

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 relevant to the claims in this action, the North Carolina General Assembly never extended to the City of Charlotte the power to take deductions for or otherwise support the operation of a pledge fund to provide either death benefits or retirement benefits for its employee participants.
42. Nevertheless, on information and belief, at all times relevant to the claims in this action, the City of Charlotte has taken payroll deductions from participant employees compensation for and administered first a death benefit which was later expanded to include a retirement benefit.
43. The City of Charlotte has affirmatively represented in its Answer to the Complaint in this action that its actions and deductions taken in support of a pledge fund were authorized pursuant to the January 17, 1966 City Council Resolution. **Exhibit A** to the Complaint (Answer paragraph 22) Also attached hereto as **Exhibit A**.
44. **Exhibit A** of the complaint, however, makes clear that on January 17, 1966 “[the] approval of the use of payroll deductions for the Volunteer Police Pledge Fund [was] subject to the details being worked out satisfactorily.”
45. Even if authorized by the North Carolina General Assembly, which it was not, lacking requisite specificity, Charlotte City Council January 17, 1966 Resolution (complaint **Exhibit A**) cannot be the basis for any Pledge Fund deductions and to the extent deductions were taken pursuant to January 17, 1966 Resolution, all such deductions were ultra vires being without authority from both the North Carolina General Assembly and the Charlotte City Council. Funds so deducted must be returned to the Pledge Fund participants who have not otherwise received funds at least equal to the amount deducted plus interest.
46. The April 8, 1969, minutes of the City Council, Complaint **Exhibit B**, however, clarifies in specific terms exactly what was perhaps intended 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) “Mr. Veeder, City Manager, stated 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). That the Fire Department through a memorandum from Chief Black has asked for similar privileges for the Fire Department.”

47. The April 8, 1969, City Council minutes, while purporting to approve a \$5 death benefit fund for the Fire Department, do not constitute approval of or any official action taken in 1966 by Resolution or otherwise. If, however, the April 8, 1969 City Council Resolution could be interpreted to be the "approval" of any action for the Police Department in 1966, it would only be approval of a \$5 death benefit fund. However, at no time relevant to the claims in this action did the North Carolina General Assembly grant to the City of Charlotte any authority to create a Death Benefit Fund or a Retirement Benefit Fund for any employees until January 1, 1972 when N.C.G.S. sec 160A-163 was enacted which required such fund be "actuarially sound" as determined by an actuary "certified as qualified by the Commissioner of Insurance or any member of the American Academy of Actuaries."

48. Further evidence of what was intended by the Charlotte City Council in 1969 is reflected by the Charlotte Fire Department Pledge Fund contract, a copy of which is attached as **Exhibit H** hereto. The Fire Department contract was provided by the City of Charlotte in response to a Freedom of Information Request for a copy of the Police Department Volunteer Pledge Fund contract. **Exhibit I** attached is the Freedom of Information request noting Charlotte's responses.

49. Notwithstanding the clear language of the April 8, 1969 Charlotte City Council Minutes (**Complaint Exhibit B attached**) and the practice followed for the Fire Department, the City of Charlotte without proper authority from the North Carolina General Assembly and the Charlotte City Council, subsequently took deductions from the weekly compensation of Police Department Volunteer Pledge Fund participants for retirement benefits, which deductions were ultra-vires, not within the powers granted to Charlotte by the North Carolina General Assembly nor granted to Charlotte by its City Council. All ultra-vires deductions must be returned to the Pledge Fund participants who have not otherwise received funds at least equal to the amount deducted plus interest

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 and was negligent by not ensuring that funds were deducted from employee compensation only for those things

specifically authorized by the North Carolina General Assembly and approved by the Charlotte 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 taken in excess of the amount not otherwise received as well as 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. Charlotte was negligent in that it had an affirmative duty to and failed

(a) to confirm it had authority from the General Assembly, the City Council, or the City Manager (to the extent the City Council and the City Manager had authority to grant) to take death benefit deductions, which authority it did not possess,

(b) to confirm that it had authority from the General Assembly, the City Council, or the City Manager (to the extent the City Council or the City Manager had authority to grant) to take retirement deductions after the initial approval only applied to death benefits, which authority it did not possess,

(c) to confirm that the deductions when initially commenced were taken for a viable entity and a sustainable purpose as for example deductions taken for the United Way or other similar organizations,

(d) to confirm from time to time that the deductions taken were taken for the purpose for which they were initially approved,

(e) to monitor information in its possession to insure that the program was sustainable and prospectively able to meet its purported purpose,

(f) to prevent the advertising and publishing of the fund as a "benefit" along with other benefits during recruitment class presentations on a city website when information available to the City would show that the fund was not sustainable,

(g) to monitor the activities of its finance and payroll department to insure those funds deducted were properly authorized, had a reasonable chance of achieving the purpose of the deduction and would not cause its employees financial loss.

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 Charlotte 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 the negligence of the City of Charlotte, plaintiffs in equity are entitled to recover the full amount of the ultra-vires deductions in excess of the amount otherwise received as well as appropriate interest as allowed by law.

