


MEMORANDUM

DATE: May 16, 2017  
TO: Robin Currin, City Attorney  
FROM: John Maddux, Assistant City Attorney   
SUBJECT: APD Traffic Stop Information – Analysis of Other Local Governments in North Carolina

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**Background**

During the April 25, 2017 City Council meeting, Ian Mance, an attorney representing the Southern Coalition for Social Justice, presented an analysis of data collected by the Asheville Police Department (APD) concerning vehicle stops and searches conducted by the APD. Based on his analysis, Mr. Mance recommended the APD take the following actions:

- (1) Scrutinize and address the APD's data reporting practices to ensure compliance with North Carolina General Statute § 143B-903 entitled collection of law enforcement statistics;
- (2) Prohibit or de-emphasize regulatory and equipment-based stops;
- (3) Institute a mandatory written consent-to-search policy; and
- (4) Order periodic audits of individual officer stop-and-search data.

Following Mr. Mance's presentation, the City Council directed the City Manager to request City staff to analyze the data and recommendations presented, and to prepare a report for presentation to the City Council at its May 9 meeting. Our office also collected information with respect to the current policies of other law enforcement agencies cited by Mr. Mance relating to regulatory stops and

consent searches. This information is intended only as supplemental to that already prepared by the APD, and not intended as support for or against any action by the City Council.

### **Adoption of Policies by Other North Carolina Agencies**

During his presentation, regarding regulatory stops, Mr. Mance informed the City Council that:

Police agencies, in North Carolina and nationwide, are increasingly re-evaluating the wisdom of initiating traffic stops for regulatory and equipment based violations. These types of stops generally do not impact public safety and they are known to disproportionately impact poor and minority drivers. They are a significant driver of racial stop disparities.

Both Fayetteville PD and Greensboro PD formally de-prioritized these types of stops in recent years, a decision that has helped shrink racial stop disparities. Chapel Hill's town council recently directed its police chief to follow suit and begin phasing out regulatory stops. Durham's police chief recently voiced skepticism about such stops and is currently considering a similar directive.

Regarding consent searches, Mr. Mance told the City Council that, "multiple police agencies across North Carolina, including those in Chapel Hill, Durham, and Fayetteville, currently require officers to obtain written authorization from the party to be searched for all consent-based searches."

In an effort to confirm Mr. Mance's statements regarding the adoption of these policies by other agencies, I contacted attorneys for the agencies cited by Mr. Mance, located news articles regarding those agencies' policies, examined resolutions passed by other City Councils, reviewed departmental policy manuals and memoranda (where available), and made inquiries with other attorneys

representing North Carolina police departments and sheriffs' offices through the North Carolina Police Attorneys Association. The following chart summarizes my findings:

<b>Agency</b>	<b>Prohibits/Discourages Regulatory Stops</b>	<b>Requires Signed Form Prior to Consent Search</b>
Brunswick County Sheriff's Office	No	No
Chapel Hill	Town Council passed a resolution authorizing City Manager to work with Police Chief to develop a plan to deemphasize regulatory stops. Resolution does not direct the adoption of a particular policy.	Yes, provided for vehicles or homes. If a person consents, but refuses to sign, officers must record. If recording not feasible, officers must document consent in incident report and on form itself.
Durham County Sheriff's Office	No	No
Durham Police Department	No	Yes, if search of vehicle, residence or business
Fayetteville	No, but not a high priority and former chief asked that these types of stops be conducted at a lower ratio than moving violations.	Yes, although the form has taken a much lower priority for the department since the introduction of body cameras.
Forsyth County Sheriff's Office	No	No
Gaston Police Department	No	No, but with body cameras will require consent be recorded
Greensboro Police Department	No	No, but a consent search report is completed by the officer.
Guilford County Sheriff's Office	No	No

Haywood County Sheriff's Office	No	No
High Point Police Department	No	No
Mecklenburg County Sheriff's Office	No	Form available, but deputies have discretion about whether to use it.
Orange County Sheriff's Office	No	Not required, but available and strongly encouraged.
Raleigh Police Department	No	Form required before searching a vehicle, residence, building or business. Form is recommended, but not required, before searching a person based on consent.
State Troopers - Troop G	No	No
Union County Sheriff's Office	No	No
Wake County Sheriff's Office	No	Will attempt to have persons sign form. If they allow consent, but refuse to sign form, an officer other than the requesting officer may sign the form as a witness that consent was orally given.
Yancey County Sheriff's Office	No	No

Summed up, it appears that very few agencies prohibit or formally de-emphasize vehicle stops based on regulatory or equipment-based violations of the law, and that none do so by ordinance. A common statement relayed to me was that these types of vehicle stops are not a priority for law enforcement, however, officers are charged with enforcing the law, including what many might consider minor violations. In addition, it appears that Mr. Mance's presentation was,

respectfully, incorrect in certain respects. As noted in Mr. Mance's presentation, the Greensboro Police Department (GPD) did in fact prohibit or de-emphasize such stops in late 2015, apparently in response to a New York Times article noting the disparate rate that African-Americans in Greensboro were stopped for these types of violations compared with other groups. However, according to more recent information reported in the media, and confirmed to me by GPD personnel, the GPD resumed enforcing these laws in February of 2017 after taking time to examine the department's practices and policies. In addition, Mr. Mance's statement that the Chapel Hill Town Council "recently directed its police chief to . . . begin phasing out regulatory stops" was also not entirely correct; the actual resolution passed by the Council states, "Council authorizes the Town Manager to work with the Police Chief and Town Attorney to . . . develop a plan to de-emphasize regulatory stops/warning tickets."

Mr. Mance's statements regarding other agencies and written consent forms were more accurate. Both Chapel Hill and Fayetteville do in fact ask that their officers obtain signed written forms prior to conducting consent searches. However, one of Fayetteville's police attorneys informed me that the forms have become less important to the agency since all officers were outfitted with body-cameras, and many jurisdictions, including Chapel Hill, allow officers to conduct searches in instances where the person provides verbal consent but refuses to sign the form. In those instances, the agencies typically require the officers take other steps to ensure the validity of the consent, such as recording the verbal consent with a body-camera, or having another officer sign the form as a witness. Of the

eighteen agencies from which I was able to obtain information, five agencies require written forms, and two others have forms available, but do not require that they be used.