

STATE OF NORTH CAROLINA

MECKLENBURG COUNTY

ROBERT WRIGHT, MARK MICHALEC, and  
SCOTT SHIPMAN individually and on behalf  
of all others similarly situated,

Plaintiffs,

v.

CITY OF CHARLOTTE,

Defendant.

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
21 CVS 4063

**PLAINTIFFS' REVISED FIRST  
MOTION TO AMEND THE  
COMPLAINT BY ADDING A THIRD  
ALTERNATIVE CLAIM FOR RELIEF  
AND A FOURTH ALTERNATIVE  
CLAIM FOR RELIEF**

Pursuant to the provisions of North Carolina Rule of Procedure 15(a), Plaintiffs move for leave to file a First Amended Complaint in the matter to add a Third Alternative and Fourth Alternative Claim for relief, a copy of which Amendment with exhibits is attached. In support of this Motion, Plaintiffs show the Court as follows:

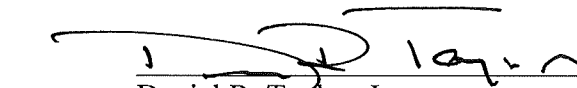
1. Plaintiffs filed the Complaint on March 16, 2021, and Defendant was duly served.
2. Defendant filed an Answer to the Complaint on June 18, 2021.
3. Pursuant to Rule 15(a), Plaintiffs may amend only by leave of Court if the adverse party does not consent in writing.
4. The Proposed First Amended Complaint arises from the same transactions and occurrences set forth in the original Complaint. Indeed, Defendant's contention in its Answer to paragraph 22 of the Complaint led to this proposed amendment. In paragraph 22 of its Answer, Defendant asserts that payroll deductions for the Voluntary Police Pledge Fund were approved by the text of Complaint Exhibit A (June 17, 1966, public record minutes of City Council of the City of Charlotte). The text of Exhibit A, however, provides no such support but Exhibit B (April 8, 1969, public record minutes of the City Council of the City of Charlotte) clearly reflects that the

only deduction approved to be taken were “when there is a death of a member of the [Charlotte Mecklenburg Police Department].” Absent further later authority by the City Council only deductions for death benefits were authorized and all other deductions taken by the City of Charlotte were ultra-virus. These claims should be deemed to relate back to the filing of the Complaint on March 16, 2021, as if stated in it, pursuant to Rule 15(c). In addition, Plaintiffs have added additional language in paragraph 35 incorporated in all claims that Defendant has waived sovereign immunity on all claims asserted – First, Second, Third and Fourth Claims for Relief.

5. Discovery is ongoing and this matter has not been placed on a trial calendar.

6. The Proposed First Amended Complaint will not cause undue delay or undue prejudice to Defendant and is not interposed for any improper reason or in bad faith. Justice would be served by permitting the filing of the First Amended Complaint.

Respectfully submitted this 7<sup>th</sup> day of August 2021.



Daniel R. Taylor, Jr.

E. Winslow Taylor

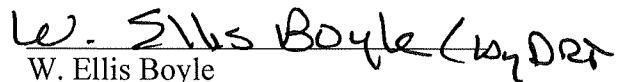
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*Attorneys for Plaintiffs*



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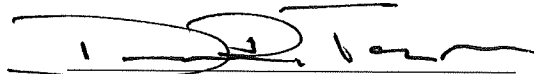
*Attorney for Plaintiffs*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this date a copy of the foregoing was duly served upon defendant by placing postage prepaid envelopes containing copies of same into the U.S. Mail, properly addressed to the defendant's attorney of record as follows:

Daniel E. Peterson  
Parker Poe  
620 South Tryon Street, Suite 800  
Charlotte, NC 28202  
DanielPeterson@ParkerPoe.com  
*Attorney for Defendant City of Charlotte*

This the 7<sup>th</sup> day of August 2021.



Daniel R. Taylor, Jr.  
*Attorney for Plaintiffs*



The Volunteer Pledge Fund as approved by the City Council in 1966 was never approved to operate in any fashion to allow for deductions from weekly compensation other than as stated in Complaint **Exhibit B** "when there is a death of a member of the department, with the money going to the beneficiary."

