



TOWN OF RIVER BEND

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RIVER BEND TOWN COUNCIL AGENDA

Work Session Meeting

April 8, 2021

River Bend Town Hall

5:00 p.m.

1. **VOTE-** Parks & Recreation Recommendation for July 4th Activities
2. Discussion – Reopening Town Facilities
3. Discussion – American Rescue Plan Funding
4. Arbor Day Proclamation
5. Review Agenda – Nobles
6. CLOSED SESSION - NCGS§143-318.11(a)(3)(6)

Pledge: Councilwoman Maurer

*****NOTE – DUE TO COVID-19, SEATING IS LIMITED AND ON A FIRST-COME BASIS. WE ENCOURAGE EVERYONE TO PRACTICE THE 3-W'S.**

CLASS A SERVICES AND STORAGE, INC. AGREEMENT

This contract entered into in this 25th day of March, 2021 A.D. by and between Class A Services and Storage, Inc. of Stella, North Carolina (referred to as "Class A") and the Town of River Bend (referred to as CUSTOMER).

WITNESSETH: CLASS A for and in consideration of the terms hereinafter mentioned, agrees to furnish to the CUSTOMER_ONE_(1) Fireworks Display(s) as per agreement made and accepted and made a part hereof, including the services of our Operator to take charge of and fire display under the supervision and direction of CUSTOMER, said display to be given on the evening of **July 2, 2021** CUSTOMER INITIAL _____, weather permitting, it being understood that should inclement weather prevent the giving of this display on the date mentioned herein the parties shall agree to a mutually convenient alternate date within three (3) months of the original display date. The determination to cancel the show because of inclement or unsafe weather conditions shall rest within the sole discretion of CLASS A. In the event the customer does not choose to reschedule another date or cannot agree to a mutually convenient date, Class A is entitled to, (and not limited to) all out of pocket expenses including overhead expenses and insurance.

CLASS A agrees to furnish all necessary fireworks display materials and personnel for fireworks display in accordance with the program approved by the parties. Quantities and varieties of products in the program are approximate. After final design, exact specifications will be supplied upon written request. A deposit of \$0.00 is required and the total cost of this contract is \$7,500.00. The contract will need to be signed and returned by April 15, 2021.

Final Payment is due the night of the fireworks. Any outstanding balances will have a service charge of 2.0% per month shall be added if account is not paid in full within thirty days after display date. Further, on balances outstanding of 120 days or more, CLASS A is entitled to recover the balance due, plus accrued interest, plus attorney fees of 20% of past due plus court costs.

CUSTOMER agrees:

Provide a minimum setback of 300 feet at all points from the discharge area and a suitable place to fire the fireworks from.

It is further agreed and mutually understood that nothing in this contract shall be constructed or interpreted to mean a partnership, both parties being responsible for their own separate debts, obligations and neither party shall be responsible for any agreements not stipulated in this contract.

The parties hereto do mutually and severally guarantee terms, conditions, and payments of this contract, these articles to be binding upon the parties, themselves, their heirs, executors, administrators, successors and assigns.

Class A Services and Storage, Inc.

BY _____

Date Signed: _____

Chris Moncourtois

President-Class A Services and Storage, Inc.

160 White Oak Bluffs

Stella, N.C. 28582

(252) 393-6693

CUSTOMER

BY _____

It is duly authorized agent, who represents he/she has authority
to bind customer

Date Signed: _____

Name: _____

Please type or print

address: _____

Phone: _____



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[NC Local Government Law](#)

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American Rescue Plan Act of 2021: Local Government Authority to Expend their Allocations

About the author

Kara Millonzi



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This entry was posted on April 5th, 2021 and is filed under [Budgeting & Appropriations](#), [County Finance](#), [Finance & Tax](#), [Municipal Finance](#).



On March 11, 2021, the federal American Rescue Plan Act of 2021 (ARP) became law. There is still a lot to be deciphered in this \$1.9 trillion stimulus package; the third such major relief act since the onset of the COVID-19 pandemic. We do know that the law includes substantial aid for state and local governments. With respect to local governments, some monies will be distributed directly to them (specifically, allocations to counties and municipalities with populations over 50,000). Other monies will be allocated to the State for distribution to qualifying local governments (all other municipalities). *See* Part 8, [Subtitle M—Coronavirus State and Local Fiscal Recovery Funds of H.R. 1319 American Rescue Plan Act of 2021](#). The monies will be distributed in tranches, with the first payment made within 60 days' of the law's enactment. The second tranche will be distributed a year after the first. The monies may be used for costs incurred by December 31, 2024.