WHEREFORE, Plaintiffs individually and on behalf of the class that they represent, pray that as relief for this Alternative Fourth Claim for Relief, plaintiffs have and recover the full amount of the ultra-vires deductions not otherwise received as well as appropriate interest as allowed by law.

This the _____ day of _____ 2022.

Daniel R. Taylor, Jr.
E. Winslow Taylor
Taylor & Taylor,
Attorneys at Law, PLLC
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Winston-Salem, NC 27101
Tel.: 336-418-4745

w. Ellis Boyle
Knott & Boyle, PLLC
4800 Six Forks Road, Suite 100
Raleigh, NC. 27609
Telephone: 919-783-5900

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the ___ day of _____ 2022, 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

This the ___ day of _____ 2022.

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. Albee, 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 Albee, 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 E-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.

CHARLES W. HARRIS 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 ONLY VALID UNTIL FEBRUARY 21, 1966.

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

The motion of Councilman Thrower, seconded by Councilman Tuttle and unani-
mously carried, an ordinance entitled: Ordinance No. 415 to Amend Chapter
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.

The 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.

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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 Throner, seconded by Councilman Alexander and unanimously carried, the meeting was adjourned.

Lillian R. Hoffman
Lillian R. Hoffman, City Clerk

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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.

On 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.

MEMORANDUM 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 go 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. Houser 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 William C. Smith University Band present on Monday for the opening, and they hope to have a good turn-out for the opening season.

REMARKS BY VARIOUS CITIZENS.

Mr. W. W. 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 business 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 Walter Bick has asked for similar privileges for the Fire Department.

Councilman Stregall 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 Stregall, and unanimously carried, the meeting was adjourned.

Ruth Armstrong
Ruth Armstrong, City Clerk

EXHIBIT H

This AGREEMENT, made this the _____ day of _____, 20____, between the CHARLOTTE FIRE DEPARTMENT VOLUNTARY PLEDGE FUND, hereinafter referred to as "FUND", and _____ hereinafter referred to as "MEMBER."

WITNESSETH:

WHEREAS, the Charlotte Fire Department Voluntary Pledge Fund is organized for the purpose of providing cash benefits to the beneficiary of a member who deceases; and

WHEREAS, _____ is desirous of becoming a member of the Charlotte Fire Department Voluntary Pledge Fund.

NOW, THEREFORE, IT IS AGREED BY and between the parties hereto, as follows:

1. That the FUND covenants and agrees to pay to _____ Beneficiary (ies), relationship _____, upon the death of a MEMBER, a sum equal to Ten Dollars (\$10.00) multiplied times the number of the participating members on the date of the death of MEMBER. If a beneficiary dies before the MEMBER, the beneficiary's interest shall terminate; in the event of multiple beneficiaries having been designated said deceased's share shall be absorbed into and become part of the equal shares of the surviving beneficiaries. If there are no beneficiaries alive when the MEMBER dies, the FUND shall pay benefits as follows:
 - a. To the surviving spouse;
 - b. If no surviving spouse, then in equal shares to surviving children;
 - c. If no surviving spouse or children, then in equal shares to surviving parents;
 - d. If no surviving spouse, children, or parents, then equal shares to surviving brothers and sisters, including half-brothers, half-sisters, step-brothers, step-sisters;
 - e. If there are no surviving payees as listed above, then the FUND shall be paid over and delivered to the Estate if the deceased MEMBER.
2. That in consideration of the cash sum paid to Beneficiary, MEMBER hereby covenants and agrees to contribute to the Charlotte Fire Department Voluntary Pledge Fund during his/her term of membership, as follows:
 - a. Ten Dollars (\$10.00) upon execution of this Agreement;
 - b. Ten Dollars (\$10.00) upon each death of a member to the FUND, excluding himself;
 - c. That further said contributions shall be made by payroll deduction from MEMBER's salary check paid by the City of Charlotte, at a weekly rate of Ten Dollars (\$10.00) until amounts due FUND are paid.
3. That in the event this Agreement is terminated by reason or reasons other than death of a MEMBER, MEMBER hereby acknowledges that no benefits or refund of contributions shall be received by MEMBER.
4. That this agreement may be terminated by either party hereto by ten (10) days written notice to terminate delivered to the other party.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed, the day and year above written, for the uses and purposes hereinbefore set forth.

Charlotte Fire Department Voluntary Pledge Member:

Voluntary Pledge Member Signature

Signed and sworn to before me this _____ day of _____, by _____.