In 1966 as reflected in **Complaint Exhibits A & B** (attached hereto as Exhibits A & B as well), the City Council only granted authority to the City of Charlotte to take deductions for the Voluntary Police Pledge Fund for death benefits, and deductions taken for any other purposes as occurred through the years until the deductions were terminated were ultra vires.

As a result of the unauthorized deductions taken by the City of Charlotte, Defendant is liable to each member of the class to a full refund and appropriate interest as allowed by law.

### **ALTERNATIVE THIRD CLAIM FOR RELIEF IN EQUITY**

#### **SPECIFIC ALLEGATIONS**

40. The allegations of paragraphs 1 - 39 of the Complaint are incorporated fully and completely as if restated herein except to the extent any paragraph or portion of any paragraph is determined to be inconsistent with the allegations of this Alternative Third Claim for Relief in Equity.
41. On information and belief, at all times since 1966 the legal authority of the City of Charlotte to take deductions from the compensation of Charlotte employees was limited to those items specifically authorized by the City Council of the City of Charlotte as is reflected in **Exhibit G** attached hereto.
42. The City of Charlotte has affirmatively represented in its Answer to the Complaint in this action that it was authorized to take the Pledge Fund deductions, based on **Exhibit A** to the Complaint (Answer paragraph 22)
43. **Exhibit A** of the complaint, however, makes clear that in January 1966 "[the] approval of the use of payroll deductions for the Volunteer Police Pledge Fund [was] subject to the details being worked out satisfactorily [at a later time]."
44. Lacking requisite specificity, complaint **Exhibit A** cannot be the basis for any Pledge Fund deductions and to the extent deductions were taken pursuant to complaint **Exhibit A**, all such deductions were ultra vires being without authority and the funds so deducted must be returned to the Pledge Fund participants from whose salary the deductions were taken.
45. The April 8, 1969, minutes of the City Council, Complaint **Exhibit B**, however, clarifies in specific terms exactly what was approved in 1966 subsequent to the January 17, 1966, City Council meeting. Specifically, as appears in the City of Charlotte, City Council public records of April 8, 1969 (Minute Book 51, Page 458) "in 1966 [Charlotte City] Council approved a Volunteer Pledge Fund for the Police Department permitting payroll deduction of \$5.00 each when there is a death of a member of the department with the money going to the beneficiary." (emphasis added)
46. At no time since 1966 has the City Council of the City of Charlotte authorized the City of Charlotte to deduct funds from the pay of Volunteer Police Pledge Fund participants other than as reflected by Complaint **Exhibit B**.

47. Further evidence of what was intended by the City Council is reflected by the Charlotte Fire Department Pledge Fund contract **Exhibit H** attached hereto which was provided by the City of Charlotte in response to a Freedom of Information Request for a copy of the Volunteer Pledge Fund contract. **Exhibit I** attached hereto.

48. Notwithstanding the clear language of Complaint **Exhibit B**, as time passed the City of Charlotte's Finance Department, without proper authority, took deductions from the weekly compensation of Volunteer Pledge Fund participants for purposes other than as authorized in 1966 pursuant to Complaint **Exhibits B**.

49. All payroll deductions for the purpose of providing anything other than a death benefit for a member from 1966 through the time Pledge Fund deductions were terminated were contrary to and in violation of the 1966 authorization, complaint **Exhibit B**, and must be returned to the participant from whose compensation the authorized deductions were taken.

WHEREFORE, Plaintiffs individually and on behalf of the class that they represent, pray that as relief for this Alternative Third Claim for Relief, that they have and recover the full refund of all ultra-vires deductions taken and appropriate interest as allowed by law

### **ALTERNATIVE FOURTH CLAIM FOR RELIEF**

(COMMON LAW NEGLIGENCE)

#### **RESTATED ALTERNATIVE BACKGROUND**

The City of Charlotte had an affirmative duty to its employees to ensure that funds were deducted from their compensation only for those things specifically authorized by the City Council. The City of Charlotte failed in its duty and is liable to each employee from whom deductions were taken without authorization of the City Council. As a result of the negligence of the City of Charlotte, plaintiffs are entitled to recover the full amount of the ultra-vires deductions and appropriate interest as allowed by law.