Aside from their expected allocation amount, local government officials want to know the purposes for which the monies may be spent and whether or not the grant of funds from the federal government is sufficient to provide North Carolina local governments expenditure authority. This blog post addresses these two issues. As a caveat, this post is based on interpretations of the federal law and current state law. There may be different interpretations

promulgated by the agencies charged with implementing the aid to local governments and there may be changes to state law to facilitate the receipt and expenditure of funds by local governments. I will update this post as more information becomes available, particularly guidance on reporting and accountability measures.

Note also that this post only deals with monies allocated directly to local governments by the ARP. The General Assembly may appropriate additional monies from the State's ARP allocation to local governments, and to certain special districts and public authorities, and will set the expenditure parameters for those funds. And the ARP provides funding for many other programs, services, activities, and projects, that will directly aid a local government's citizens, utility customers, community groups, businesses, nonprofits, and other government entities. (For a brief overview of key provisions of the ARP, see this National Conference of State Legislatures' [summary](#).) Local government officials will want to understand how all of this targeted relief will impact their communities as they make their own appropriation decisions.

Turning back to the purpose of this post, let's look at local government authority to spend ARP allocations for the specified purposes.

General Authority to Spend ARP Funds

In North Carolina, local governments must have statutory authority to undertake any activity, including the receipt and expenditure of federal grant/aid monies. The fact that the federal government is providing monies either directly or indirectly to NC local governments does not, alone, give those local governments authority to spend that money. We have to look to state law for that authority—specifically [G.S. 160A-17.1](#), which allows

the governing body of any city or county ... to make contracts for and to accept grants-in-aid and loans from the federal and State governments and their agencies for constructing, expanding, maintaining, and operating any project or facility, or performing any function, which such city or county may be authorized by general law or local act to provide or perform.

Thus, a local government has specific authority to accept ARP funds, but must spend the monies consistent with federal requirements and within the contours of state law authority. Note, also, that once grant proceeds are received by a local government, they are public funds and subject to the same budgeting, fiscal management, expenditure control, and accounting rules as all other local government monies, according to the [Local Government Budget and Fiscal Control Act, G.S. Ch. 159, Art. 3](#).

ARP Expenditure Parameters for Local Government Allocations

That leads to the second issue. What does ARP authorize local governments to spend the stimulus monies on and do local governments have state law authority to spend the monies for these purposes?

According to new Sect. 603(c) of 42 USC 801 (Coronavirus Local Fiscal Recovery Fund), monies received by any of the qualifying local government entities (whether directly from the federal government or from the State as a pass-through) may be used for the following four categories of expenditures. Under each purpose stated in the federal law (which is in bold italics), I detail whether, and to what extent, state law authority currently exists for a local government to spend monies for this purpose.

To respond to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19) or its negative economic impacts, including assistance to households, small businesses, and nonprofits, or aid to impacted industries such as tourism, travel, and hospitality.

This provision encompasses a broad array of potential local government expenditures. There are myriad ways that counties and municipalities might provide assistance to community members and organizations to mitigate the negative economic impacts of COVID-19. As detailed above, though, a local government must have state law authority to undertake any specific program, service, activity, or project (collectively, programs). A local government may use this money to fund existing or new local government programs, to make grants to nonprofits or other community organizations, and to provide aid to small businesses.

Local government programs. A local government has broad authority to undertake programs that benefit its citizens. It will be difficult to catalogue all of the possible state statutes that authorize such programs. They may range from public health and social services programs, to community and economic development programs, to social, cultural, and recreational programs.

Under [G.S. 160D-1311](#), for example, a local government has wide-ranging authority to provide “programs concerned with employment, economic development, crime prevention, child care, health, drug abuse, education, and welfare needs of persons of low and moderate income.” A local government may use some (or all) of its ARP monies to fund current or new programs related to the negative economic impact of COVID-19 on its low- or moderate-income citizens. And these programs could be structured to provide services, supplies, infrastructure, or even direct monetary aid to qualifying citizens.

Similarly broad is the authority under [G.S. 160A-497](#), which allows a county or municipality to “undertake programs for the assistance and care of its senior citizens [defined as those who are at least 60 years of age] including but not limited to programs for in-home services, food service, counseling, recreation and transportation....” A local government may use its ARP monies to support its senior citizens dealing with pandemic-related issues.

These are, of course, just two examples. There are many other sources of state law authority that allow a local government to use ARP monies to fund its own programs that will aid its community members in responding to COVID-19 and mitigating its financial impact. And the only expenditure limitation under the federal law is no ARP monies may be used to fund pensions.

