



CITY OF HENDERSONVILLE CITY COUNCIL REGULAR MEETING

Operations Center - Assembly Room | 305 Williams St. | Hendersonville NC 28792
Thursday, September 07, 2023 – 5:45 PM

AGENDA

1. **CALL TO ORDER**
2. **INVOCATION AND PLEDGE OF ALLEGIANCE TO THE FLAG**
3. **PUBLIC COMMENT** - *Up to 15 minutes is reserved for comments from the public not listed on the agenda.*
4. **CONSIDERATION OF AGENDA**
5. **CONSENT AGENDA** - *Items are considered routine, noncontroversial in nature and are considered approved by a single motion and vote.*
 - A. Adoption of City Council Minutes - *Jill Murray, City Clerk*

August 9, 2023 Regular Monthly Meeting

August 23, 2023 Second Monthly Meeting
 - B. Annexation: Certificate of Sufficiency- Living Savior Evangelical Lutheran Church (C23-65-ANX) – *Tyler Morrow, Planner II*
 - C. Contract Award Fleetwood Water Improvements Project– *Adam Steurer, Utilities Director*
 - D. September 2023 Budget Amendments – *Adam Murr, Budget Manager*
 - E. Resolution to Apply for Funding for the Lead Service Line Investigation and Replacement Project – *Gracie Erwin, Environmental Compliance Coordinator*
 - F. Resolution Accepting Award of DEQ LASII Planning Funds – *Michael Huffman, Stormwater Division Manager*
 - G. Consideration of Resolution of Support to Name the U.S. 64 Bridge in Honor of Deputy Ryan P. Hendrix – *Jennifer Hensley, Council Member*
 - H. Purchase of Chlorine- *Ricky Levi*
6. **PRESENTATIONS**
 - A. Proclamation-Childhood Cancer Awareness - *Barbara Volk, Mayor*
7. **PUBLIC HEARINGS**

- [A.](#) Annexation: Public Hearing- 2203 and 2205 N. Stoney View Court (Bullets Contracting, LLC) (C23-61-ANX)– *Tyler Morrow, Planner II*
- [B.](#) Annexation: Public Hearing- Townes at Martha Kate (C23-62-ANX)– *Tyler Morrow, Planner II*
- [C.](#) Zoning Text Amendment: Small-Scale Multi-Family in the MIC (P23-49-ZTA) – *Matthew Manley, AICP – Strategic Projects Manager*

8. UNFINISHED BUSINESS

- [A.](#) Consideration of City Council Primary Election – *Angie Beeker, City Attorney and John Connet, City Manager*

9. NEW BUSINESS

- [A.](#) Consideration of Allowing Golf Carts on Public Streets – *Council Member Hensley and John Connet, City Manager*
- [B.](#) Rescheduling of November Workshop Meeting – *John Connet, City Manager*
- [C.](#) Nonconsensual Towing Ordinance– *Angela S. Beeker, City Attorney*

10. CITY MANAGER REPORT - John F. Connet, City Manager

- [A.](#) August 2023 Contingency Report – *John Connet, City Manager*

11. CITY COUNCIL COMMENTS

12. CLOSED SESSION

- [A.](#) Closed Session – *John Connet, City Manager*

13. ADJOURN

The City of Hendersonville is committed to providing accessible facilities, programs and services for all people in compliance with the Americans with Disabilities Act (ADA). Should you need assistance or an accommodation for this meeting please contact the City Clerk no later than 24 hours prior to the meeting at 697-3005.



MINUTES

August 9, 2023

REGULAR MEETING OF THE CITY COUNCIL

CITY OPERATIONS CENTER | 305 WILLIAMS ST. | 5:45 p.m.

Present: Mayor Barbara G. Volk, Mayor Pro Tem Lyndsey Simpson and Council Members: Dr. Jennifer Hensley, Jerry Smith and Debbie O'Neal-Roundtree

Staff Present: City Manager John F. Connet, Assistant City Manager Brian Pahle City Attorney Angela Beeker, City Clerk Jill Murray, Communications Manager Allison Justus, Budget Manager Adam Murr, and others

1. CALL TO ORDER

Mayor Volk called the meeting to order at 5:46 p.m. and welcomed those in attendance. A quorum was established with all members in attendance

2. INVOCATION AND PLEDGE OF ALLEGIANCE TO THE FLAG

The City Council observed a moment of silence for prayer or reflection followed by the Pledge of Allegiance to the Flag.

3. PUBLIC COMMENT *Up to 15 minutes is reserved for comments from the public not listed on the agenda.*

General Public Comment

Lyra Prickett of Hendersonville spoke against DEI;

Daryl Waldrop who owns Pisgah Forest Gem Mine addressed City Council regarding parking and said its killing the businesses. He also mentioned homelessness and said he has people coming to and around his store harassing employees and customers every day. They are defecating and urinating in his parking space behind his store and are doing drug deals in the parking lot. I don't know if you know but Asheville is working on their laws to fight this and now they're all coming here. You need to put some ordinances in place that will allow the police to take care of this and help them or if they don't want to be helped, to move them out of our county. They are a danger to my employees, my patrons and my family and I would appreciate it if you would look into this and enforce safety downtown;

Jeff Groh of Fletcher address City Council regarding DEI and is against it;

Clifford Meek of Hendersonville spoke about getting passenger transportation in Hendersonville and asked that the City of Hendersonville issue a proclamation regarding such;

Mike Taylor & Kim Burel of Hendersonville addressed City Council regarding Pops Diner in Hendersonville and raised concerns over the new traffic pattern that is affecting them. They are losing their parking and would like to get some answers.

Lynne Williams spoke via Zoom electronic software regarding 1202 Greenville Highway and is not happy with the project and the amount of trees that will be coming down. Preservation of the forest canopy is needed now. Secondly, the comp plan vote is scheduled for Spring of 2024 and her concern is that Council Members Simpson and Hensley will not be elected at that time and they will just be grandfathered in and this vote will determine the next 20 years. She asked Council to wait on voting for that until 2025 or prior to the end of your actual term. Lastly, she is concerned with committee appointments and urged council to bring balance to the Planning Board. Also, regarding the Tree Ordinance Revision Committee, you're about to appoint Ken Gordon who told her that he is against the tree ordinance which is what the Tree Ordinance Committee is all about. She thought the DEI meetings were great.

Digital Public Comments

Daniel Bradford said The Patton pool needs some TLC. It's the only public pool in the county. It's old. The kiddie pool is closed for the summer and there is no diving board. The old pump broke

from a normal thunderstorm and now it's closed. I propose we spend some money restoring our beloved aging pool. I would go so far as to recommend the construction of a new pool as well, but let's at least fix up the one we already have first.

William Cumming said we are residents of Tryon but get all of our medical care in Hendersonville so are there about 3 times a week. We have to use handicapped parking and are shocked to see that we will have to start paying to park downtown! This will limit our ability to shop and dine on and around Main Street when we are in town. This is going to force us to do our shopping outside town and even in more visitor-friendly towns like Greer and Spartanburg. We stopped going to Asheville several years ago due to the negative changes in that town toward visitors, and sadly, we are starting to see a similar approach being taken in Hendersonville. It seems that growth and greed combine to destroy the very things that make a city vital and interesting to visitors.

Melodye Campbell said earlier in the spring, City Council rejected the development at 1202 Greenville Highway in order to protect the 6 acre urban forest. I have heard that the development has now been decreased to 50 units. How does that still protect the urban forest? It would behoove the city to purchase that property and preserve it as an urban oasis.

CONSIDERATION OF AGENDA

City Manager John Connet suggested that Council remove Item 7A (Street Closure between City Hall and N. Edwards Street) as the petition was withdrawn.

Council Member Lyndsey Simpson moved that City Council approve the agenda as amended. A unanimous vote of the Council followed. Motion carried.

4. CONSENT AGENDA

Council Member Debbie O'Neal-Roundtree moved that City Council approve the consent agenda as presented. A unanimous vote of the Council followed. Motion carried.

A. Adoption of City Council Minutes – Jill Murray, City Clerk

June 28, 2023

July 6, 2023

July 26, 2023

B. Resolution Authorizing the Sale of Two Police Cruisers Equipped for K-9 Use to the Town of Sparta, NC – Blair Myhand, Chief of Police

Resolution #R-23-83

RESOLUTION BY THE HENDERSONVILLE CITY COUNCIL TO AUTHORIZE THE SALE OF TWO POLICE K9 CRUISERS TO THE TOWN OF SPARTA, NC

WHEREAS, the Hendersonville Police Department owns two police cruisers equipped for K-9 use; and;

WHEREAS, the vehicles are no longer used by the Department and are in need of repair; and

WHEREAS, the Town of Sparta, North Carolina desires to purchase the two vehicles; and

WHEREAS, North Carolina General Statute §160A-274 authorizes the sale of personal property to other governmental units with or without consideration; and

WHEREAS, the Hendersonville Police Department wishes to sell the 2019 Chevrolet Tahoe to the Sparta Police Department at a value of \$25,000; and

WHEREAS, the Hendersonville Police Department wishes to sell the XXXX Ford Expedition to the Sparta Police Department at a value of \$6,000.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Hendersonville, North Carolina that:

1.

The 2019 Chevrolet Tahoe identified by VIN 1GNSKDEC5KR145764 and the 2016 Ford Expedition identified by VIN 1FMJU1GTXGEF24537 are deemed surplus and approved to be sold.
2.

The City Council Councils authorizes the sale of the two vehicles to the Town of Sparta in accordance with §160A-274 as follows:

a.

2019 Chevrolet Tahoe: \$25,000

b.

2016 Ford Expedition: \$6,000
3.

The City Manager is authorized to execute the Bill of Sale with the Town of Sparta.
- Adopted by the City Council of the City of Hendersonville, North Carolina on this 9th day of August, 2023.
- /s/Barbara G. Volk, Mayor
- Attest: /s/Jill Murray, City Clerk
- Approved as to form: /s/Angela S. Beeker, City Attorney

C. Amendments to Chapter 10 - Animals– Daniel Heyman, Staff Attorney

Ordinance #O-23-47

AN ORDINANCE OF THE CITY OF HENDERSONVILLE CITY COUNCIL TO READOPT AND AMEND CHAPTER 10 OF THE CODE OF ORDINANCES FOR THE CITY OF HENDERSONVILLE WITH RESPECT TO THE WELFARE OF ANIMALS

WHEREAS, The Hendersonville City Council established the Animal Services Advisory Committee to provide input on the operations and policies of the Hendersonville Police Department regarding the enforcement of the Animal Ordinance; and

WHEREAS, The last significant amendment to Chapter 10 of the Code of Ordinances included the establishment of the Animal Services Advisory Committee and local enforcement of animal services; and

WHEREAS, The Animal Services Advisory Committee has spent significant time auditing and revising Chapter 10 of the Code of Ordinances to better reflect some of the unique needs of Hendersonville; and

WHEREAS, It is the intent of the City of Hendersonville to align its animal related regulations with applicable state laws in order to ensure the effective enforcement thereof.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HENDERSONVILLE, NORTH CAROLINA THAT:

SECTION 1. Chapter 10 – ANIMALS of the Code of Ordinances of the City of Hendersonville is hereby readopted and amended to read as follows:

ARTICLE I. - GENERAL PROVISIONS

Sec. 10-1. Animal Control Ordinance Purpose

- (a)

Pursuant to authority granted by the general assembly, this chapter is enacted to:
- (b)

Regulate, restrict or prohibit, if necessary, animals;
- (c)

Protect the public from unvaccinated, diseased, stray, roaming, dangerous, wild or exotic animals;
- (d)

Make unlawful the acts of animals that interfere with the enjoyment of property or the peace and safety of the community;
- (e)

Protect animals from abuse or conditions harmful to their well-being;
- (f)

Carry out any other lawful duties authorized by state laws and applicable ordinances;
- (g)

Provide peace and dignity of residents; and
- (h)

The city council hereby finds that animals kept or allowed to be in violation of any of the sections of this chapter are detrimental to the health, safety, and welfare of the citizens of the city and jeopardize the peace and dignity of the town.

Sec. 10-2 Definitions

For the purposes of this chapter, the following words and phrases shall have the meaning respectively ascribed to them by this section:

Adequate food means the provision of and access to food that is sufficient in quantity, prepared and provided so that the animal can consume it, and provided in a manner that is sanitary for the animal.

Adequate shelter means shelter which meets all the following requirements:

- (a)

Is constructed of solid wood or weather resistant material, with solid walls on all sides, that is wind and moisture proof, with a dry floor, a solid, water-proof roof sloped away from the entrance to protect from weather and extreme cold, and a covered entrance by flexible windproof material or a self-closing swinging door;

- (b) Has suitable bedding (hay, straw, cedar shavings, blankets, or the equivalent that is routinely changed to avoid the growth of bacteria) for insulation and protection against cold and damp sufficient for an animal to burrow to promote retention of body heat,
- (c) Is out of the direct path of wind;
- (d) Is free of waste or debris and is otherwise clean and sanitary;
- (e) Gives the animal the ability to walk, stand, turn, and lie down comfortably; and
- (f) Provides drainage to eliminate excess water and moisture, protection from rain, sleet, snow, hail, sun, and the adverse effects of heat and cold.
- (g) The following shall not constitute adequate shelter:
 - (1) Inside of vehicles; or
 - (2) Underneath vehicles; or
 - (3) Inside metal or plastic barrels or cardboard boxes; or
 - (4) Rooms, sheds or other buildings without windows or proper ventilation.