#### **ALTERNATIVE FOURTH CLAIM FOR RELIEF**

SPECIFIC ALLEGATIONS

50. The allegations of paragraphs 1 - 49 of the Complaint are incorporated fully and completely as if restated herein except to the extent any paragraph or portion of any paragraph is determined to be inconsistent with the allegations of this Alternative Fourth Claim for Relief.

51. The City of Charlotte had an affirmative duty to its employees to deduct from the compensation of its employees only items specifically approved by the City Council of the City of Charlotte

52. By failing to have processes in place to ensure only proper deductions are taken and ensure that all deductions were authorized, the City of Chalotte failed in its duty at all times relevant by deducting funds for purposes other than the death of a Pledge Fund participant as reflected in Complaint **Exhibit B**.

53. As a result of its negligence, the City of Charlotte is liable to all Pledge Fund participants who had money taken from their pay for purposes other than a death benefit and as a result of the negligence of the City of Charlotte, the Pledge Fund participants are entitled "to a full refund, plus interest, on those deductions to the date of judgment."

WHEREFORE, Plaintiffs individually and on behalf of the class that they represent, pray that as relief for this Alternative Fourth Claim for Relief, that plaintiffs have and recover the full amount of the ultra-vires deductions and appropriate interest as allowed by law.

This the \_\_\_ day of \_\_\_\_\_ 2021.

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w. Ellis Boyle  
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Raleigh, NC. 27609  
Telephone: 919-783-5900

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the \_\_\_ day of \_\_\_\_\_ 2021, he served the following:

**PLAINTIFFS' AMENDMENT TO COMPLAINT  
ADDING A THIRD ALTERNATIVE CLAIMS FOR RELIEF IN EQUITY  
AND A FORTH ALTERNATIVE CLAIMS FOR RELIEF.**

upon counsel for Defendant by United States Postal Service addressed to:

Daniel E. Peterson  
Parker Poe  
620 South Tryon Street, Suite 800  
Charlotte, NC 28202  
*Attorney for Defendant City of Charlotte*

And, by email addressed to

[danielpeterson@parkerpoe.com](mailto:danielpeterson@parkerpoe.com)

This the \_\_\_ day of \_\_\_\_\_ 2021.

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Daniel R. Taylor, Jr.  
Taylor & Taylor,  
Attorneys at Law, PLLC  
418 N. Marshall St., Suite 204  
Winston-Salem, NC 27101  
Tel.: 336-418-4745



# EXHIBIT A

A regular meeting of the City Council of the City of Charlotte, North Carolina, was held in the Council Chamber, City Hall, on Monday, January 17, 1966, at 2 o'clock p.m., with Mayor Stan R. Brookshire presiding, and Councilmen Claude L. Albea, Fred D. Alexander, Sandy R. Jordan, Milton Short, John H. Thrower, Jerry C. Tuttle and James B. Whittington present.

ABSENT: None.

The Charlotte-Mecklenburg Planning Commission sat with the City Council and heard the discussions on the Zoning petitions, with the following members present: Mr. Sibley, Chairman, Mr. Ashcraft, Mr. Lakey, Mr. Olive, Mr. Stone and Mr. Turner.

ABSENT: Mr. Gamble, Mr. Jones, Mr. Tate and Mr. Toy.

\* \* \* \* \*

INVOCATION.

The invocation was given by Mr. W. J. Elvin.

MINUTES APPROVED.

Upon motion of Councilman Albea, seconded by Councilman Jordan and unanimously carried, the Minutes of the last meeting of the City Council were approved as submitted to them.

PETITION NO. 66-4 BY DR. T. M. McMILLAN AND WIFE FOR CHANGE IN ZONING OF 13.4 ACRE TRACT ON THE SOUTHEAST CORNER OF PROVIDENCE ROAD AND CARMEL ROAD, FROM R-15 TO B-1, WITHDRAWN.