Grants to nonprofits. What about providing grants or donations to private entities, such as nonprofits, chambers of commerce, or other organizations that are serving the community during the pandemic? This is a little more complicated. The ARP specifically authorizes a local government to transfer any of these monies to a private nonprofit organization (as defined by 42 USC 11360(17)) or a public benefit corporation involved in the transportation of passengers or cargo.

However, unless pursuant to a specific, statutorily authorized program, a local government may not simply grant, appropriate, or donate monies to nonprofit entities, even if it only uses ARP dollars. Under current law,* though, a local government may contract with a private individual or entity to carry out an activity/program/project that the local government has statutory authority to undertake. See [G.S. 160A-20.1](#) (municipalities); [G.S. 153A-449](#) (counties).

In other words, if a municipality or county has statutory authority to finance a particular program, then it may contract with a private entity to perform that program. But a municipality or county may not appropriate public monies to a private entity, including a non-profit, if the monies ultimately will be spent on a program that the government could not fund directly.

Further, a local government that contracts with a nonprofit for a particular purpose has an obligation to ensure that the nonprofit carries out the public purpose that it was contractually obligated to undertake. There are a number of ways that a local government may go about monitoring the expenditures of public funds by a nonprofit—and the methods likely will vary depending on the size of the unit and the types of expenditures at issue. The North Carolina Supreme Court has provided some guidance to local governments on this issue—sanctioning a particular oversight method in *Dennis v. Raleigh*, 253 N.C. 400 (1960). That case involved a challenge to an appropriation of funds by the City of Raleigh to a local chamber of commerce, to be spent on advertising the city. The chamber of commerce engaged in a variety of activities, some of which were unlikely to be considered public purposes. Thus, the city sought to ensure that the public funds it appropriated to the chamber of commerce were spent appropriately. The city put in place three separate “controls.” First, the appropriation to the chamber of commerce was specific—it stated that the monies were to be used “exclusively for . . . advertising the advantages of the City of Raleigh in an effort to secure the location of new industry.” Second, the city council reserved the right to approve each specific piece of advertising. Third, the chamber of commerce had to account for the funds at the end of the fiscal year. On the basis of the control exercised by the city over the expenditure of the public funds, the court upheld the appropriation.

The first and third “controls” placed on the chamber of commerce by the City of Raleigh in *Dennis* likely are particularly instructive. These controls parallel the appropriation and annual audit requirements placed by the [Local Government Budget and Fiscal Control Act](#) on moneys spent directly by a municipality or county. At a minimum, a local government should provide clear guidelines and directives to the private entity as to how and for what purposes public monies may be spent, and the unit should require some sort of accounting from the private entity that it fully performed its contract obligations. See this [previous post](#) for more information on the performance accounting options.

**Note that it is possible that the General Assembly will give local governments authority to make these grants directly to nonprofits. At least one bill has been introduced that would allow the City of Durham to provide such grants —[H268](#). (As of this writing the bill has not been enacted by the General Assembly.)*

Aid to small businesses. With respect to providing aid to small businesses, my colleague, Tyler Mulligan, has summarized a local government’s state law authority to provide that type of assistance [here](#) and [here](#). (Note that at least one of those blog posts was written to address issues related to the first federal stimulus bill, known as the CARES Act. Although the ARP is a different federal law, the state law considerations are the same.)

To respond to workers performing essential work during the COVID-19 public health emergency by providing premium pay to eligible workers of the [qualifying local government] that are performing such essential work, or by providing grants to eligible employers that have eligible workers who perform essential work. Eligible workers are “those workers needed to maintain continuity of operations of essential critical infrastructure sectors” and additional sectors that a local government’s manager, administrator, or mayor designates as critical to protect the health and well-being of the local government’s residents. Premium pay is defined as “an amount of up to \$13 per hour that is paid to an eligible worker, in addition to wages or remuneration the eligible worker otherwise receives, for all work performed by the eligible worker during the COVID-19 public health emergency.” The total amount of premium pay per worker may not exceed \$25,000.

Under current law, local governments have broad statutory authority to provide for employee compensation and fringe benefits (see [G.S. 160A-162](#) for municipalities and [G.S. 153A-92](#) for counties). This state law authority is sufficient to allow local governments to use ARP funds to award premium pay to essential workers, consistent with federal law. Local government officials will need to work with their attorney to determine who qualifies and how to implement the premium pay, consistent with other employment laws and the local unit’s personnel policies. Counties, in particular, need to be careful in how premium pay is structured because of statutory prohibitions on reducing the compensation of certain employees, including sheriff office employees and register of deed employees. County commissioners also do not have direct control over the compensation of certain county employees, including election office employees (other than the director of elections).