Adequate water means constant access to clean, fresh water provided in a sanitary manner and so that the animal can consume it. During extreme cold weather, the water must be changed frequently to prevent freezing. During extreme hot weather, the water must be changed frequently and served in a no-tipping, non-metal container to prevent heat-related injuries or death.

Animal means every non-human, animate being that is endowed with the power of voluntary motion, including, but not limited to, dogs, cats, livestock and other mammals, birds, reptiles, amphibians, and fish.

Animal Services Center means any holding place or other facility designated by the City of Hendersonville for the detention of animals.

Animal Services Officer means any person properly appointed either by the City of Hendersonville, or any officer authorized to act within the City's jurisdiction due to an inter-local agreement, to enforce all sections of this chapter and applicable state laws and who are responsible for discharging such other duties and functions as may be prescribed by the City Council as set forward by this chapter or any other applicable ordinance or state law or pursuant to inter-local agreements.

Animal at large means any animal off the premises of its owner and not under sufficient physical restraint such as a leash, cage, bridle, or similarly effective device allowing the animal to be controlled. For purposes of this article, voice command is not recognized as sufficient physical restraint. This definition does not apply to any areas in the City that have been delineated by the City Council, such as dog parks.

Animal under restraint means any animal confined within a vehicle, confined within the real property limits of its owner, or secured by leash or lead.

Cat means a domestic feline of either sex.

Dangerous dog means any dog that:

- (a) Without provocation has killed or inflicted serious injury on a person; or
- (b) Is determined by the Chief of Police, their designee, or the Animal Services Advisory Committee to have engaged in one or more of the following behaviors:
 - (1) inflicted a bite on a person that resulted in broken bones or disfiguring lacerations or required cosmetic surgery or hospitalization, or
 - (2) has killed or inflicted severe injury upon a domestic animal when not on the owner's real property, or
 - (3) has approached a person when not on the owner's property in a vicious or terrorizing manner in an apparent attitude of attack; or
- (c) Is owned or harbored primarily or in part for the purpose of dog fighting, or any dog trained for dog fighting.

This definition shall not apply to: (1) a dog that has been subject to provocation, (2) any dog responding to a trespass upon the animal owner's premises, if the victim is the trespasser, or (3) dogs used by law enforcement agencies to carry out official law enforcement duties. Provocation must be clearly established.

Dog means a domestic canine of either sex.

Domesticated means those species of animals that normally and customarily share human habitat and are normally dependent on humans for food and shelter, such as, but not limited to, dogs, cats, cattle, horses, swine, fowl, sheep, goats, reptiles, amphibians, rabbits, and fish.

Harboring an animal means feeding or sheltering an animal for 14 days or more unless the animal is being boarded for a fee.

Holding facility means any pet shop, kennel, cattery, boarding facility, veterinary office, animal shelter, or combination thereof.

Owner means any person owning, keeping, harboring, possessing, or acting as custodian, however temporarily, of an animal; provided, however, that a person having temporary custody or possession of an animal for the sole purpose

of turning over such animal to a member of the animal services division or other peace officer shall not be deemed the owner of the animal.

Pet means a domesticated animal kept for pleasure rather than utility. Pets include, but are not limited to, birds, cats, dogs, fish, hamsters, mice, reptiles, domesticated wild animals and other animals associated with man's environment.

Pet shop means a commercial establishment, which offers for sale two (2) or more species of live animals with the intent that they be kept as pets.

Provocation means conduct or actions on the part of any person or animal that is likely to arouse a violent or aggressive response by an animal. This term does not include any action on the part of an individual or animal that pertains to reasonable efforts of self-defense.

Public nuisance animal means any animal or group of animals which:

- (a) Is found at large three or more times in a 12-month rolling period; or
- (b) Damages the property of anyone other than its owner; or
- (c) Is a Vicious Animal; or
- (d) Causes unsanitary condition of enclosures or surroundings; or
- (e) By virtue of number or type is offensive or dangerous to the public health, safety, or welfare; or
- (f) Is diseased and dangerous to the public health.

Serious injury means a physical injury resulting in broken bones, disfiguring lacerations, or requires cosmetic surgery or hospitalization.

Tether means tying out or fastening a dog outdoors on a rope, chain, or other line for restraining a dog. The term does not mean the restraint of a dog on an attended leash.

Vicious animal means any animal which constitutes a physical threat to human beings or other animals by virtue of attacks of such number and severity as to cause property damage or physical injury.

Secs. 10-3—10-30. – Reserved.

ARTICLE II. – ANIMAL SERVICES

Sec. 10-31 General Duties of Animal Services Officer.

The animal services officer shall be charged with the responsibility of:

- (a) Taking up and delivering any animal at large in violation of this chapter to the animal shelter.
- (b) Issuing appropriate permits, civil penalties, and notices required for the enforcement of this chapter.
- (c) Declaring an animal as a potentially dangerous animal, as defined in this chapter, if they determine such. Upon determining that an animal is a potentially dangerous animal, the Chief of Police shall notify the owner of the animal in writing, giving the reasons for the determination. The owner may appeal the determination by filing written objections with the Animal Services Advisory Committee established in this chapter.
- (d) Canvassing the city, including homes and businesses utilizing security animals as necessary to ascertain that all animals are currently vaccinated against rabies; to organize and carry out any such canvas, having sole and exclusive authority, control, and responsibility for such actions; and to ensure that the provisions of this chapter and state law related to animal control are adhered to.
- (e) Investigating complaints regarding animals.
- (f) Protecting animals from neglect or abuse and assist animal cruelty investigators as needed in enforcing state laws regarding cruelty.
- (g) Enforcing the laws regarding remedies for an owner's failure to obtain proper vaccination of animals against rabies.
- (h) Investigating all reported animal bites or other human physical contact with suspected rabid animals and submit bite reports and reports of human contacts to the county health director.

Except as may be otherwise provided by statute or local law or ordinance, no officer, agent, or employee of the city charged with the duty of enforcing the provisions of this chapter or other applicable law shall be personally liable for any damage that may accrue to persons or property because of any act required or permitted in the discharge of such duties.

Sec. 10-32. Animal Enforcement Authority

The animal services officer is hereby authorized to enforce the provisions of this chapter and any other regulation adopted in accordance with the provisions of this chapter.

Sec. 10-33. Inspection, interference, or concealment.

- (a) Inspections: Whenever necessary, inspections will be used to enforce the provisions of this chapter, or whenever the animal services officer has reasonable cause to believe that there exists in any household or upon any premises any violation of this chapter, the animal services officer is hereby empowered to enter

and inspect such property at any reasonable time and perform any duty imposed upon them by this chapter as follows:

- (1) If such property is unoccupied, the animal services officer shall first make a reasonable effort to locate the owner or other person having control of the property;
 - (2) If such property is occupied, the animal services officer shall first present proper credentials to the occupant and request entry, explaining the reasons therefore; and
 - (3) If such entry is refused or cannot be obtained because the owner or other person having control or charge of the property cannot be located after due diligence, the animal services officer may seek an administrative search warrant.
- (b) Interference: It shall be unlawful for any person to interfere with, hinder, assault, molest, resist, or obstruct the animal services officer while the animal services officer is carrying out any duty created under this chapter.
- (c) Concealment of animal: It shall be unlawful for any person to conceal, for the purpose of evading the rabies inoculation requirement of state law, any uninoculated animal from the animal services officer, or to evade any other provision of this chapter.
- (d) In addition to any other remedy available, violation of this section shall constitute a misdemeanor as provided in Section 1-6.

Sec. 10-34. Animal Services Advisory Committee

The Animal Services Advisory Committee shall make recommendations to the City Council regarding animal-related ordinances, policies, and procedures. The Animal Services Advisory Committee may undertake the study of areas under their authority to advise City of Hendersonville staff and City Council.

The Animal Service Advisory Committee, or a duly appointed subcommittee thereof, shall act as the Animal Services Appellate Board and hear all appeals under this chapter when permitted by State law, including appeals of dangerous dog determinations.

The composition, rules of procedure, and all other matters shall be governed by the Animal Services Advisory Committee Charter and Rules of Procedure, as amended.

Secs. 10-34—10-60. – Reserved.

ARTICLE III – KEEPING ANIMALS

Sec. 10-61. – Keeping of certain animals prohibited

It shall be unlawful for any person to keep or maintain any oxen, bison, roosters, or wolf hybrids within the City.

Sec. 10-62. – Swine

It shall be unlawful for any person to keep any hogs or other swine within the city with the exception of miniature pigs weighing not more than 100 pounds kept as household pets. Only one such miniature pig shall be kept in any household. Such pigs shall be kept in a restrained area and shall not be permitted to run at large. Such pigs shall also be kept in accordance with Article V of this Chapter. Any outside area occupied by a miniature pig shall be regularly sanitized and kept free from waste. No such area shall be allowed to become muddy or unsanitary.

Sec. 10-63. – Keeping of other farm animals

Other farm animals may be kept within the City subject to applicable health statutes and regulations, and provided that: (1) none of the foregoing animals may not be kept or maintained within 150 of any building occupied or designated as a residence, except the residence of such animals owner; and (2) the forgoing animals shall be kept in accordance with Article V of this Chapter.

Sec. 10-64. – Keeping of poultry

- (a) It shall be unlawful to maintain a poultry flock of greater than 20 birds.
- (b) In accordance with Sec. 10-61 above, the keeping of roosters is prohibited.
- (c) The keeping of poultry shall be subject to all applicable health statutes and regulations.

Sec. 10-65. – Requirements for construction and maintenance of poultry enclosures.

In addition to the requirements of Article V of this Chapter, each person keeping poultry within the city shall comply with the following rules and regulations:

- (1) The poultry house and run must be fenced, and the birds shall kept within it at all times.
- (2) The poultry house must be used for poultry only and it must be well ventilated, with at least one square foot of window to 15 square feet of floor space.
- (3) The run must be well drained so there will be no accumulation of moisture.

Sec. 10-66. – Disposal of dead chickens and other poultry.

It shall be unlawful for any person to allow any dead chicken or poultry to remain on the premises, and disposal of any dead chicken or fowl may not be contrary to any methods approved by the county health department.

Secs. 10-67—10-90. – Reserved.

ARTICLE IV – OFFENSES AND MISCELLANEOUS

Sec. 10-91. – Animals at large

- (a) It shall be unlawful for the owner of any domesticated animal to allow or permit such animal to be at large within the corporate limits of the city at any time upon any property not his own without the written permission of the owner of such property.
- (b) In addition to any other remedy available, permitting a dog that has been deemed dangerous to run at large is a misdemeanor as provided by Section 1-6.

Sec. 10-92. – Protection of Birds

- (a) The area embraced within the corporate limits of Hendersonville and all land owned or leased by the Hendersonville outside the corporate limits is hereby designated as a bird sanctuary.
- (b) It shall be unlawful intentionally to trap, hunt, kill, or otherwise take, within the sanctuary hereby established, any native wild bird except pursuant to a valid permit issued by the North Carolina Wildlife Resources Commission; provided, however, that this section shall not be deemed to protect any birds classed as a pest under Article 22A of Chapter 113 of the North Carolina General Statutes and the Structural Pest Control Act of North Carolina of 1955 or the North Carolina Pesticide Law of 1971.
- (c) In addition to any other remedy available, violation of this Section is also a misdemeanor as provided in Sec. 1-6.

Sec. 10-93. – Protections of Squirrels

- (a) The entire area embraced within the corporate limits of the city is hereby designated as a sanctuary for all species of squirrel (family Sciuridae), especially the Brevard White Squirrel.

It shall be unlawful for any person to hunt, kill, trap, or otherwise take any protected squirrels within the city limits except pursuant to a valid permit issued by the North Carolina Wildlife Resources Commission. This section shall not be deemed to protect any squirrels classified as a pest by the North Carolina General Statutes, except that the Brevard White Squirrel shall always be protected by this section.

Sec. 10-94. – Fouling public grounds.

It shall be unlawful for any owner, keeper, or walker of any animal to permit the discharge such animal's excreta upon any public or private property, other than the property of the owner within the city, if such owner, keeper, or walker does not immediately thereafter remove and clean up such animal's excreta from the public or private property.

Sec. 10-95. – Restraint of animals.

- (a) Physical restraint: It shall be unlawful for any Owner of any animal, excluding cats, to keep such animal on their own premises or off the premises, unless such animal is under sufficient physical restraint, such as a leash, cage, bridle or similar effective device which restrains and controls the animal, or within a vehicle or adequately contained by a fence on the premises or other secure enclosure. If the physical restraint used is a leash, bridle, or other device requiring a person to control the animal, the person using such restraint must be of sufficient age and physical size or ability to reasonably restrain the animal. If the secure enclosure is an invisible fence system, then all components of the system must be in working order and in proper place. Additionally, there must be a visible, permanent sign on the premises stating that there is an invisible fence.
- (b) Tethering: Dogs may not be tethered to a stationary object unless a competent adult is in the immediate presence of the dog and the following conditions are met:
 - (1) A tether shall be equipped with a swivel on both ends.
 - (2) A tether shall be a minimum of ten feet in length and shall be made of either metal chain or coated steel cable.
 - (3) Tethers shall be attached to a buckle type collar or harness and under no circumstances shall the tether itself be placed directly around a dog's neck. Tethers shall not be used in conjunction with training collars such as choke or pinch-style collars.
 - (4) The weight of the tether shall not exceed ten percent of the total body weight of the dog but shall be of sufficient strength to prevent breakage.
 - (5) The tether by design and placement shall allow the dog a reasonable and unobstructed range of motion without the possibility of entanglement, strangulation, or other injury. The tether shall allow the dog access to adequate food, water, and shelter.
 - (6) A dog must be four months of age or older to be tethered.
 - (7) Only one dog shall be attached to a single tether.
 - (8) Pulley systems, running lines and trolley systems may be used in conjunction with a tether.
 - (9) Pulley systems, running lines or trolley systems shall be at least ten feet in length. and no more than seven feet above the ground.
 - (10) The line of the pulley system, running line or trolley system to which, the tether is attached shall be made of coated steel cable.
 - (11) No tether shall be affixed to a stationary object which would allow a dog to come within five feet of any property line.

