Demolition of Former Norcross Library**

**Drafter**
**Eric Johnson**

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MAYOR **CRAIG NEWTON** · MAYOR PRO TEM **MATT MYERS** · COUNCILMEMBER **ANDREW HIXSON** · COUNCILMEMBER **JOSH BARE**
COUNCILMEMBER **BRUCE GAYNOR** · COUNCILMEMBER **ARLENE BECKLES** · CITY MANAGER **ERIC JOHNSON** · CITY CLERK **MONIQUE LANG**

# Agenda Report

**To:** Mayor and Council

**From:** Eric Johnson, City Manager

**Agenda:** June 21, 2022 – Policy Work Session

**Agenda #:** 22-6506

**Item:** Demolition of former Norcross Library

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**Recommendation:** Authorize demolition of the former Norcross Library building, located at 6025 Buford Highway, and fencing of the site in anticipation of future site development and construction of a public safety building to house the Norcross Police Department and the Norcross Municipal Court at this location.

**Background:** This site and building were obtained in a swap with Gwinnett County as part of the construction of the new Norcross Library adjacent to Lillian Webb Park. The building was previously considered for renovation into a new Police Department headquarters. Analysis of space needs by CROFT, and an assessment of the building and site, determined that the building is not large enough to house the Police Department. Additionally, a detailed assessment of the existing building and parking lot found significantly greater costs for repairs and renovation than previously anticipated -- . In the meantime, the City Council has considered incorporating the Municipal Court into the same building as the Police Department, allowing some economies through co-location, but further making the existing building inadequate. The current estimated space needs for both functions is 33,000 square feet. The former library is about one-third that size – 10,600 square feet -- and one-half the 21,300 square foot space requirement for just the Police Department.

Some vandalism has occurred to the unoccupied building and, should the City not move forward with demotion (including recovering and recycling materials, where possible), the City should invest in securing the building from any further damage.

**Financial Impact:** Adequate funds are available from Redspeed fines to initiate the initial stages of a public safety building project: land and site development, demolition of structures, and preparation of construction documents. Added funds for this project would be anticipated from passage of a 2023 SPLOST referendum in the form of an allocation for Administrative Facilities, and additional funds will likely be required from issuance of revenue bonds pledging fine revenue and/or other City revenue. The most recent estimate for construction costs, based on current pandemic-impacted factors, was $425/square foot, which amounts to $14 million. That cost excludes land and land development; construction plans; and furniture, fixtures and equipment.

An earlier estimate for infrastructure repairs and renovation of the existing library building was $3.4 million. At that time, the estimated construction cost of a new building was $325/square foot.

**Consistent with Comprehensive Plan?** Yes. Goal 6 addresses the tradition of high level of service. The location of the public safety building on Buford Highway will provide transit access and high visibility, while facilitating an efficient design and incorporation of sustainability elements.

**Next Steps:** On approval, the City will secure bids for demolition, and develop an initial financing plan in conjunction with the City's financial advisor.

**Attachments:**
None.

# City of Norcross

## Legislation Details (With Details)

| | | | |
|---|---|---|---|
| **File #:** | 22-6507 | **Version:** | |
| **Type #:** | Agenda Item | **Status:** | |
| **On Agenda:** | 6/21/2022 6:30 PM | **In Control:** | Policy Work Session |
| **Title:** | Full-Time Employee– Internal Communications Lead | | |

**Sponsors:**

**Code Sections:**

**Attachments:**

1. Agenda Report - FTE Communications Lead
2. Norcross Communications Task Force Recommendations

**Title**
**Full-Time Employee– Internal Communications Lead**

**Drafter**
**Councilmember Dr. Arlene Beckles**
**Mayor Pro Tem Matt Myers**

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# Agenda Report

**To:** Mayor and Council

**From:** Councilmember Dr. Arlene Beckles
Mayor Pro Tem Matt Myers

**Date:** June 21, 2022 – Policy Work Session

**Item No.:** 22- 6507

**Title:** Full Time Employee – Internal Communications Lead

**CC:** Eric Johnson

## Recommendation
An internal Full-Time Employee is needed to stay abreast of internal/external communications strategy, and branding, and to be the one point of contact of the city to provide a consistent message across all our communications mediums. It is recommended that the attached report be revisited, and a Strategic Communications Master Plan created and used as a guideline to better inform our residents and businesses.

## Background
Refer to the Norcross Communications Task Force report and recommendations (attached)

## Financial Impact
HR to be consulted

## Consistent with Comprehensive Plan?
Provide a high level of service with communication being the first pillar of consistency in getting the word out that impacts life-threatening public safety, and community events that impacts our residents and businesses.