(Official Seal)

_____, Notary Public
My commission expires _____

Charlotte Fire Department Voluntary Pledge Representative:

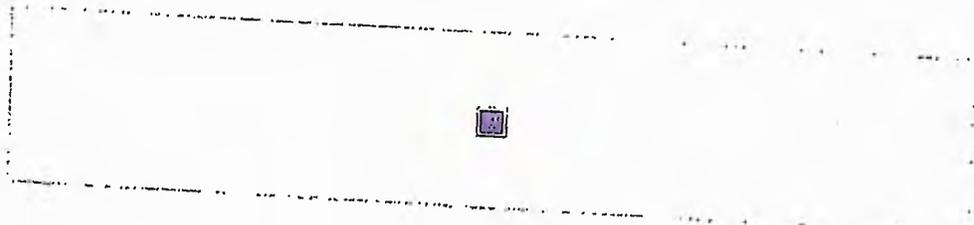
Voluntary Pledge Representative Signature

Title

EXHIBIT I

From: Rinnix, Paula
To: Clampitt, Brittany; Simpson, Sheila; Koch, Bradford; Tufano, Robert; D'Elosua, Sandy; Emmanuel, Kamella
Cc: Walker, Jordan-Ashley; Brown, Kenneth
Subject: RE: FOIA CMPD Police Pledge Fund
Date: Tuesday, March 12, 2019 4:04:02 PM
Attachments: CMPD - Pledge Fund Contract.pdf
image001.png
image002.png
image003.png
image004.png
image005.png
image006.png
image007.png

Copy of contract attached...



From: Rinnix, Paula
Sent: Tuesday, March 12, 2019 4:01 PM
To: Clampitt, Brittany <Brittany.Clampitt@ci.charlotte.nc.us>; Simpson, Sheila <ssimpson@ci.charlotte.nc.us>; Koch, Bradford <bkoch@cmpd.org>; Tufano, Robert <rtufano@cmpd.org>; D'Elosua, Sandy <sdelosua@cmpd.org>; Emmanuel, Kamella <Kamella.Emmanuel@cmpd.org>
Cc: Walker, Jordan-Ashley <Jordan-Ashley.Walker@ci.charlotte.nc.us>; Brown, Kenneth <kebrown@ci.charlotte.nc.us>
Subject: RE: FOIA CMPD Police Pledge Fund

Britt,

Per our conversation, I spoke with Patricia Burris, our HRMS and Payroll Program Manager and she was able to share with me additional information regarding the CMPD Police Pledge Fund.

We discussed each of the questions below to determine which ones could be answered by Human Resources and which ones would require a response from someone in CMPD.

I am not sure of the point of contact in CMPD to respond to their questions.

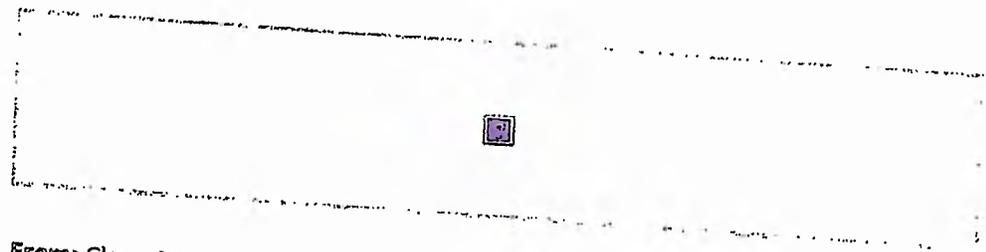
HR can have the responses for those indicated below by Friday, March 12th, EOD:

1. Names and titles of all board members (past and present). **CMPD**
2. How much money, in total, has gone into the fund since it started until today, Feb. 25, 2019 – **HR**

3. How many people have been signed up for pledge fund in its history? It is my understanding that about 1,100 people are currently signed up for the pledge fund. I would like to know a specific number. **CMPD**
4. How many retired employees are on the waiting list to receive their payout? **CMPD**
5. How much money would it take to pay out all active members of the waiting list? **CMPD** - would give # of active members on Waiting List and **CMPD**
6. Deputy Chief Jennings said the payout "fluctuates." What is the minimum payout that a retired employee has received and what is the maximum? **CMPD**
7. We would like to request a copy of the Pledge Fund Contract. **CMPD**
8. I would like to have a copy of a current bank statement relating to the pledge fund. I understand that there might be sensitive bank account information that needs to be blurred out. **CMPD**

Those eight questions are considered a "priority" for our upcoming stories. On top of those questions, I'm requesting additional information relating to emails.

1. I would like to request all CMPD emails with the combined words "pledge fund" between Feb. 1 through Feb. 25. - **CMPD**



From: Clampitt, Brittany
Sent: Monday, March 11, 2019 3:26 PM
To: Simpson, Sheila <ssimpson@ci.charlotte.nc.us>; Koch, Bradford <bkoch@cmpd.org>; Tufano, Robert <rtufano@cmpd.org>; D'Elosua, Sandy <sdelosua@cmpd.org>; Rinnix, Paula <Paula.Rinnix@ci.charlotte.nc.us>
Cc: Walker, Jordan-Ashley <Jordan-Ashley.Walker@ci.charlotte.nc.us>; Brown, Kenneth <kebrown@ci.charlotte.nc.us>
Subject: FW: FOIA CMPD Police Pledge Fund

Hey all,

Sunshine Week is here and we have a follow-up on this request. If you all could acknowledge that these are being pulled and reviewed, that would be great. There are records requested of both HR and CMPD. Please let me know where we stand on these.

Again, here's the request:

1. Names and titles of all board members (past and present).
2. How much money, in total, has gone into the fund since it started until today, Feb. 25, 2019