Sec. 10-96. – Giveaways in Public Spaces.

It shall be unlawful to display any animal in a public place for the purpose of selling, trading, or giving the animal away or used as a prize or inducement. For this section, public place shall be defined as any place open to the public including but not limited to malls, supermarkets, parking lots, flea markets, farmers markets, road rights-of-way, and parks. This section does not apply to state regulated pet shops, commercial kennels, licensed animal shelters, veterinarian offices, licensed stockyards, or livestock auctions or 501(c)(3) non-profits who adopt out animals with proof of rabies vaccination and alteration

Sec. 10-97. – Excessive noises.

It shall be unlawful for any Owner to allow any Animal to excessively bark, howl, or make other loud noises continuously or intermittently for more than 30 minutes.

The Animal Services Officer shall only be required to investigate an alleged violation of this section upon the receipt of a complaint from two individuals.

Secs. 10-98—10-120. – Reserved.**ARTICLE V. – ANIMAL CRUELTY****Sec. 10-121. – Unlawful treatment.**

It shall be unlawful for any Owner to fail to provide an animal with adequate food, water, shelter, necessary medical attention, and humane care and treatment.

Nothing in this section shall be construed to require a standard of care otherwise prohibited by G.S. 160A-203.1.

In addition to all other remedies available, violation of this Section is a misdemeanor as provided in Section 1-6.

Sec. 10-122. – Abandonment.

No owner of an animal shall abandon such animal except to relinquish the animal to the animal shelter during normal business hours. If the Animal Services Officer finds that an animal has been abandoned, the animal may be impounded. If an animal has been abandoned in a house or within a fenced area, the Animal Services Officer must make a reasonable effort to locate the owner or manager of the property. If the property owner or manager is not the animal owner, then the Animal Services Officer shall secure permission to remove the animal. If the property owner is also the animal owner and this individual cannot be located, the Animal Services Officer shall secure an appropriate warrant to seize the animal. An animal seized pursuant to this section shall be impounded for a period of ten days. If the animal is unclaimed by its owner after being held ten days, the animal shall be disposed of by adoption or humane euthanasia, or transferred to an Animal Services Center or other appropriate facility.

In addition to all other remedies available, violation of this Section is a misdemeanor as provided in Section 1-6.

Sec. 10-123. – Transport of Animals.

Animals transported in open truck beds on public roads shall be secured by cross tethering suitable and acceptable for the size of animal in such a manner that such animal cannot fall or jump over the side or contained in a properly secured and ventilated cage. This provision shall not be applicable to:

- (1) Law enforcement dogs, while being used for investigation, tracking and similar duties under the supervision of a certified law officer;
- (2) Search and rescue dogs, while being used for their intended purpose and under the control of a trained handler;
- (3) Hunting dogs, while being used in a legal hunt on private property, private roads or public secondary roads;
- (4) Farm dogs, while being used for agricultural purposes on private property or private roads; or
- (5) Farm dogs, while being used for agricultural purposes on secondary roads within one mile of property owned, leased, or otherwise used for farm purposes.

In addition to all other remedies available, violation of this Section is a misdemeanor as provided in Section 1-6.

Sec. 10-124. – Confinement of Animals in Motor Vehicles.

It shall be unlawful for any person to place or confine an animal or allow an animal to be placed or confined in a vehicle, building, car, boat, or vessel of any kind under such conditions or for such a period as to endanger the health or well-being of such animal due to temperature, lack of food or drink, or such other conditions as may reasonably be expected to cause suffering, disability, or death.

- (1) When an animal is confined in violation this section, after making a reasonable effort to find the driver of a vehicle in which an animal is confined, the animal services officer, in the presence of a law enforcement officer, may use the least intrusive means to enter the vehicle if necessary to remove the animal, where reasonable cause exists to believe the animal may die if not immediately removed.
- (2) The animal services officer removing the animal shall then impound the animal and leave in a prominent place on the motor vehicle a written notice of the animal's impoundment, a brief description of the animal, and where and when the animal may be reclaimed.

In addition to all other remedies available, violation of this Section is a misdemeanor as provided in Section 1-6.

Sec. 10-125. – Animals used in entertainment, shows, and for exhibition.

It shall be unlawful for any person to sponsor, promote, or train a wild or domestic animal to participate in any unnatural behavior in which the animal is wrestled, fought, harassed, or displayed in such a way that the animal is

abused or stressed. This prohibition applies to events and activities taking place in either public or private facilities or property in the town and applies regardless of the purpose of the event or activities and whether a fee is charged to spectators.

In addition to all other remedies available, violation of this Section is a misdemeanor as provided in Section 1-6.

Secs. 10-126—10-150. – Reserved.

ARTICLE VI. – RABIES CONTROL

Sec. 10-151. – Vaccination of dogs and cats required.

It shall be unlawful for an Owner of any dog or cat four months of age or older to fail to provide current vaccination against rabies for such dog or cat.

Sec. 10-152. – Vaccination tag and certification.

- 1) Dogs are required to wear a rabies vaccination tag at all times.
- 2) Cats are not required to wear rabies vaccination tag, but the owner of a cat shall maintain the tag, or the rabies vaccination certificates as written evidence to prove the cat has a current rabies vaccination.
- 3) It shall be unlawful for any person to use for any animal a rabies vaccination tag issued for an animal other than the one using the tag.
- 4) Enforcement: If an animal is found without a rabies tag, the owner shall have 5 calendar days to obtain proper proof of vaccination and present to the Animal Services Officer.
 - a. If after 5 days, there is still no proof of rabies vaccination, the Animal Services Officer may take any of the enforcement actions provided in this Chapter.
 - b. If an animal is found without a rabies tag off the owner's property, the animal shall be impounded for 72 hours for owner reclaim. Prior to release, the animal's vaccination history shall be verified, and rabies vaccine voucher shall be purchased if required.

Sec. 10-153. – Bite Notification

- (a) Reporting requirement: It shall be unlawful for: (1) any person bitten by a dog or cat, (2) their parent or guardian if such person is a minor, and (3) the person owning such animal or having such animal in his possession or under his control to fail to report, within 24 hours of a bite, to the Animal Services Officer that such animal has bitten a person. It shall be unlawful for any person to fail to inform the Animal Services Officer where an animal is located if the owner has given the animal away or caused in any way the animal to be taken from the owner's premises.
- (b) Confinement: All dogs or cats that bite human beings shall be immediately confined for ten days in a place designated by the Henderson County Health Director. If the Owner refuses to confine the animal as required by this section, the Animal Services Officer or the Henderson County Health Director may order the seizure of the animal and its confinement for ten days at the expense of the owner. Following such ten-day confinement, the dog or cat may be released with the written permission of the Animal Services Officer or the Henderson County Health Director.

As provided in N.G.C.S. 130A-196(b), failure to comply with confinement requirements is a Class 2 misdemeanor.

Secs. 10-154—10-180. – Reserved.

ARTICLE VII. – PUBLIC NUISANCE AND DANGEROUS DOGS

Sec. 10-181. – Public Nuisance.

- (a) The keeping of a Public Nuisance Animal, as defined in this Chapter, is hereby prohibited.
- (b) Complaint and notice: Upon receipt of a complaint being made to the Police Department by any resident or residents that any person is keeping a Public Nuisance Animal as defined in this chapter, the Chief of Police shall cause the owner of the animal or animals in question to be notified that a complaint has been received and shall cause the situation complained of to be investigated and a report and findings thereon to be reduced to writing by the investigating Animal Services Officer.
- (c) Abatement. If the written findings of the investigating officer indicate that the complaint is justified, then the Chief of Police shall cause the Owner of the animal or animals in question to be so notified in writing, by registered mail, return receipt requested, or by personal delivery, ordered to abate such nuisance within five days after notification, and issued a citation for the violation. In the event the Owner of the animal or animals is unknown and cannot be ascertained, the notice and order, along with a general description of the animal or animals shall be published within a local newspaper. In addition, any animal determined to be a nuisance under this section must be micro chipped at the owner's expense within ten days of the Public Nuisance Animal determination or appeal determination. Failure to comply within this time frame shall constitute a separate offense for each day thereafter.
- (d) Impoundment upon failure to abate. If any person receiving notice in the manner hereinabove described shall fail or refuse to abate the nuisance upon order of the Chief of Police within the specified time, the Chief of Police may cause the animal or animals in question to be apprehended and impounded.
- (e) Civil penalties. Additionally, if any person receiving notice in the manner hereinabove described shall fail or refuse to abate the nuisance upon order of the Chief of Police within the specified time, the Chief of Police may assess a civil penalty as provided in Section 1-6.

(e) Right of appeal. Within seven days from receipt of their notification, the owner of the nuisance animal may appeal the findings of the Chief of Police by giving written notice of appeal to the Chief of Police. An appeal shall stay the abatement of the Public Nuisance Animal determination until a final determination by the Animal Services Advisory Committee.

(f) Inspection. The Animal Services Officer is hereby permitted to make periodic inspections of animals deemed to be Public Nuisance Animals to ensure compliance with this Chapter.

Sec. 10-182. – Declaration of dangerous dogs.

The Chief of Police shall have the authority to declare a dog to be a dangerous dog. Any determination that a dog is a dangerous dog shall be made in writing, summarizing the available evidence. The letter shall be served by personal delivery or by certified or registered mail to the Owner. The written determination shall order compliance with the appropriate provisions of this chapter and may impose reasonable conditions to maintain the public health and safety.

Sec. 10-183. – Dangerous dogs restricted.

It shall be unlawful for any person to own or in any way maintain or harbor a dog that has been deemed dangerous, except as provided in this chapter. Notwithstanding any enumerated exception in listed in Sec. 10-2, any dog which has killed a person shall be immediately euthanized.

Sec. 10-183. – Appeal.

Any person who owns a dog that has been declared a dangerous dog shall have the right to appeal the declaration to the Animal Services Advisory Committee as provided herein:

- (a) Manner of appeal. The Owner of a dangerous dog may request an appeal of the determination in writing. The written appeal must be submitted to the Chief of Police, must state the Owner's address, and must be received or postmarked within seven calendar days of the receipt by the Owner of notice of the declaration.
- (b) Pending the appeal, the Owner of a dangerous dog shall comply with the provisions of Section 10-184 herein.
- (c) Hearing procedures. Once properly appealed, the Animal Services Advisory Committee shall conduct a quasi-judicial hearing to determine whether the declaration of the dog as a dangerous dog should be upheld.
- (d) Outcome. If the dog is affirmed by the animal services advisory board as being a dangerous dog, then the Owner shall comply with the provisions of this Chapter. Any person who owns a dog upheld as a dangerous dog by the Animal Services Advisory Committee has the right to appeal this determination to the Henderson County Superior Court.

Sec. 10 –184. – Enclosures and control measures.

- (a) If a dog has been determined to be a dangerous dog, as specified in this section, the dog may be retained upon the Owner satisfying the following conditions:
 - (1) The Owner must always ensure that the dog on and off the Owner's property remains securely enclosed as per the ordinance or controlled and muzzled as described below.
 - a. Confine the dog within the owner's residence; or
 - b. Erect and confine the dog (except when muzzled and controlled as required below), within 30 days in a securely enclosed and padlocked pen with a concrete bottom and secure top. The structure must be at least 10x10 feet and be secured by a tamper-proof lock. Pending construction of such pen, the dog must be confined within the owner's residence; or
 - c. The animal must be muzzled and under restraint by a competent person who, by means of a leash, always has such animal firmly under physical restraint when not in a secure building or enclosure. The muzzle must be a basket muzzle.
 - d. Any dog deemed dangerous shall not be permitted in public recreation areas, including dog parks, parks, or greenways.
 - (2) The owner must post one or more warning signs provided by the city, which are to be visible to any adjoining property from each exposure of the residence or the structure in which the dangerous dog is confined. The city may charge a fee for each sign provided.
 - (3) The owner of a dangerous dog must maintain in full force and effect a liability insurance policy of at least \$100,000 for personal injury or death of any person resulting from an attack by such dangerous dog. The owner shall provide the Animal Services Officer with a certificate of insurance which shall require 30 days written notice by the insurer or owner in the event of cancellation, reduction or other modifications of coverage. In addition to the notice requirement above, owner shall provide the Animal Control Officer with immediate written notice of cancellation, reduction, or other modification of coverage of insurance.
 - (4) Within ten days of the determination or appeal determination, the owner of a dangerous dog must demonstrate to the Animal Services Officer that such dog had a microchip implanted.