## Next Steps
Begin the process to hire Full-Time Employee Communications Strategic Plan using the provided recommendations and current updates

## Attachments
Norcross Communications Task Force Report and Recommendations

## Update

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# Norcross Communications Task Force Report and Recommendations

**Background**:
Norcross outsources all of its communication operations to Accent Creative Group.. The City has a retainer contract with Accent that is based on 100 hours per month or about 23 hours per week. In 2019 the average number of hours spent on Norcross projects was 120 per month or about 27 hours per week. These numbers do not include hours contributed by Pam Ledbetter, Accent's CEO. Ms. Ledbetter functions as a city department head, attending all appropriate city meetings, and interfacing with staff and boards, as well as account project management, so we know the hours served under this contract are significantly higher.

The scope of our retainer contract includes both internal (proofreading, letter writing, presentations, speech writing and collateral materials) and external (digital and print publicity, public notifications, newsletters, website updates, email blasts and other social media) communications.

The number of internal customers (mayor and council, city staff, boards and committees, downtown merchants) and the requests these internal customers make has significantly increased since the inception of the contract. However, according to the City Manager, there has not been a corresponding increase in compensated hours although there has been a small increase to the original retainer. Additionally, the scope of work as defined by the original contract has changed over time but the contract has not been reworked to reflect additional priorities and/or change of scope.

In her role as a quasi-department head, Ms. Ledbetter works to set priorities within her budget. It is not possible, within the terms of the present contract, to respond to every request. Additionally, because the city utilizes income generated by the hotel/motel tax to fund the bulk of this contract, most expenditures are subject to certain tourism criteria and must be approved by the county.

At times, the requested turn-around time for projects is unreasonably short, occasionally as short as Friday to Monday, which serves to preempt other work in progress and/or create weekend and/or after hours for Accent employees. To borrow from Steven Covey, the urgent can get in the way of the important. More advance planning by internal customers could perhaps alleviate some of this.

It has also been difficult at points to gain adherence to marketing standards (colors, branding etc.) when staff or other groups self-produce content, although it has improved greatly with the new processes ACG put in place. This did and can result in a hodge-podge of signage and communication pieces, as well as inconsistent and/or redundant public presentation and brand messaging across platforms.

*ACG Insight:* Early on in the contract, ACG stated that they met with each department head to gather additional insight on each departments' needs and to collect their specific collateral pieces for review. ACG created some needed communication department tools such as:
• An accessible file with process and planning documents
• An advertising schedule that records the year's schedule of committed advertising, pay cycles, deadlines, ad specs and ad contracts
• An event promotion spreadsheet providing a checklist for marketing efforts for each of the 121 scheduled calendar events
• Social media strategies for each of our platforms
• A PR spreadsheet for tracking anticipated stories, targeted push dates, actual push dates and whether these were picked up by the press
• A communications policy to aid in consistently and fairly responding to incoming requests (although it is not always followed)
• A newsletter production schedule and editorial calendar
• A master calendar checklist, with monthly, weekly and daily tasks that structures planning a year in advance, that is then amended and revised as the year progresses.
Other important items to note:

- The city website had not been managed by the communications department in the past and was being updated by the HR department and other department heads and key employees. ACG conducted an audit and found many issues with the site and asked the city manager for oversight of the website in order to control messaging and brand and keep within recommended best practices for government sites. The ACG team worked with the city web developers, CivicPlus, to migrate to an enhanced platform and to clean up and reface the existing site based on the citys' budget parameters.
- ACG also noticed that there was inconsistency with city signage and presented to council the need to conduct an audit of all city signage in order to get all signage back in good repair and within brand standards and to identify locations and establish some budgetary goals for placements of gateway signage for the city. This also included a complete inventory with locations and style types identified.

Finally, we sometimes turn to Accent Creative for help in event planning and execution (city anniversary and political forums are recent examples). While this is a service Accent offers and executes well (they were responsible for the Gwinnett County Bicentennial Celebration), these activities generally lie outside the contract's originally conceived scope of work and add to the rate at which retainer hours are consumed.

The original 2020 annual communications budget, including both retainer and collaterals, was $317,900. This was reduced to $218,900 when the city made across the board cuts due to COVID. The proposed budget for 2021 is $257,000, which is a decrease of about 20% over the original 2020 number. This was again due to projected consequences of COVID.

While no city is managed, organized or funded in exactly the same way as another, comparative analysis indicates that Norcross is operating on a significantly lower budget than other cities in our area. Nevertheless, citizens, who cannot see the backend discrepancies in budget, organization, population size and available resources, expect to see a comparable product.