Mr. Robert Perry, Attorney for the petitioners of the subject property, advised that Dr. McMillan and his wife wish to withdraw their petition for the reasons they have found that the residents of the community were unaware that the corners of Carmel and Providence Roads and of Sardis and Providence Roads were presently zoned R-15MF; and they were also unaware of the plans for connecting Sardis and Carmel Road. That they anticipate that the residents will study the changing character of these intersections and the Major Thoroughfare Plan and General Development Plan and will be more favorably inclined to the change in zoning of the subject property in the near future.

Councilman Short moved that permission be granted to withdraw the petition. The motion was seconded by Councilman Alexander, and unanimously carried.

HEARINGS ON PETITION NO. 66-13 BY SHARON HOME LOAN COMPANY AND J. J. HARRIS FOR CHANGE IN ZONING OF PROPERTY EXTENDING FROM SHARON ROAD TO NEAR INVERNESS ROAD AND LYING TO THE SOUTH OF WICKERSHAM ROAD, FROM R-12 TO R-12MF AND O-12S ADJOURNED UNTIL FEBRUARY 21, 1966.

ORDINANCE NO. 415 TO AMEND CHAPTER 7 OF THE CODE OF THE CITY OF CHARLOTTE  
RELATING TO MONUMENTS IN CEMETERIES.

Upon motion of Councilman Thrower, seconded by Councilman Tuttle and unani-  
mously carried, an ordinance entitled: Ordinance No. 415 to Amend Chapter  
7 of the Code of the City of Charlotte Relating to Monuments in Cemeteries,  
was adopted.

This ordinance is recorded in full in Ordinance Book 14, at Page 257.

CROSSING GUARDS AUTHORIZED AT NEWLAND ROAD AND CUMMINS AVENUE AND AT NEW-  
LAND ROAD AND SAMUEL STREET TO SERVE LINCOLN HEIGHTS AND WILLIAMS JUNIOR  
HIGH SCHOOL, AND TRANSFER OF FUNDS FROM THE CONTINGENCY ACCOUNT, GENERAL FUNDS,  
FOR THIS PURPOSE.

Upon motion of Councilman Albee, seconded by Councilman Whittington and unani-  
mously carried, a crossing guard was authorized at Newland Road and Cummins  
Avenue and at Newland Road and Samuel Street to serve Lincoln Heights and  
Williams Junior High School, and \$860.00 was authorized transferred from  
the General Fund, Contingency Account for this purpose.

TRANSFER OF FUNDS FROM GENERAL FUND, UNAPPROPRIATED FUNDS TO TRAFFIC ENGINEER-  
ING DEPARTMENT ACCOUNT FOR THE INSTALLATION OF NEW SCHOOL ZONES AND SIGNS,  
AUTHORIZED.

Councilman Tuttle moved that \$12,680.00 be transferred from the General Fund,  
Unappropriated funds to the Traffic Engineer Department Account, for the  
Installation of new School Zones and Signs for the 67 elementary and junior  
high schools located within the city limits, as recommended by the Traffic  
Engineers. The motion was seconded by Councilman Short and carried unani-  
mously.

See Ordinance No. 550-X attached.

PAYROLL DEDUCTION OF FUNDS FOR VOLUNTEER POLICE PLEDGE FUND, AUTHORIZED.

Councilman Thrower moved approval of the use of payroll deductions for the  
Volunteer Police Pledge Fund, subject to the details being worked out satis-  
factorily. The motion was seconded by Councilman Short and carried unani-  
mously.

January 17, 1966  
Minute Book 46 - Page 362

FV PNC

ENGINEERING AGREEMENT IN CONNECTION WITH THE WIDENING OF SHARON AMITY ROAD FROM TANGLE DRIVE TO INDEPENDENCE BOULEVARD AUTHORIZED WITH RALPH WHITEHEAD & ASSOCIATES.