- (5) The Animal Services Officer may periodically inspect the premises where a dangerous dog is kept verifying compliance with the provisions of this chapter. The Owner must permit these inspections at any reasonable time without notice to the Owner from the Animal Enforcement Officer.
- (6) All dogs deemed dangerous must be altered within 30 days of the determination.
- (7) Control measures.
 - a. All control measures required by this section must be met immediately upon the determination that the dog is dangerous except for the construction of the enclosure discussed in the subsection of this provision. The owner has 30 days to construct the enclosure during which time the animal must be confined indoors and may only be permitted outside under the control of a competent person by leash and the animal must be muzzled.
 - b. If the owner has no place to keep the animal while the structure is being constructed, the animal may be kept at the Henderson County Animal Services Center or at a private establishment approved by the Animal Services Officer and Henderson County Animal Services at the owner's expense.
- (b) Notification within 24 Hours:
 - (1) Change of address or ownership of a dangerous dog, the owner shall provide written notification of the change of address or ownership to the Chief of Police, stating the full name if there's a new owner, address, and location of the new owner of the dog.
 - (2) Of the death of a dangerous dog, the owner shall provide written notification of the dog's death to the Chief of Police.
- (c) Notification Prior to Transfer. Prior to any transfer to a new Owner (with or without consideration) of a dangerous dog, the owner must provide to the Chief of Police a written statement, signed before a notary by the transferee, indicating the transferee's understanding of the transferee's obligations hereunder as an owner of a dangerous dog. If the dangerous or dog is being transferred out of the City of Hendersonville, or out of North Carolina, the owner of the animal must notify the Chief of Police of the new jurisdiction to which the animal is being moved that this dog has been deemed a dangerous dog. The Chief of Police also shall notify the new jurisdiction that the animal has been deemed dangerous and the circumstances surrounding the case. The Owner must comply with any local regulations regarding dangerous dogs in the new location. No dog deemed dangerous may be adopted pending the outcome of quasi-judicial hearing.
- (d) In addition to all other remedies available, violation of this Section is a misdemeanor as provided in Section 1-6.

Sec. 10-185. – Impoundment Authorized.

- (a) Immediate impoundment: Any dangerous dog may be immediately impounded if the animal is kept in violation of this section. Civil penalties may be imposed.
- (b) Cost of impoundment: Costs of impoundment shall be paid by the owner for the animal at a daily rate as determined by the impoundment facility. In instances where the animal must be impounded at a private facility or kennel, the person liable for the animal will pay the rate established by those facilities.
- (c) Release from impoundment:
 - (1) Dog deemed dangerous/potentially dangerous may only be released to owner if the following requirements have been satisfied
 - a. Proof of compliance submitted to Chief of Police, or
 - b. Approval of proof by the Chief of Police is submitted in writing to the impoundment facility.
 - (2) If criminal charges have been brought against the Owner for failure to comply with this Chapter, for interference with the operations of the Animal Services Officer, or criminal charges under N.C.G.S. Chapter 67 Article 1A, no dog deemed dangerous/potentially dangerous shall be released from the impoundment until determined by a court of competent jurisdiction. During this time while the dog is impounded, costs of impoundment shall continue to be charged to the Owner.

Sec. 10-186 – Destruction of animals that cannot be seized or confined by reasonable means.

- (a) Notwithstanding any other provision of this Chapter, an animal that cannot be seized by reasonable and normal means, trapped in a humane, live-capture animal trap, or tranquilized, alternative resources being exhausted, may be humanely destroyed in the field by animal services or other law enforcement officers.
- (b) Vicious, dangerous animals so designated, or wild animals, or an animal attacking a human being, domestic animal, livestock, or fowl another pet, or livestock may be immediately destroyed in the field, if such destruction is necessary for the protection of the public health and safety or that of city staff.

Secs. 10-187—10-210. – Reserved.

ARTICLE VIII. – ENFORCEMENT

Sec. 10-211. – Violations and penalties.

The following penalties shall pertain to violations of this chapter:

- (a) This chapter may be enforced by criminal penalty where specifically provided.
- (b) Enforcement may include any appropriate equitable remedy, injunction or order of abatement issued by a court of competent jurisdiction pursuant to N.C.G.S. §160A-175(d) and (e).
- (c) Civil penalties. In addition to and independent of any criminal penalties and other sanctions provided in this article, violations of this article may also subject the offender to the civil penalties hereinafter set forth.
- (d) A combination of the forgoing and/or any other remedy available by law.

Sec. 10-212. – Civil Penalties

- (a) Generally: Any person who violates any provision of this chapter shall be subject to a civil penalty for each level of violation in accordance with subsection (d) of this section and the corresponding civil penalty in the Civil Penalty Schedule, Section 10-213. If the violation is continued, each day's violation shall constitute a separate offense. For the purposes of this chapter, repeat violations occur where the City has issued a civil penalty for the same offense within a 12-month period. Nothing in this section shall prevent the City from issuing warning violations.
- (b) Issuance of a citation: Issuance of a citation for violation of this chapter is directed toward and against the known owner. The purpose of the issuance of a citation is to affect the conduct of the owner by seeking to have the owner ensure compliance with this chapter. The issuance of a citation hereunder shall not affect the prosecution of a violation hereof as a misdemeanor as provided above. A citation shall:
 - (1) Give notice of the violation(s) alleged of the owner;
 - (2) State the civil penalties for such violation(s);
 - (3) State the date by which any penalties for such violation(s) must be paid; and
 - (4) State that the city may initiate after such date a civil action to collect the civil penalties which are and may become due.
- (c) If the owner of an animal or other alleged violator does not respond to the above-described citation, or the applicable civil penalty is not paid within the time period prescribed, a civil action may be commenced to recover the penalty and costs associated with collection of the penalty. The city manager or his designee are expressly authorized to initiate and prosecute small claims actions in district court to collect civil penalties and fees due to the city under this Chapter.
- (d) Penalty severity: The severity of violations of the provisions of this chapter shall be as follows:
 - (1) Violation of the following shall constitute a level I violation:
 - a. Section 10-61. – Keeping of certain animals prohibited.
 - b. Section 10-62. – Swine.
 - c. Section 10-63. – Keeping of other farm animals.
 - d. Sec. 10-64. – Keeping of poultry.
 - e. Sec. 10-65. – Requirements for construction and maintenance of poultry enclosures.
 - f. Sec. 10-91. – Running at large.
 - g. Sec. 10-94. – Fouling public grounds.
 - h. Sec. 10-95. – Restraint of animals.
 - i. Sec. 10-97. – Excessive noises.
 - j. Sec. 10-123. – Transport of animals.
 - k. Sec. 10-151. – Vaccination of dogs and cats required.
 - l. Sec. 10-152. – Vaccination tag and certification.
 - m. Violation of any provision of this Chapter not otherwise provided for in this subsection (d).
 - (2) Violation of the following shall constitute a level II violation:
 - a. Section 10-66. – Disposal of dead chickens and other poultry.
 - b. Sec. 10-92. – Protection of birds.
 - c. Sec. 10-93. – Protection of squirrels.
 - d. Sec. 10-96. – Giveaways in public spaces.
 - e. Sec. 10-122. – Abandonment.
 - f. Sec. 10-153. – Bite notification.
 - g. Sec. 10-181. – Public nuisance.
 - (3) Violation of the following shall constitute a level III violation:

- a. Sec. 10-33. – Inspection, interference, or concealment.
- b. Sec. 10-121. – Unlawful treatment.
- c. Sec. 10-124. – Confinement of animals in motor vehicles.
- d. Sec. 10-125. – Animals used in entertainment, shows, and for exhibition.
- e. Sec. 10-184. – Enclosures and control measures.

Sec 10-213. – Civil penalty schedule

Civil Penalty Schedule				
	First Violation	Second Violation	Third Violation	Additional Violations
Level I	Warning	\$50	\$100	\$200
Level II	\$100	\$150	\$200	\$400
Level III	\$200	\$300	\$500	\$500

SECTION 2. If any provision of this ordinance or its application is held invalid, the invalidity does not affect other provisions or applications of this ordinance that can be given effect without the invalid provisions or application, and to this end the provisions of this ordinance are severable.

SECTION 3. It is the intention of the city council and it is hereby ordained, that the provisions of this ordinance shall become and be made part of the Code of Ordinances, City of Hendersonville, North Carolina, and the sections of this ordinance may be renumbered to accomplish such intention.

SECTION 4. This Ordinance shall be effective upon its adoption.

Adopted by the City Council of the City of Hendersonville, North Carolina on this 9th day of August, 2023.

/s/Barbara G. Volk, Mayor
Attest: /s/Jill Murray, City Clerk
Approved as to form: /s/Angela S. Beeker, City Attorney

D. August 2023 Budget Amendments – Adam Murr, Budget Manager

TO MAYOR & COUNCIL

APPROVAL: August 09, 2023

FISCAL YEAR 2023

FORM: 08092023-01

BUDGET AMENDMENT

FUND 010

ACCOUNT NUMBER	ACCOUNT DESCRIPTION	EXISTING BUDGET	INCREASE	DECREASE	REVISED BUDGET
010-1400-501001	Salaries- Regular	2,249,678	41,000	-	2,290,678
010-1400-521110	Protective Clothing	80,000	-	11,000	69,000
010-1400-524030	R&M Trucks	102,000	-	30,000	72,000
FUND 010	TOTAL REVENUES	-	-	-	-
	TOTAL EXPENDITURES	2,431,678	41,000	41,000	2,431,678

An end of year FY23 budget amendment to prepare for the annual audit process.

The City Manager and City Clerk certify budget ordinance amendment 08092023-01 was approved by City Council on August 09, 2023.

TO MAYOR & COUNCIL

APPROVAL: August 09, 2023

FISCAL YEAR 2023

FORM: 08092023-02

BUDGET AMENDMENT

FUND 010/410

ACCOUNT NUMBER	ACCOUNT DESCRIPTION	EXISTING BUDGET	INCREASE	DECREASE	REVISED BUDGET
010-0000-470900	Fund Balance Appropriated	1,186,525	-	100,000	1,086,525
010-0000-598901	Transfer Out (to 410 Project #23001)	3,547,053	-	100,000	3,447,053
FUND 010	TOTAL REVENUES	4,733,578	-	200,000	4,533,578
	TOTAL EXPENDITURES	-	-	-	-
410-0000-470100-23001	Transfer In (From 010)	-	-	100,000	(100,000)
410-1502-519200-23001	Contract Services	-	-	100,000	(100,000)
FUND 410	TOTAL REVENUES	-	-	100,000	9,067,156
	TOTAL EXPENDITURES	-	-	100,000	(200,000)

An amendment decreasing fund balance appropriation in the General Fund (010) and Transfer In (410) to project #23001.

The City Manager and City Clerk certify budget ordinance amendment 08092023-02 was approved by City Council on August 09, 2023.

TO MAYOR & COUNCIL
APPROVAL: August 09, 2023

FISCAL YEAR 2024
FORM: 08092023-03

BUDGET AMENDMENT

FUND 410 460 468					
ACCOUNT NUMBER	ACCOUNT DESCRIPTION	EXISTING BUDGET	INCREASE	DECREASE	REVISED BUDGET
410-0000-470010-VE024	Debt Proceeds (Vehicle & Equip. Loan)	403,000	30,250	-	433,250
410-0000-460090-VE024	Contributions/Donations	-	30,250	-	30,250
410-1300-554002-VE024	C/O-Vehicles (14-47, Marked)	60,500	-	-	60,500
410-1300-554002-VE024	C/O-Vehicles (14-53, Marked)	60,500	-	-	60,500
410-1300-554002-VE024	C/O-Vehicles (14-52, Marked)	60,500	-	-	60,500
410-1300-554002-VE024	C/O-Vehicles (14-55, Marked)	60,500	-	-	60,500
410-1300-554002-VE024	C/O-Vehicles (14-48, Marked)	60,500	-	-	60,500
410-1300-554002-VE024	C/O-Vehicles (14-49, Marked)	60,500	-	-	60,500
410-1300-554002-VE024	C/O-Vehicles (14-50, Un-marked)	40,000	-	-	40,000
410-1300-554002-VE024	C/O-Vehicles (New BGC Vehicle)	-	60,500	-	60,500
FUND 410 (Police)	TOTAL REVENUES	403,000	60,500	-	463,500
	TOTAL EXPENDITURES	403,000	60,500	-	463,500
410-0000-470010-VE024	Debt Proceeds (Vehicle & Equip. Loan)	430,000	-	-	430,000
410-1400-554001-VE024	C/O-Equipment (SCBAs)	325,000	-	-	325,000
410-1400-554002-VE024	C/O-Vehicles (14-61, SUV)	65,000	-	-	65,000
410-1400-554002-VE024	C/O-Vehicles (14-84, Truck)	40,000	-	-	40,000
FUND 410 (Fire)	TOTAL REVENUES	430,000	-	-	430,000
	TOTAL EXPENDITURES	430,000	-	-	430,000
410-0000-470010-VE024	Debt Proceeds (Vehicle & Equip. Loan)	469,000	-	-	469,000
410-1502-554002-VE024	C/O-Vehicles (Sustainability Vehicle)	50,000	-	-	50,000
410-1523-554002-VE024	C/O-Vehicles (16-03, 2500 Series)	63,000	-	-	63,000
410-1525-554002-VE024	C/O-Vehicles (14-30, 2500 Series)	53,000	-	-	53,000
410-1525-554002-VE024	C/O-Vehicles (14-58, 2500 Series)	53,000	-	-	53,000
410-1525-554001-VE024	C/O-Equipment (43-03 Ventrac)	100,000	-	-	100,000
410-1555-554001-VE024	C/O-Equipment (20-01 Dump)	150,000	-	-	150,000
FUND 410 (Public Works)	TOTAL REVENUES	469,000	-	-	469,000
	TOTAL EXPENDITURES	469,000	-	-	469,000
460-0000-470100-VE024	Transfer In (from 060)	589,000	-	-	589,000
460-7002-554002-VE024	C/O-Vehicles (All W&S Vehicles)	205,000	-	-	205,000
460-7002-554001-VE024	C/O-Equipment (42-06, Skid Steer)	100,000	-	-	100,000
460-7002-554001-VE024	C/O-Equipment (44-08 Excavator)	82,000	-	-	82,000
460-7002-554001-VE024	C/O-Equipment (LSL Crew Dump)	120,000	-	-	120,000
460-7002-554001-VE024	C/O-Equipment (LSL Crew Excavator)	82,000	-	-	82,000
FUND 460 (Water & Sewer)	TOTAL REVENUES	589,000	-	-	589,000
	TOTAL EXPENDITURES	589,000	-	-	589,000
468-0000-470100-VE024	Transfer In (from 010)	49,065	-	-	49,065
468-0000-470010-VE024	Debt Proceeds (Vehicle & Equip. Loan)	500,000	-	-	500,000
468-7855-554002-VE024	C/O-Vehicles (14-18, 3500 Series+Refuse Bed)	75,000	-	-	75,000
468-7855-554001-VE024	C/O-Equipment (61-17 Leaf Machine)	174,065	-	-	174,065
468-7855-554001-VE024	C/O-Equipment (Waste Truck)	300,000	-	-	300,000
FUND 468 (Env. Services)	TOTAL REVENUES	549,065	-	-	549,065
	TOTAL EXPENDITURES	549,065	-	-	549,065
An amendment increasing the FY24 Vehicle and Equipment CPO, #VE024 to reflect the acquisition of a Boys' and Girls' Club (BGC) Police Officer Vehicle. The vehicle acquisition will be funded 50% by a contribution from the BGC and 50% by the City through the FY24 vehicle and equipment loan.					