<u>**Recommendations**</u>:

**1. The City needs to be clearer about what it wants from its communications department and what it is willing to spend to get it.**

Rationale: When Accent was initially hired it was as an interim marketing department charged with keeping current efforts afloat while developing the systems and processes needed to govern work when a new employee was hired. The city then decided to continue to outsource rather than add communications staff. At this point the defined scope of work included day to day management of communications; social media, collaterals, weekly eblast, website, monthly newsletters, PR with local media, and developing a departmental budget.

Since that time the scope of work has grown piecemeal to include:

• Creating branding for and helping to promote various Boards and Programs (new ones included: Community Market, Sustainable Norcross, Discovery Garden, LiveNorcross, etc.)
• Overseeing and managing the city website
• Planning small gatherings such as ribbon cuttings, ground-breakings and debates and sitting on planning committees for larger events.
• Assisting Mayor, Council and staff with communication needs such as drafting letters, proofing and completing applications for awards, creating talking points for interviews and presentations, putting together PowerPoint presentations for staff, videotaping meetings, etc.
• Assisting Economic Development in marketing, which in the past was not part of the work of the communications team
• Being on call 24/7 for crisis management response
• Oversight of city signage and wayfinding

One thing that has been missing in all this is a City visioning and planning process specifically for PR and marketing. While marketing has been included as a side note in several of the city's comprehensive plans, these do not specifically research, evaluate and address the marketing of the city in the way a strategic marketing plan would. Our last rebranding did not include a strategic marketing component, which may be one reason the brand itself has not been as well integrated as it otherwise might have been.

It falls to the city to decide whether a true strategic marketing plan including goals, priorities and a 3 to 5- year implementation plan is in order. Accent Creative provides these services but it is a project unto itself and would not be covered by the annual retainer. There is a heavy research component, including focus groups. The typical cost is $20,000 to $150,000 depending upon the firm and the depth of research.

**2. The City needs to decide whether a completely redesigned website with enhanced functionality is a priority for funding.**

Rationale: When upgrades to the Norcross website were last discussed, the decision was made to go with the nominal cost improvements offered by our provider. While this did increase functionality, it was not a real redesign and did not meet the expectation of some of our citizens.

The financial investment needed for a complete redesign is estimated at $80 to $100 K. The task force was divided as to the need to spend more in this area. Some believe this is vitally important. Others believe the current website is both an improvement of what we previously had and adequate for our present needs. A complete redo would be a considerable expense to the city and not possible within current budget parameters. Council will need to decide whether and when this should be pursued and authorize the funds for this to happen.

**3. Digital Marketing should be given a greater priority**
Rationale: Although the city does utilize digital marketing in most of its initiatives, the Task Force generally agrees that we need a more robust and creative digital presence, specifically an enhanced focus on platforms such as Instagram which the city currently uses with an audience base of approximately 1911 followers (a significant increase from 428 in Oct 2018 when ACG took it over. Note: there were a total of 27 posts dating back to August 2014, which we archived- originally we were locked out of this social platform). Particular attention should be given to communicating with younger and more diverse and multilingual populations. A strong need for "stories" and video content would greatly enhance this initiative but would need participation and increased budget to achieve desired results.

4. **The city should consider adding a Communications Liaison to the city staff**
Rationale: The addition of an internal FTE would allow us to better sort through internal requests, attend to issues of last-minute demand, and maintain current information across platforms. This person would be responsible for attending internal meetings, including department head meetings; gathering and making updates to website content from various departments and monitoring our website (s) to see that information is kept current; interpreting and monitoring deadlines so that work flows smoothly; managing the interface between the city and our communication partners such as Accent Creative; and interpreting to various constituents the parameters within which public entities must function. Skill sets required should include ability to write, edit and proofread materials for internal customers, freeing Accent Creative to focus on external communication, graphic production and media presence. This would allow for a more targeted use of retainer hours.

5. **The city needs to prioritize and invest in enhanced ways to communicate with diverse populations**
Input from our Hispanic community indicates a strong preference for telephone-based communication, including texts (in Spanish) and the use of apps (like Facebook) with a translation feature. Currently, the city has the functionality set on the website and social sites with a translation feature for those that desire it. The city also translates its city newsletter into Spanish and posts it on the website and the plan was to print additional copies in Spanish for distribution pre-COVID. The ACG team did reach out to CivicPlus to gather additional details about the notifications system for those that sign up for city alerts/notifications through the website. They learned that it will translate on their devices for them. Many of these citizens don't have home computers but do use smartphones regularly. It is important for us to be intentional in our outreach to this segment of our citizenry and create a strategy to let them know of the

above city communications available to them. A focused targeted promotional campaign would help drive this audience to the platforms currently available.