Upon motion of Councilman Whittington, seconded by Councilman Albee and unanimously carried, an engineering agreement was authorized with Ralph Whitehead & Associates in connection with the widening of Sharon Amity Road from Tangle Drive to Independence Boulevard, AT A TOTAL LUMP sum fee of \$12,500.00.

REQUEST OF MRS. W. A. LILLY FOR INFORMATION REGARDING CONSTRUCTION OF SWIMMING POOL IN WOODBURY FOREST REFERRED TO THE PLANNING COMMISSION.

Councilman Tuttle requested Mr. Bobo, Administrative Assistant, to take up the letter from Mrs. W. A. Lilly regarding the construction of a swimming pool in Woodbury Forest with the Planning Commission, AND SEE if anything can be worked out for her.

ADJOURNMENT.

Upon motion of Councilman Thrower, seconded by Councilman Alexander and unanimously carried, the meeting was adjourned.

*Lillian R. Hoffman*  
Lillian R. Hoffman, City Clerk

FV PNC

# EXHIBIT B

April 8, 1969  
Minute Book 51 - Page 458

A regular meeting of the City Council of the City of Charlotte, North Carolina, was held in the Council Chamber, City Hall, on Tuesday, April 8, 1969, with Mayor Stan R. Brookshire presiding, and Councilmen Fred D. Alexander, Milton Short, Gibson L. Smith, James B. Stegall, Jerry Tuttle and James B. Whittington present.

ABSENT: Councilman Sandy R. Jordan.

\* \* \* \* \*

INVOCATION.

The invocation was given by Councilman Milton Short.

MINUTES APPROVED.

Upon motion of Councilman Whittington, seconded by Councilman Smith, and unanimously carried, the minutes of the last Council Meeting, on March 31, 1969, were approved as submitted.

MAYOR AND COUNCILMEN INVITED TO OPENING OF BASEBALL SEASON IN CHARLOTTE.

Mr. Don Hill stated he is present in reference to the opening of the baseball season; Mr. Phil Houser has just returned from Florida and has asked him to come today and invite the Mayor and Council to a successful season in the baseball park this year. Mr. Hill stated they are happy that the Mayor has agreed to open the season by throwing out the first ball. He stated Mr. Mayor has agreed to accept from the Councilmen the number of tickets for some boxseats for the game on Monday night; that they hope to have the Johnson C. Smith University Band present on Monday for the opening, and they hope to have a good turn-out for the opening season.

STATEMENTS BY VARIOUS CITIZENS.

Mr. W. J. Elvin stated a few weeks ago he suggested that the salaries of the Mayor and Council be increased by 100 percent; that he hoped this increase would encourage people better qualified with a broader general business and financial experience to run for these offices; that he would also suggest that all regular Council Meetings be held in the evening as many of the younger people are not available to hold office or attend meetings or committee assignments unless such a change is made.

Mr. Bobby White of the Derita Jaycees stated they are planning to hold a Fair and carnival to open Friday or Saturday night as a project to raise money for their charities.

Mr. White stated the Jaycees want to get involved more in politics; that a lot of their men have expressed interest that has never been expressed before; also, the evening meetings would give them a better chance to attend the meetings and to express their ideas.

Councilman Smith stated he attended their meeting on Monday night and they are really a charitable group and they are young men with a lot of ability; that he commends them to government as the type of people he has talked about who should be involved in city government.


PAYROLL DEDUCTION FOR VOLUNTEER PLEDGE FUND FOR FIRE DEPARTMENT AUTHORIZED.

Mr. Veeder, City Manager, stated in 1966 Council approved a Volunteer Pledge Fund for the Police Department permitting payroll deduction of \$5.00 each when there is a death of a member of the department, with the money going to the beneficiary. That the Fire Department through a memorandum from Chief Black has asked for similar privileges for the Fire Department.

Councilman Stegall moved approval of the request as recommended. The motion was seconded by Councilman Short, and after discussion, carried unanimously.

ADJOURNMENT.

Upon motion of Councilman Whittington, seconded by Councilman Stegall, and unanimously carried, the meeting was adjourned.

  
Ruth Armstrong, City Clerk