The City Manager and City Clerk certify budget ordinance amendment 08092023-03 was approved by City Council on August 09, 2023.

TO MAYOR & COUNCIL
APPROVAL: August 09, 2023

FISCAL YEAR 2024
FORM: 08092023-04

BUDGET AMENDMENT

FUND 010					
ACCOUNT NUMBER	ACCOUNT DESCRIPTION	EXISTING BUDGET	INCREASE	DECREASE	REVISED BUDGET
010-0000-460090	Contributions/Donations	-	50,000	-	50,000
010-1200-519200	Contracted Services	225,000	50,000	-	275,000
FUND 010	TOTAL REVENUES	-	50,000	-	-
	TOTAL EXPENDITURES	-	50,000	-	-
An amendment increasing budget appropriations following the receipt of a \$50,000 a contribution for work on the City's Comprehensive Plan. The addition of the \$50,000 contribution brings the FY24 comp plan appropriation to a total of \$200,000.					

The City Manager and City Clerk certify budget ordinance amendment 08092023-04 was approved by City Council on August 09, 2023.

TO MAYOR & COUNCIL
APPROVAL: August 09, 2023

FISCAL YEAR 2024
FORM: 08092023-05

BUDGET AMENDMENT

FUND 010					
ACCOUNT NUMBER	ACCOUNT DESCRIPTION	EXISTING BUDGET	INCREASE	DECREASE	REVISED BUDGET
010-0000-470030	Insurance Proceeds	-	1,368	-	1,368
010-1525-524030	R&M Trucks	14,500	1,368	-	15,868
FUND 010	TOTAL REVENUES	-	1,368	-	1,368
	TOTAL EXPENDITURES	14,500	1,368	-	15,868
An amendment for an insurance reimbursement related to a vehicle accident					

The City Manager and City Clerk certify budget ordinance amendment 08092023-05 was approved by City Council on August 09, 2023.

TO MAYOR & COUNCIL
APPROVAL: August 09, 2023

FISCAL YEAR 2024
FORM: 08092023-06

BUDGET AMENDMENT

FUND 010					
ACCOUNT NUMBER	ACCOUNT DESCRIPTION	EXISTING BUDGET	INCREASE	DECREASE	REVISED BUDGET
010-0000-470900	Fund Balance Appropriated	2,716,519	100,000	-	2,816,519
010-1502-519200	Contract Services	22,800	100,000	-	122,800
FUND 010	TOTAL REVENUES	2,716,519	100,000	-	2,816,519
	TOTAL EXPENDITURES	22,800	100,000	-	122,800
An amendment increasing fund balance appropriation in the General Fund (010) for the Parks Master Plan					
The City Manager and City Clerk certify budget ordinance amendment 08092023-06 was approved by City Council on August 09, 2023.					

TO MAYOR & COUNCIL
APPROVAL: August 09, 2023

FISCAL YEAR 2023
FORM: 08092023-07

BUDGET AMENDMENT

FUND 010					
ACCOUNT NUMBER	ACCOUNT DESCRIPTION	EXISTING BUDGET	INCREASE	DECREASE	REVISED BUDGET
080-0000-435001	H&W Charges	292,025	20,001	-	312,026
080-3101-519200	Contract Services	73,525	20,001	-	93,526
FUND 010	TOTAL REVENUES	-	20,001	-	312,026
	TOTAL EXPENDITURES	-	20,001	-	93,526
An amendment correcting the Health & Wellness Fund (080) in preparation for the FY23 audit.					
The City Manager and City Clerk certify budget ordinance amendment 08092023-07 was approved by City Council on August 09, 2023.					

E. Annexation: Certificate of Sufficiency – 2203 & 2205 N. Stoney View Court (Bullets Contracting, LLC) (C23-61-ANX) – Tyler Morrow, Planner II

Resolution #R-23-84

RESOLUTION BY THE CITY OF HENDERSONVILLE CITY COUNCIL FIXING DATE OF PUBLIC HEARING ON QUESTION OF ANNEXATION PURSUANT TO G.S. 160A-31

WHEREAS, a petition requesting annexation of the contiguous area described herein has been received; and

WHEREAS, certification by the City Clerk as to the sufficiency of the petition has been made;

NOW, THEREFORE BE IT RESOLVED, by the City Council of the City of Hendersonville, North Carolina that:

Section 1. A public hearing on the question of annexation of the contiguous area described herein will be held at the City Operations Center located at 305 William St. Hendersonville NC, 28792 at 5:45 p.m. September 7th, 2023, or as soon thereafter as it may be heard.

Section 2. The area proposed for annexation is described as follows:

Being all of that real property consisting of PINs 9569-47-1183 and 9569-47-2203 described in the plat recorded in Book 2023- ____ [to be inserted at recording of the plat] of the Henderson County Registry, said PINs 9569-47-1183 and 9569-47-2203 being described by metes and bounds as follows:

Being Lots 3 & 4 of Block A of Stoney Crest Subdivision, as shown on the plat thereof recorded in Plat Cabinet C at Slide 23, in the Office of the Register of Deeds for Henderson County, North Carolina, and being more particularly described as follows:

Beginning at a point on the northwestern right of way line of North Stone View Court at the common corner of Lots 4 & 5 of the aforementioned subdivision; thence along the common line between Lots 4 & 5 running North 74°31’01” West for 141.80 feet to a point on the southeastern limits of the City of Hendersonville; thence along the southeastern limits of the City of Hendersonville the following three (3) course to wit: (1) North 15°23’02” East for 74.40 feet; (2) North 14°50’43” East for 24.81 feet; (3) North 14°50’43” East for 99.55 feet to a point at common corner of Lots 2 & 3 of the aforementioned subdivision; thence leaving the limits of the City of Hendersonville and along the common line between Lots 2 & 3 running South 74°39’12” East for 141.09 feet to a point on the Northwestern right of way line of North Stone View Court; thence along the northwestern right of way line of North Stone View Court the following two (2) courses to wit: (1) South 14°53’55” W for 99.55 feet; (2) South 14°53’55” W for 99.55 feet to the Point of Beginning.

Containing 0.64 acres (28,074 square feet), more or less.

Re: Petition for Contiguous Annexation
Petitioner: Bullets Contracting, LLC- Chris Miller, Manager
File No. C23-61-ANX

Section 3. Notice of the public hearing shall be published once in The Hendersonville Times-News, a newspaper having general circulation in the City of Hendersonville, at least 10 days prior to the date of the public hearing.

Adopted by the City Council of the City of Hendersonville, North Carolina on this 9th day of August, 2023.

/s/Barbara G. Volk, Mayor
 Attest: /s/Jill Murray, City Clerk
 Approved as to form: /s/Angela S. Beeker, City Attorney

**F. Annexation: Certificate of Sufficiency – Townes at Martha Kate (C23-62-ANX) –
 Tyler Morrow, Planner II**

Resolution #R-23-85

**RESOLUTION BY THE CITY OF HENDERSONVILLE CITY COUNCIL FIXING DATE OF PUBLIC
 HEARING ON QUESTION OF ANNEXATION PURSUANT TO G.S. 160A-58.2**

WHEREAS, a petition requesting annexation of the satellite area described herein has been received; and

WHEREAS, certification by the City Clerk as to the sufficiency of the petition has been made;

NOW, THEREFORE BE IT RESOLVED, by the City Council of the City of Hendersonville, North Carolina that:

Section 1. A public hearing on the question of annexation of the satellite area described herein will be held at City Operations Center located at 305 William St. Hendersonville NC, 28792 at 5:45 p.m. September 7th, 2023, or as soon thereafter as it may be heard.

Section 2. The area proposed for annexation is described as follows:

Being all of that real property consisting of PIN 9569-75-0342 described in the plat recorded in Book 2023- ____ [to be inserted at recording of the plat] of the Henderson County Registry, said PIN 9569-75-0342 being described by metes and bounds as follows:

Tract 1
 Beginning on a 1/2" rebar, said rebar bearing NC Grid Coordinates of Northing – 596039.0349 and Easting – 966861.2601, and proceeding thence from beginning point thus established, S 21°59'23" E 26.02' to a 1/2" rebar, thence S 28°05'48" E 69.57' to a point in Queen Street, thence along with Queen Street the following five calls, S 46°01'56" E 13.80' to a point, S 57°10'21" E 210.36' to a point, S 46°42'31" E 113.30' to a point, S 38°33'02" E 135.50' to a point, S 38°10'56" E 267.63' to a point, thence leaving Queen Street S 20°04'32" E 100.50' to a 1/2" rebar located in the northern margin of North Main Street, thence with the northern margin of North Main Street on a non-tangent curve to the left with a radius of 291.69' and an arc length of 98.42' (chord - S 39°38'46"W, 97.95') to a point, thence S 29°58'49"W 429.16' to a point, said point being the easternmost point of "Possible Overlap Area" as described below, thence leaving the margin of North Main Street, N 13°10'06" W 18.25' to a point, thence N 28°49'16" W 126.13' to a point, thence N 60°17'30" W 232.38' to a point, thence N 33°05'56" W 596.69' to a point, thence N 55°47'26" passing a 1/2" rebar at a distance of 25.19' for a total distance of 175.08' to a 1" iron pipe, thence N 57°55'43" 277.19' to the point and place of beginning. Containing 12.21 Acres Total and depicted as Tract 1 on survey by Associated Land Surveyors & Planners, PC, bearing job number S-22-699.

Possible Overlap Area
 Beginning on a point in the northern margin of North Main Street, said point being the southeastern corner of Tract 1 as described above, and proceeding from said beginning point thus established, S 29°58'49" W 61.59' to a point, thence N 38°29'37" W 379.20' to a point, thence S 60°17'30" E 232.38' to a point, thence S 28°49'16" E 126.13' to a point, thence S 13°10'06" E 18.25' to the point and place of beginning. Containing 0.47 Acres and depicted as Possible Overlap Area on survey by Associated Land Surveyors & Planners, PC, bearing job number S-22-699.

Tract 2
 Beginning on a point located in the southern margin of North Main Street, said point being located S 47°18'15" 61.51' from the southeastern corner of the "Possible Overlap Area" as described above, and proceeding from beginning point thus established with the southern margin of North Main Street, N 29°58'49" E 363.42' to a point in the centerline of Ochlawaha Drive, thence with the centerline of Ochlawaha Drive, S 17°13'56" E 67.56' to a mag nail, thence S 18°39'06" E 157.80' to a point, thence on a curve to the right with a radius of 125.00' and an arc length of 97.34' (chord S 03°39'25" W 94.90') to a point in the western margin of Ochlawaha Drive, thence S 25°58'04" W 47.05' to a point, thence N 60°14'45" W 82.23' to a point, thence N 53°13'35" W 58.00' to a point, thence N 64°07'55" W 90.81' to a point, thence N 56°54'56" W 68.43' to the point and place of beginning. Containing 1.52 Acres and depicted as Tract 2 on survey by Associated Land Surveyors & Planners, PC, bearing job number S-22-699.

Re: Petition for Satellite Annexation
 Petitioners: Townes at Martha Kate LLC (Rick Moore, Manager)
 File No. C23-62-ANX

Section 3. Notice of the public hearing shall be published once in The Hendersonville Times-News, a newspaper having general circulation in the City of Hendersonville, at least 10 days prior to the date of the public hearing.

Adopted by the City Council of the City of Hendersonville, North Carolina on this 9th day of August, 2023.