The ARP also allows a local government to give grants to private sector employers to provide premium pay to their essential workers. However, there is no clear state statutory authority for a local government to do this. It is possible, that a local government could establish a hazard pay program for low- or moderate- income workers (as per above), but that would not allow grants to eligible employers for all of their essential employees. Similarly, if a nonprofit or small business contracts with a local government to perform a specific function (as per above), it’s possible that the private entity could use some of its payment from the local government to provide premium pay to its essential employees. But I am not aware of a current state statute that would allow a local government to grant monies to private entities solely for the purpose of providing premium pay to essential workers.

For the provision of government services to the extent of the reduction in revenue of such [qualifying local government] due to the COVID-19 public health emergency relative to revenues collected in the most recent full fiscal year of the [local government] prior to the emergency.

This provision allows a local government to use the stimulus funds to replace lost revenue due to the pandemic. A local government will need to document the loss by comparison to the 2018-2019 fiscal year (which was the most recent full fiscal year prior to the COVID-19 pandemic). These replacement revenues may replenish a local government’s fund balance or be appropriated for other purposes by the local government’s governing board. As mentioned above, the monies must be used to cover costs incurred by December 31, 2024. A local government should fully understand the reporting and accountability requirements before using ARP monies to replace lost revenue; more guidance on this issue from the federal and state agencies should be forthcoming.

To make necessary investments in water, sewer, or broadband infrastructure.

Many local governments provide water and sewer services. There is existing statutory authority to allow these governments to spend ARP monies on necessary water and sewer infrastructure projects. See [G.S. 153A-276](#) for counties and [G.S. 160A-313](#) for municipalities. The monies may not be used to cover operating expenses (although the revenue replacement provision in number (3) allows a local government to cover lost water and sewer revenues due to the pandemic). Pending further direction from the federal or state government, it will be up to the local government’s governing board to determine what infrastructure investments are necessary.

The state law authority for broadband is much more limited. Currently, counties do not have authority to construct or fund broadband infrastructure, except as needed for county operations. Pursuant to G.S. 153A-459 (enacted by SL 2019-111), a county may

provide grants to unaffiliated qualified private providers of high-speed Internet access service, as that term is defined in G.S. 160A-340(4), for the purpose of expanding service in unserved areas for economic development in the county. The grants shall be awarded on a technology neutral basis, shall be open to qualified applicants, and may require matching funds by the private provider. A county shall seek and consider requests for proposal from qualified private providers within the county prior to awarding a broadband grant and shall use reasonable means to ensure that potential applicants are made aware of the grant, including, at a minimum, compliance with the notice procedures set forth in G.S. 160A-340.6(c). The county shall use only unrestricted general fund revenue for the grants. For the purposes of this section, a qualified private provider is a private provider of high-speed Internet access service in the State prior to the issuance of the grant proposal. Nothing in this section authorizes a county to provide high-speed Internet broadband service.

Counties may only use "unrestricted general fund revenue" to make these grants, though. That does not include ARP monies because these funds are restricted.

Municipalities have authority to fund broadband (and construct broadband infrastructure) as a public enterprise, see *BellSouth Telecommunications, Inc. v. City of Laurinburg*, 606 S.E.2d 721 (2005), but the General Assembly severely curtailed that authority several years ago. A municipality must be able to satisfy all of the process and substantive requirements in [G.S. Ch. 160A, Art. 16A](#) in order to construct broadband infrastructure other than for municipal government purposes, even dark fiber that it then leases or sells to private entities to provide broadband services. (See [this post](#) for more details.)

Outside of developing it for its own purposes, a local government likely will not be able to use ARP monies to construct broadband infrastructure more broadly absent additional legislative authority.

Sharing Allocations with Other Local Government Entities

A local government may wish to partner with another local government entity to use ARP funds to carry out one or more of the allowed purposes. The ARP specifically authorizes a local government to transfer any of its allocation to a "special-purpose unit of State or local government." A special-purpose unit of State or local government likely encompasses all of the special districts and public authorities that are subject to the Local Government Budget and Fiscal Control Act. (See this [blog post](#) for a list of those entities).

Under state law, there also is broad authority for a local government to enter into an interlocal agreement with another government entity to accomplish a public purpose that the local government has statutory authority to undertake. See [G.S. Ch. 160A, Art. 20](#).