/s/Barbara G. Volk, Mayor

Attest: /s/Jill Murray, City Clerk

Approved as to form: /s/Angela S. Beeker, City Attorney

G. Utility Extension Agreement for the Orchard View Subdivision – *Brendan Shanahan, City Engineer*

Resolution #R-23-86

RESOLUTION BY THE CITY OF HENDERSONVILLE CITY COUNCIL TO AUTHORIZE THE CITY MANAGER TO ENTER INTO A UTILITY EXTENSION AGREEMENT WITH CARROLLWOOD DEVELOPMENT LLC AND CARROLLWOOD DEVELOPMENT CORPORATION FOR THE ORCHARD VIEW SUBDIVISION

WHEREAS, the City of Hendersonville owns, operates and maintains a water system to serve customers throughout Henderson County; and

WHEREAS, residential, commercial, and industrial developments often require public water as a part of their development projects; and

WHEREAS, the Developer extends public water lines to their site, which upon completion and acceptance, are provided to the City to own, operate, and maintain; and

WHEREAS, the City requires a Utility Extension Agreement to be executed to establish requirements of both the Developer and the City for the water and sewer line extension processes; and

WHEREAS, Carrollwood Development LLC, the “Developer”, and Carrollwood Development Corporation, the “Owner”, will enter into a Utility Extension Agreement with the City to provide water and sewer services to the Orchard View Subdivision.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Hendersonville, North Carolina that:

1. The Utility Extension Agreement with Carrollwood Development LLC, the “Developer”, and Carrollwood Development Corporation, the “Owner”, to provide water service to the Orchard View Subdivision is approved, as presented.
2. City Manager is authorized to execute the Utility Extension Agreement, and to approve and execute amendments to the Utility Extension Agreement in the future provided such amendments do not impose a financial obligation upon the City.
3. City Manager is authorized to acquire easements, rights-of-way, and other interests in real property consistent with the terms of the Utility Extension Agreement, provided that such acquisition does not impose a financial obligation upon the City.

Adopted by the City Council of the City of Hendersonville, North Carolina on this 9th day of August, 2023.

/s/Barbara G. Volk, Mayor

Attest: /s/Jill Murray, City Clerk

Approved as to form: /s/Angela S. Beeker, City Attorney

H. Utility Extension Agreement for the Park Residences at Highland Lake Village Subdivision – *Brendan Shanahan, City Engineer*

Resolution # R-23-87

RESOLUTION BY THE CITY OF HENDERSONVILLE CITY COUNCIL TO AUTHORIZE THE CITY MANAGER TO ENTER INTO A UTILITY EXTENSION AGREEMENT WITH REAL PLACES, INC., (FORMERLY KNOWN AS HIGHLAND LAKE, INC.) FOR THE PARK RESIDENCES AT HIGHLAND LAKE VILLAGE SUBDIVISION

WHEREAS, the City of Hendersonville owns, operates and maintains water and sewer systems to serve customers throughout Henderson County; and

WHEREAS, residential, commercial, and industrial developments often require public water and gravity sewer services as a part of their development projects; and

WHEREAS, the Developer extends public water and gravity sewer lines to their site, which upon completion and acceptance, are provided to the City to own, operate, and maintain; and

WHEREAS, the City requires a Utility Extension Agreement to be executed to establish requirements of both the Developer and the City for the water and sewer line extension processes; and

WHEREAS, Real Places, Inc., (formerly known as Highland Lake, Inc.), the “Developer” and “Owner”, will enter into a Utility Extension Agreement with the City to provide water service to the Park Residences at Highland Lake Village Subdivision.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Hendersonville, North Carolina that:

1. The Utility Extension Agreement with Real Places, Inc., (formerly known as Highland Lake, Inc.), the “Developer” and “Owner” to provide water service to the Park Residences at Highland Lake Village Subdivision is approved, as presented.
2. City Manager is authorized to execute the Utility Extension Agreement, and to approve and execute amendments to the Utility Extension Agreement in the future provided such amendments do not impose a financial obligation upon the City.
3. City Manager is authorized to acquire easements, rights-of-way, and other interests in real property consistent with the terms of the Utility Extension Agreement, provided that such acquisition does not impose a financial obligation upon the City.

Adopted by the City Council of the City of Hendersonville, North Carolina on this 9th day of August, 2023.

/s/Barbara G. Volk, Mayor

Attest: /s/Jill Murray, City Clerk

Approved as to form: /s/Angela S. Beeker, City Attorney

I. Approval of United Financial, a Division of Home Trust Bank to Provide Installment Financing for Vehicles and Equipment Purchased in Fiscal Year 2023-2024 – John Buchanan, Finance Director

Resolution #R-23-88

RESOLUTION BY THE CITY OF HENDERSONVILLE CITY COUNCIL TO APPROVE FINANCING TERMS FOR THE PURCHASE OF VEHICLES AND EQUIPMENT

WHEREAS, The City of Hendersonville has previously determined to undertake a project for the financing of vehicles and equipment, and

WHEREAS, United Financial has provided a proposal with an acceptable interest rate and terms to meet the City’s needs; and

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Hendersonville, North Carolina that:

1. The City of Hendersonville hereby determines to finance the purchase of vehicles and equipment through United Financial, in accordance with the proposal dated July 11, 2023. The amount financed shall not exceed \$902,000 with an annual interest rate of 3.8% for a term of 4 years, and a proposal dated July 19, 2023 with an amount not to exceed of \$882,000 with an annual interest rate of 3.93% for a term of 7 years.
2. All financing contracts and all related documents for the closing of the financing shall be consistent with the foregoing terms. City staff are hereby authorized to and directed to execute and deliver any financing documents, and to take all such action as they may consider necessary to carry out the financing as contemplated by the proposal and this resolution.

Adopted by the City Council of the City of Hendersonville, North Carolina on this 9th day of August, 2023.

/s/Barbara G. Volk, Mayor

Attest: /s/Jill Murray, City Clerk

Approved as to form: /s/Angela S. Beeker, City Attorney

J. Fee Schedule Amendments – Jenny Floyd, Budget and Management Analyst

Ordinance: O-23-49

AN ORDINANCE OF THE CITY OF HENDERSONVILLE CITY COUNCIL TO AMEND SECTION 8 OF THE FISCAL YEAR 2023-24 BUDGET ORDINANCE TO AMEND THE FEE SCHEDULE FOR WATER AND SEWER FEES AND RATES

SECTION 8: That there is hereby adopted an official Fee Schedule listing specific fees, licenses, and utility rates charged by the City of Hendersonville for the use of City facilities and equipment for the purposes of making them available to the public, utility rates the proceeds of which are for the maintenance and expansion utility systems, the reproduction of public records and other miscellaneous services to cover the actual cost of producing

these documents and information under the provision of NCGS 132-6.2 and other various fees associated with enhanced direct services provided by the City. The Fee Schedule is incorporated herein by reference and shall be placed in the office of the City Clerk.

WHEREAS, on June 1st, 2023 the City adopted the FY24 fee schedule; and

WHEREAS, additional changes are needed for the fee schedule to reflect all changes to the updated water and sewer charges.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Hendersonville, North Carolina that:

1. Section 8 of the Fiscal Year 2023-24 Budget Ordinance for the City of Hendersonville shall be amended, effective August 10th, 2023, to revise the Fee Schedule as follows:

Water			
Outside City Limits			Purposed
Base Charge by Meter Size			
3/4"		\$11.23	
1"		\$13.11	
1 1/2"		\$17.75	
2"		\$23.70	\$31.16
3"		\$37.63	
4"		\$57.51	
6"		\$107.19	
8"		\$166.81	
Volumetric Charges			
Residential			
0 to 6,000 gallons		\$6.05 per 1000 gallons	
6,000 to 14,000 gallons		\$6.65 per 1000 gallons	
14,000 gallons and greater		\$7.56 per 1000 gallons	
Commercial/Industrial			
0 to 40,000 gallons		\$6.05 per 1000 gallons	
40,000 to 200,000 gallons		\$5.78 per 1000 gallons	
200,000 gallons and greater		\$5.13 per 1000 gallons	
Irrigation			
0 to 40,000 gallons		\$7.56 per 1000 gallons	
40,000 gallons and greater		\$8.06 per 1000 gallons	
Sewer			
Inside City Limits			
Volumetric Charges			
All Usage		\$6.33 per 1000 gallons	\$6.88 per 1000 gallons
Sewer Only -Flat Rate		\$32.98 per month	\$37.31 per month

Adopted by the City Council of the City of Hendersonville, North Carolina on this 9th day of August, 2023.

/s/Barbara G. Volk, Mayor
Attest: /s/Jill Murray, City Clerk
Approved as to form: /s/Angela S. Beeker, City Attorney

K. Lower Mud Creek Floodplain Restoration Engineering Services Selection– Michael Huffman, Stormwater Division Manage

Resolution #R-23-89

RESOLUTION BY THE CITY OF HENDERSONVILLE CITY COUNCIL TO SELECT A FIRM TO PROVIDE PROFESSIONAL ENGINEERING SERVICES FOR THE LOWER MUD CREEK FLOODPLAIN RESTORATION PROJECT AND DIRECT THE CITY MANAGER TO NEGOTIATE A CONTRACT WITH THE SELECTED FIRM

WHEREAS, the City of Hendersonville advertised a request for qualifications for professional engineering services for the City of Hendersonville and;

WHEREAS, Wildlands Engineering was determined to have the highest aggregate score and was most frequently ranked as the highest firm by each reviewer; and

WHEREAS, firms Jennings Environmental, RES Inc., and RVE, were the next highest-ranking firms in order; and

WHEREAS, a contract for service is still to be established;

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Hendersonville, North Carolina that:

1. The City Manager is authorized to negotiate and enter into contract for professional engineering services for the lower mud creek floodplain restoration project with Wildlands Engineering on behalf of the City and
2. If negotiations fail, the City Manager is directed to negotiate a contract with the next most qualified firm based on the rankings provided in the RFQ review sheet, said contract to be consistent with the terms of this Resolution;

Adopted by the City Council of the City of Hendersonville, North Carolina on this 9th day of August, 2023.

/s/Barbara G. Volk, Mayor

Attest: /s/Jill Murray, City Clerk

Approved as to form: /s/Angela S. Beeker, City Attorney

L. Comprehensive Stormwater Master Planning Services Contract Amendment –
Michael Huffman, Stormwater Division Manager

Resolution #R-23-90

**RESOLUTION BY THE CITY OF HENDERSONVILLE CITY COUNCIL AUTHORIZING AN
AMENDMENT TO THE WK DICKSON CONTRACT FOR THE COMPREHENSIVE STORMWATER
MASTER PLANNING PROJECT**

WHEREAS, the City of Hendersonville advertised a request for qualifications for comprehensive master planning services for the City of Hendersonville and;

WHEREAS, WK Dickson was determined to have the highest aggregate score and was most frequently ranked as the highest firm by each reviewer; and

WHEREAS, City Council previously authorized an agreement with WK Dickson in an amount not to exceed \$500,000; and

WHEREAS, City stormwater management staff, along with WK Dickson, have secured additional funding, bringing the total available funds for this project to \$530,000;

WHEREAS, staff has requested City Council to authorize an amendment to the WK Dickson agreement to increase the maximum authorized amount to \$530,000;

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Hendersonville, North Carolina that:

1. The City Manager is authorized to negotiate and enter into an amendment to the contract for the stormwater master planning project with WK DICKSON on behalf of the City in consultation with the City Attorney, upon such terms and conditions as he deems appropriate, including but not limited to:
 - a. Determining the scope of work;
 - b. Breaking the scope of work into Phases if appropriate, and
 - c. Amending the contract in the future to amend the scope of work or activate future phases,

Provided, however, that the following conditions shall apply:

- a. The contract and any amendment(s) entered now or in the future shall only obligate the City to budgeted and available funds as of the date of the contract or any such amendment; and
- b. The total of funds authorized under this Resolution shall not exceed \$530,000.

Adopted by the City Council of the City of Hendersonville, North Carolina on this 9th day of August, 2023.

s/Barbara G. Volk, Mayor

Attest: /s/Jill Murray, City Clerk

Approved as to form: /s/Angela S. Beeker, City Attorney

**M. Lower Mud Creek Floodplain Restoration Grant Administration and Project
Management – Michael Huffman, Stormwater Division Manager**

Resolution #R-23-91

**RESOLUTION BY THE CITY OF HENDERSONVILLE CITY COUNCIL TO DIRECT THE CITY
MANAGER TO NEGOTIATE A CONTRACT WITH THE LAND OF SKY REGIONAL COUNCIL FOR
TECHNIAL SERVICES ASSISTANCE FOR THE LOWER MUD CREEK FLOODPLAIN
RESTORATION PROJECT (23006)**

WHEREAS, the City of Hendersonville has received funding from NC Land and Water Fund and the NC Division of Water Infrastructure to complete the Lower Mud Creek Floodplain Restoration project and;

WHEREAS, Land of Sky Regional Council can provide Technical Service Assistance in the form of Grant Administration and Project Management; and

WHEREAS, a contract for service is still to be established;

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Hendersonville, North Carolina that:

1. The City Manager is authorized to negotiate and enter into contract for Technical Services Assistance for the Lower Mud Creek Floodplain Restoration project with the Land of Sky Regional Council on behalf of the City

Adopted by the City Council of the City of Hendersonville, North Carolina on this 9th day of August, 2023.

/s/Barbara G. Volk, Mayor
Attest: /s/Jill Murray, City Clerk
Approved as to form: /s/Angela S. Beeker, City Attorney

N. Grant Agreement for the Lower Mud Creek Restoration Project - Michael Huffman, Stormwater Division Manager

Resolution #R-23-92

RESOLUTION BY THE CITY OF HENDERSONVILLE CITY COUNCIL APPROVING A GRANT AGREEMENT WITH THE NORTH CAROLINA LAND AND WATER FUND FOR THE LOWER MUD CREEK RESTORATION PROJECT

WHEREAS, the City of Hendersonville has been awarded a grant of \$1,120,929 by the North Carolina Land and Water Fund (the “Fund”), a division of the Department of Natural and Cultural Resources for the lower Mud Creek Restoration Project; and

WHEREAS, the City has received a draft grant agreement to govern the City’s use and the Funds disbursement of the grant; and

WHEREAS, staff has requested City Council to approve the grant agreement and authorize it’s finalization and execution by the City Manager;

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Hendersonville, North Carolina that:

1. The Grant Contract – Restoration of Degraded Streams or Other Waters (Flood Risk Reduction with Land Acquisition – Government) (the “Grant Agreement”) is hereby approved.
2. The City Manager is authorized to negotiate, finalize and execute the Grant Agreement on behalf of the City in consultation with the City Attorney and stormwater management staff, including future amendments thereto, provided, however, that the following conditions shall apply: the Grant Agreement and any amendment(s) entered now or in the future shall only obligate the City to budgeted and available funds as of the date of the agreement or any such amendment.

Adopted by the City Council of the City of Hendersonville, North Carolina on this 9th day of August, 2023.

/s/Barbara G. Volk, Mayor
Attest: /s/Jill Murray, City Clerk
Approved as to form: /s/Angela S. Beeker, City Attorney

6. PRESENTATIONS

A. Public Art Mural Proposal for Sullivan Park – Crystal Cauley

Crystal Cauley spoke about a public art mural for Sullivan Park. She feels a mural on the asphalt would be very beautiful and welcoming which would include, hopscotch, four square and maybe a walking maze and would draw children there. The Arts Council of Henderson County has agreed to be involved with this as well. She asked City Council if they would approve her doing an art mural. The slab would need to be resurfaced and then they would form a committee and they would do a professional call for artists and ask many artists to give their feedback, as well as getting citizen feedback. She also showed a stage that could feature local artists and musicians. Examples would be local story tellers, educators and numerous non-profits that focus on children. You could also do things like music in the park. There are many opportunities and the feedback has been positive. Council asked if she could send specs for what she has in mind and she said she would. Mayor Volk said that we have a Parks and Greenspace Committee and this can be mentioned to them to be considered.





B. Recognition of Jessica Pomerleau, Recruitment & Retention Officer for obtaining the Society for Human Resources CP Certification – Jennifer Harrell, Human Resources Director

Jennifer Harrell presented Jessica Pomerleau with her SHRM certificate and explained that she recently passed the examination obtaining the Society for Human Resources Certified Professional (SHRM-CP) Certification. The SHRM certificate is one of the most highly recognized international Human Resources certifications that may be obtained and is recognized and valued in all industries. To become SHRM certified, one must demonstrate not only an understanding of contemporary theoretical knowledge, but also the ability to translate this knowledge into property action in the workplace.

C. Quarterly MVP Recipients – John Connet, City Manager

City Manager John Connet introduced the three recipients of the MVP award for April through June quarter of 2023 as selected by the Service Excellence Design Team.

Jay Heatherly (Administration)

Jay was on the phone with a contractor for IT work at the parking deck. The contractor relayed that an individual was hooking something up to their exhaust. After getting more information, Jay determined that this was a dangerous situation, simultaneously contacted HPD and got emergency personnel on the scene, which resulted in saving someone's life. Jay is always willing and able to help and this is just another example of his positive attitude and care for our community. Thank you, Jay!



Justin Maybin (Water & Sewer)

Justin maintains the City generators including those at the pump stations. Someone disposed of old tires on an obscure road leading to one of our pump stations off Highland Lake Rd. Justin took it on himself to clean up the mess even though it was arguably not on City property.

**Steve Alverson (Human Resources)**

(from citizen) I tripped this morning over an unpainted speed bump on Wall St and Fourth Ave and incurred injuries on my left knee and left elbow. I called Steve Alverson's office to report this. He came to my business and informed me that the speed bump was now painted yellow. Seeing my injuries, Steve called Fire Service personnel who treated my elbow. Steve also offered to get some gauze and antibacterial medicine for me. I think he went way above the call of duty.

**7. PUBLIC HEARINGS**

- A. Street Closure: Order to Close Unnamed 20' alley (between City Hall and N. Edwards Street) (C23-44-SCL) – Tyler Morrow, Planner II**

This item was pulled from the agenda at the beginning of the meeting. The petitioner withdrew their petition.

8. UNFINISHED BUSINESS**9. NEW BUSINESS**

- A. Parking Changes – Brian Pahle, Assistant City Manager**

Assistant City Manager Brian Pahle explained that due to the parking ordinance revision, amendments to the City's fee schedule related to the new parking services system were required.

Council Member Jerry Smith moved that City Council adopt An Ordinance of the City of Hendersonville City Council to Amend Section 8 of the Fiscal Year 2023-24 Budget Ordinance to Amend the Fee Schedule for Parking Services Fees and Rates as presented. A unanimous vote of the Council followed. Motion carried.

- B. Parking Ordinance Amendments – Angela Beeker, City Attorney**

Assistant City Manager Brian Pahle explained that attached for City Council's consideration are proposed amendments to Chapter 50 of the Hendersonville Code of Ordinances, the Parking Ordinance provisions. These changes will do the following:

1. Clarify that up to three license plates may be assigned to a City monthly parking permit.
2. Clarify that of the three license plates assigned to a City monthly parking permit, only one vehicle may be parked in the permitted parking facilities at any given time.
3. Allowing the City Manager to invoke the flat rate parking fee contained within the City's fee schedule for special events, holidays, or any other time where needed due to traffic, overcrowding or other public safety concerns.
4. Change the increments for billing for paid parking to 15 minute for on-street paid parking, and 30 minutes for surface lots and the parking deck.
5. Removing the 30-minute time limit for previously limited parking spaces on Main Street by approving the amended Official Parking Map, included in this agenda packet.
6. Making it a misdemeanor and adopting a \$500.00 civil penalty for persons climbing or sitting on the walls of the parking deck.

Council Member Lyndsey Simpson moved to adopt An Ordinance to Amend Chapter 50, Traffic, Article V Stopping, Standing and Parking, of the City Of Hendersonville Code of Ordinances and to Amend the Official City Parking Map as presented. A unanimous vote of the Council followed. Motion carried.

10. BOARDS/COMMITTEE APPOINTMENTS

A. Planning Board Appointment – Jill Murray, City Clerk

At their July 6th meeting, Council Member Jennifer Hensley appointed Laura Flores to the Planning Board. Since Ms. Flores is also on the Board of Adjustment, Council asked the City Clerk to get in touch with Ms. Flores to make sure that she is not on any other boards or committees, City or otherwise. The City Clerk spoke with Ms. Flores and she assured her that she is not on any other boards.

Council Member Jennifer Hensley moved that City Council appoint Laura Flores to the Planning Board. A unanimous vote of the Council followed. Motion carried.

B. Formation of Community Advisory Committee – Lew Holloway, Community Development Director

Community Development Director Lew Holloway explained that in an effort to provide community-driven feedback over the course of the Comprehensive Planning process, the City's consultant team of Bolton & Menk have requested that the City establish a Community Advisory Committee (CAC). This committee will be made up of a wide range of citizens and leaders within various sectors. The attached list provides a framework for identifying potential committee members. The consultants recommend a range of 12-15 appointed members for this type of committee.

Composition of Community Advisory Committee		Potential Organizations	Prospective Member Name (Suggestions)	Confirmed ?	Address	Contact		
Sectors	Government							
	City Leadership	City Council Liason						
	Other Boards / Commissions	Planning Board	Jim Robertson (Board Chair);	YES		jim.robertson@bldr.com		
	Business Leaders							
	Commercial Property Owners		Bill McKibbin	???				
	Economic Development/Industry Rep	The Partnership	Jamie Justus	YES		jamie@hcped.org		
	Business Organization	Chamber of Commerce; TDA	Mark Williams	YES				
	Community							
	Neighborhood Reps (including Historically Disadvantaged Communities, Hispanic Community, LGBTQ+)							
	Neighborhood Representatives	Green Meadows/7th Ave	David Wright	YES	Lincoln Circle	davidwright6370@gmail.com	(828) 290-4652	
	Neighborhood Representatives	Green Meadows/7th Ave						
	Neighborhood Representatives	Lenox Park	Beth Stang (Lenox Park Resident & Chief Public Defender)	YES		BethWStang@gmail.com		
	Neighborhood Representatives	Brookland Manor	Luke Slomba	YES	300 Balsam Rd. Hendersonville NC 28792	L.u.k.e.s.l.o.m.b.a@gmail.com		
	Neighborhood Representatives	Druid Hills/191	Chris Dannals (MD)	YES		prattdannals@gmail.com		
	Neighborhood Representatives	Rte 64 East	Kyle Gilgis	YES	Wolfpen	kyle.gilgis@hotmail.com		
	Neighborhood Representatives	Westside	Bob Johnson	YES; can't make	216 Fleming Street	rdigorillas@yahoo.com	828-638-1955	
	Neighborhood Representatives	Hyman Heights	Kathy Watkins	YES; can't make		kathywatkins40@gmail.com		
	Neighborhood Representatives	Medical District	Samantha Jamison (810 Knollwood Dr)	NO	Moving to Durham in Fall	sjamison1023@gmail.com		
	Civic Non-Profits	United Way	Denise Cumbee-Long (United Way)	YES		dlong@liveunitedhc.org		
	Civic Non-Profit	El Centro/Pisgah Legal	Angie Pena (El Centro-Board/Pisgah Legal)	Emailed & Called	No response as of Council Appointment Date	chair@elcentrehvl.org		
	Youth Population (HS/MS Student)	Hendersonville HS	Brock Hill	YES		bhill0182@stu.hcpsnc.org	828-808-1277	
	Aging Population (Seniors)	HC Aging Coalition	Alicia Evans (Council on Aging)	YES		aevans@coahc.org		

Council Member Lyndsey Simpson moved that City Council appoint the people as presented on the list by the Planning Director. A unanimous vote of the Council followed. Motion carried.

C. Additional Tree Ordinance Committee Appointment Request – John Connet, City Manager

City Manager John Connet explained to Council that the Partners for Economic Progress (PEP) have requested that City Council appoint Ken Gordon as an additional member to the Tree Ordinance Committee.

Council Member Lyndsey Simpson moved that City Council appoint Ken Gordon to the Tree Ordinance Committee. A unanimous vote of the Council followed. Motion carried.

11. CITY MANAGER REPORT – John F. Connet, City Manager

A. August 2023 Contingency Report – John Connet, City Manager

City Manager Connet explained that in accordance with State Statute 159-13(b) it is required that all expenditures resulting from a contingency appropriation budget be reported to the governing board at its next regular meeting and recorded in the minutes. The following contingency appropriations were made due to higher than anticipated Worker’s Comp Insurance costs:

- 1. Decrease Fund 010 contingencies by \$8,289 for Worker’s Comp. Insurance
 - a. Increase 010-1002-502091 by \$8,289
- 2. Decrease Fund 060 contingencies by \$8,289 for Worker’s Comp. Insurance
 - b. Increase 060-1002-502091 by \$8,289

B. Cash and Investment Report – John Connet, City Manager

City Manager Connet says this report shows how your idle cash is invested.

Cash and Investment Summary

	4/30/23	6/30/23
U.S. Treasuries	\$ 0.00	\$ 0.00
Agencies	1,498,225.00	1,498,225.00
Commercial Paper	0.00	0.00
NCCMT Mutual Fund	9,276,025.14	9,348,263.83
NCCMT Cash Fund	9,812,512.02	2,821,694.42
Wells Fargo H&W	65,892.81	76,137.44
Wells Fargo Operating Account	6,576,341.47	7,808,596.67
Total	\$ 27,228,996.44	\$ 21,552,917.36

Undisbursed Bond Proceeds

2019 Revenue Bond	\$ 303,791.77	\$ 230,561.76
2021 LOB	\$ 2,363,405.62	\$ 2,363,291.32
2022 Revenue Bond	\$ 1,698,384.30	\$ 964,063.08
2022 IFC Fire Station	\$ 15,647,162.70	\$ 15,522,344.19
2023 Revenue Bond		\$ 7,753,701.38
2023 City Hall/Ops Construction		\$ 6,273,082.22

Mr. Connet added that as a reminder, the Apple Festival is coming in about three weeks and the mini golf course is moving right along and on schedule and the landscaping has been installed and looks really good and I think you will be very pleasantly surprised.

12. CITY COUNCIL COMMENTS –

Lyndsey Simpson said that all of the info about Gen H that’s out there is an opportunity to speak up and come to the meetings and sign up for emails because this guides everything we do.

13. CLOSED SESSION – There was no closed session.

14. ADJOURN

There being no further business, the meeting was adjourned at 6:46 p.m. upon unanimous assent of the Council.

Barbara G. Volk, Mayor

ATTEST: Jill Murray, City Clerk



MINUTES

August 23, 2023

SECOND MONTHLY MEETING OF THE CITY COUNCIL CITY OPERATIONS CENTER | 305 WILLIAMS ST. | 4:00 p.m.

Present: Mayor Barbara G. Volk, Mayor Pro Tem Lyndsey Simpson and Council Members: Dr. Jennifer Hensley, Debbie O'Neal-Roundtree and Jerry A. Smith Jr., J.D.

Staff Present: City Manager John F. Connet, Assistant City Manager Brian Pahle, City Attorney Angela Beeker, Communications Manager Allison Justus, Budget Manager Adam Murr and others.

Absent: Jill Murray, City Clerk

1. **CALL TO ORDER**

Mayor Barbara G. Volk called the meeting to order at 4:00 p.m. and welcomed those in attendance. A quorum was established with all members in attendance.