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[The ARPA's COBRA Subsidy Provisions: What You Might Not Know](#)

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+ eight = sixteen



PROCLAMATION FOR ARBOR DAY

WHEREAS, in 1872, J. Sterling Morton proposed to the Nebraska Board of Agriculture that a special day be set aside for the planting of trees, and

WHEREAS, this holiday, called Arbor Day, was first observed with the planting of more than a million trees in Nebraska, and

WHEREAS, Arbor Day is now observed throughout the nation and the world, and

WHEREAS, trees can reduce the erosion of our precious topsoil by wind and water, cut heating and cooling costs, moderate the temperature, clean the air, produce life-giving oxygen, and provide habitat for wildlife, and

WHEREAS, trees are a renewable resource giving us paper, wood for our homes, fuel for our fires and countless other wood products, and

WHEREAS, trees in our town increase property values, enhance the economic vitality of business areas, and beautify our community, and

WHEREAS, trees, wherever they are planted, are a source of joy and spiritual renewal.

NOW, THEREFORE, I, John Kirkland, Mayor of the Town of River Bend, do hereby proclaim April 30, 2021 as Arbor Day in the Town of River Bend, and I urge all citizens to celebrate Arbor Day and to support efforts to protect our trees and woodlands, and

FURTHER, I urge all citizens to plant trees to gladden the heart and promote the well-being of this and future generations.

HEREUNTO, I set my hand and cause the Seal of the Town of River Bend to be affixed this 15th day of April, 2021.

John R. Kirkland
Mayor

Attest:

Kristie J. Nobles
Town Clerk



RIVER BEND TOWN COUNCIL AGENDA

Regular Meeting

April 15, 2021

River Bend Town Hall

7:00 p.m.

Pledge: Maurer

1. CALL TO ORDER (Mayor Kirkland Presiding)
2. RECOGNITION OF NEW RESIDENTS
3. ADDITIONS/DELETIONS TO AGENDA
4. ADDRESSES TO THE COUNCIL
5. PUBLIC HEARINGS
6. CONSENT AGENDA

All items listed under this section are considered routine by the Council and will be enacted by one motion in the form listed below. There will be no separate discussion of these items. If discussion is desired, that item will be removed from the Consent Agenda and will be considered separately.

- A. Approve:
Minutes of the March 11, 2021 Work Session
Minutes of the March 18, 2021 Regular Council Meeting

7. TOWN MANAGER'S REPORT – Delane Jackson

Activity Reports

- A. **Monthly Police Report** by Chief Joll
- B. **Monthly Water Resources Report** by Director of Public Works Mills
- C. **Monthly Work Order Report** by Director of Public Works Mills
- D. **Monthly Zoning Report** by Assistant Zoning Administrator McCollum

ADMINISTRATIVE REPORTS:

8. Finance – Councilman Irving Van Slyke, Jr.
 - A. Financial Report - Finance Administrator
9. Environment and Waterways – Councilman Brian Leonard
 - A. EWAB Report
10. Planning Board – Councilman Buddy Sheffield
 - A. Planning Board Report
11. Public Safety – Councilman Don Fogle

- A. Community Watch
 - B. CERT
12. Parks & Recreation/CAC – Councilwoman Barbara Maurer
- A. Parks and Rec Report
 - B. CAC Report
 - C. Organic Garden Report
 - D. Library Report
13. Public Works and Water Resources – Mayor John Kirkland
- A. PWAB Report
14. MAYOR'S REPORT – Mayor Kirkland
15. PUBLIC COMMENT

The public comment period is set aside for members of the public to offer comments to the Council. It is the time for the Council to listen to the public. It is not a Question & Answer session between the public and the Council or Staff. All comments will be directed to the Council. Each speaker may speak for up to 3 minutes. A member of staff will serve as timekeeper. A sign-up sheet is posted by the meeting room door and will be collected prior to the start of the Public Comment Period. Speakers will be called on by the Mayor in the order that they signed up. In order to provide for the maintenance of order and decorum, the Council has adopted a policy for this section of the meeting. A copy of the policy is posted by the door for your review. Please follow the policy. If you have a specific question for staff, you are encouraged to contact the Town Manager or the appropriate Department Head at another time.

15. ADJOURNMENT

DUE TO COVID-19, SEATING IS LIMITED AND ON A FIRST-COME BASIS. WE ENCOURAGE EVERYONE TO PRACTICE THE 3-W'S.