2. **CONSIDERATION OF AGENDA**

Council Member Jennifer Hensley moved to approve the agenda as presented. A unanimous vote of the Council followed. Motion carried.

3. **CONSENT AGENDA**

- A. Henderson County Tax Adjustments (June) – *Amanda Lofton, Deputy Tax Collector*
- B. Henderson County Tax Adjustments (August) – *Amanda Lofton, Deputy Tax Collector*
- C. Berkeley Park Property Exchange Revision to Greenways/Utility Easement – *Angela S. Beeker, City Attorney*

Council Member Debbie O'Neal-Roundtree moved to approve the consent agenda as presented. A unanimous vote of the Council followed. Motion carried.

4. **PRESENTATIONS**

- A. **Discussion Regarding Primary Election Date** – *Summer Heatherly, Henderson County Board of Elections*

Summer Heatherly from the Board of Elections started with handing Council a handout showing what Asheville did about changing their charter. She said the way it is set, you have your primary in October and that didn't change. Your primary stayed the same but we have to send out general ballots on the 1st of September so that means that we would have to hold the 12 municipalities for your election but that won't work because they would have two ballots. A general ballot and a municipal ballot. So I'm here tonight to ask if you would mind changing your primary to coincide with their primary. So that would put your primary in March and then filing would be from the first Monday in December until the second Friday in December. The whole idea is to get more people to turn out. Asheville City's was a 150% jump of people showing up for their election. Saluda, Laurel Park and Mills River do not have a primary. Fletcher follows what the City of Hendersonville is doing. If Senator Moffit takes care of this, then it won't be a problem so I encourage you all to reach out to him because then you all wouldn't have to do anything. He could take care of it in the General Assembly.

City Attorney Beeker said she would have to research a bit and see if City Council can, by ordinance, change the date of the primary without having a local act to do it.

- B. **Water and Sewer Capital Project Update** - *Adam Steurer, Utilities Director*

Adam Steurer presented a PowerPoint slide giving an update of all of the water & sewer capital projects: Etowah Water System Improvements; Clear Creek Sewer Interceptor Replacement; French Broad River Intake & Pumping Station; Water Treatment Facility Expansion; North Fork Reservoir Dredging; WWTF Replacement/Repair Projects and UV Disinfection Replacement.

Etowah Water System Improvements

- New 500,000-gal storage tank
- New pump station
- ~15,000 feet of 12-inch water pipe
- Improve pressure and fire flow
- North Greenwood Forest Drive Water Replacement Completed – In House Crew
- Status: Project Activated!
- Cost: \$8M



Clear Creek Sewer Interceptor Replacement

- Existing sewer undersized for current and future flows in Clear Creek Basin
- ~3,500 feet of 30" sewer
- Status: Substantially Complete
- Cost \$4.5M



French Broad River Intake and Pumping Station

- Additional water source
- 15 mgd initial capacity and expandable to 21 mgd
- Under Construction – Completion Summer 2024
- \$23.5M
- Over 60% Complete per pay applications

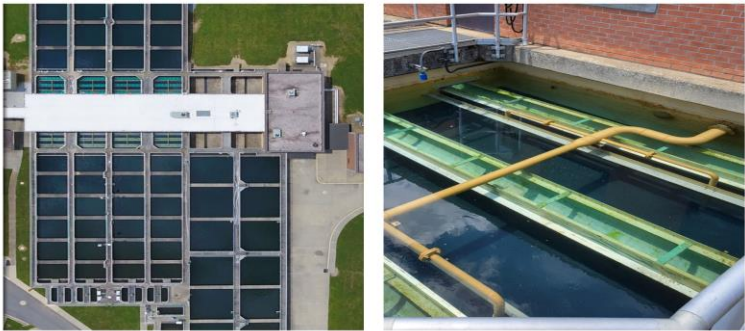


French Broad River Intake and Pumping Station



Water Treatment Facility Expansion

- Installation of additional filter
- Additional 3 mgd capacity 12 mgd to 15 mgd
- Status: Design/Permitting
- Construction 2024
- Estimated Cost: \$2.1M



North Fork Reservoir Dredging

- Removal of accumulated sediment, improve storage volume, maintenance
- Status: Construction
- Construction Cost: \$942,000



North Fork Reservoir Dredging



North Fork Reservoir Dredging



WWTF – Replacements/Repair Projects

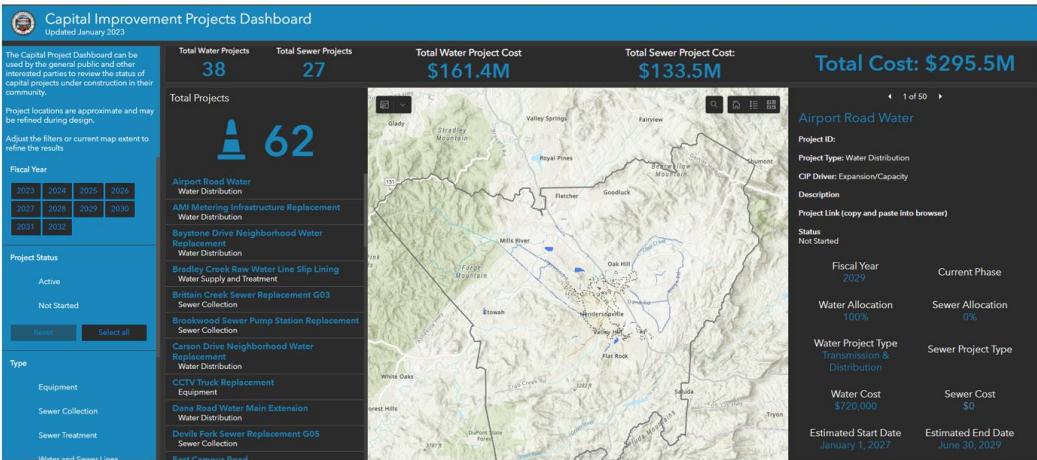
- Ultraviolet (UV) Disinfection Improvements
 - Replaces existing equipment
 - Adds treatment capacity
 - Adds redundancy
 - Under construction – completion late 2023
 - \$3.9M
- Aeration Basin No. 2 Repairs and Rehabilitation
 - Repairs bowing basin wall
 - Construction beginning summer 2023
 - \$1.6M
- Both projects funded mostly through a \$5.0 M grant allocation



WWTF – UV Disinfection Replacement



Capital Projects Dashboard



For More Information and Projects:

[Water & Sewer CIP Dashboard](#)

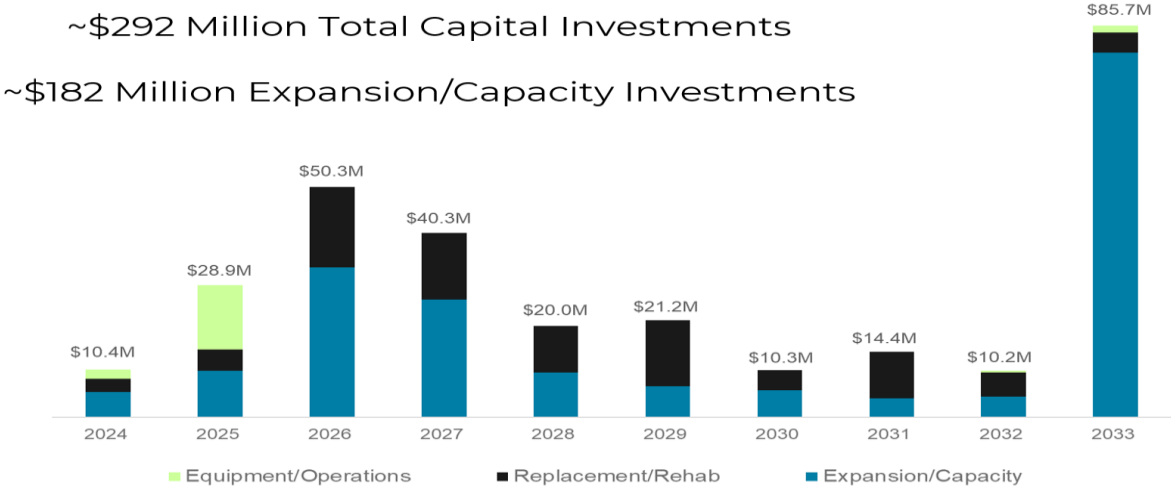
C. Water & Sewer System Development Fees (SDFs) – Adam Steurer, Utilities Director

Adam Steurer explained the background, considerations, assessment methodologies, calculations, dwelling size and the cost for residential and non-residential.

System Development Fees

- Fees charged for new connections joining the water and wastewater system and connections requiring additional system capacity
- Intended to recover the cost of constructing water and wastewater capacity, “growth pays for growth”
- Fees are applied based on units of service (representing potential demand on utility system / large user vs. small user)

Capital Improvement Plan FY2023



SDF Background

- Hendersonville assessed water/sewer SDFs until September 2016
- 2016 Town of Carthage, NC lawsuit
 - Challenged authority to charge certain water/sewer fees including SDFs
- Fees are legislated in North Carolina
 - Public Water and Sewer System Development Fee Act (NC General Statutes - Chapter 162A Article 8) approved July 2017

Considerations

- SDFs allow the utility to recover at least a portion of cost of constructing system infrastructure
- Lack of SDFs places the full cost of infrastructure on user rates
- SDFs have a potential impact on development but are very common in North Carolina
 - 81 NC utilities charge SDFs (2018/2019)
- Requirements and limitations on the use of SDFs given legislation
 - Separate tracking of revenues from SDFs
 - Limitations on the use of proceeds depending on the approach

Assessment Methodologies

Methodology	Description	Appropriate For
Buy-In Method	Fees are based on cost of constructing existing utility system.	System with ample existing capacity to sell.
Incremental Cost Method	Fees are based on planned growth-related capital improvements	System with limited or no existing capacity to sell.
Combined Method	Fees are based on cost of existing system and planned capital improvements	System with existing capacity to sell and with planning growth-related capital projects.

Financial consultant (Stantec) recommend the use of the combined method for water and sewer SDFs

Combined Method Calculation

System Development Fee =

Value of System – Credit

System Capacity

Units of Service – Equivalent Residential Unit

Water System (based on historical demands)

Type	Average Consumption (gpd)	Water System ERU Calculation	
Single Family (1 equivalent residential unit - ERU)	136	Daily Usage per ERU (gpd)	136
Multi-Family	85	Max Day Peaking Factor	1.5
Mobile / Manufactured Home	133	Peak Day Usage per ERU (gpd)	204
		Multi-Family Units (ERUs per Unit)	0.63

Sewer System (NC Planning Requirements)

Sewer System ERU Calculation	
State Standard Flow Rate (gpd) per Bedroom	120
Planning # of Bedrooms	2
Sewer Use per ERU (gpd)	240
Multi-Family Units (ERUs per Unit)	0.63

Water SDF Calculation

	Source / Treatment	Transmission / Distribution	Total
Replacement Value of Existing Depreciated Assets	\$35,827,300	\$60,665,774	\$96,493,074
Expansion Capital Projects	\$63,485,535	\$45,005,000	\$108,490,535
Total Value	\$99,312,835	\$105,670,774	\$204,983,609
Less Credits			
Outstanding Debt Principal	(\$6,704,970)	(\$11,353,414)	(\$18,058,384)
Donated and Non-Core Assets	(1,219,302)	(8,960,275)	(10,179,577)
Revenue Credit (NPV of future debt principal over period)	(29,570,505)	(20,962,580)	(50,533,085)
Net System Value	\$61,818,058	\$64,394,506	\$126,212,563
System Capacity - Million Gallons per Day*	18	18	
Level of Service per ERU (gallons per day)	204	204	
Equivalent Residential Units (ERU)	88,235	88,235	
Water System Development Fee Per ERU	\$701	\$730	\$1,431

*Includes 6 MGD WTP plant expansion

Water Calculated SDF - \$7.01 per gallon per day

Sewer SDF Calculation

	Treatment	Conveyance / Collection	Total
Replacement Value of Existing Depreciated Assets	\$28,145,176	\$35,802,595	\$63,947,771
Expansion Capital Projects	\$57,750,769	\$16,212,000	\$73,962,769
Total Value	\$85,895,945	\$52,014,595	\$137,910,540
Less Credits			
Outstanding Debt Principal	(6,446,996)	(8,201,021)	(14,648,017)
Donated and Non-Core Assets	(63,282)	(2,629,945)	(2,693,227)
Revenue Credit (NPV of future debt principal over period)	(26,899,347)	(7,551,280)	(34,450,627)
Net System Value	\$52,486,320	\$33,632,349	\$86,118,669
System Capacity - Million Gallons per Day*	7.8	7.8	
Level of Service per ERU (gallons per day)	240	240	
Equivalent Residential Units (ERU)	32,500	32,500	
Wastewater System Development Fee Per ERU	\$1,615	\$1,035	\$2,650

*Includes 3 MGD WWTP plant expansion

Sewer Calculated SDF - \$11.04 per gallon per day

Assessment of System Development Fees

- Developments that use greater volumes of water/sewer place greater costs on the utility for their capacity needs
- SDFs can be scaled by:
 - American Water Works Association (AWWA) meter equivalents
 - heated square footage
 - customer type
 - combination of methods

Meter size	Equivalent Residential Units (ERU)
3/4"	1.00
1"	1.67
1 1/2"	3.33
2"	5.33
3"	11.67
4"	21.00
6"	43.33
8"	93.33
Multi-Family (per unit)	0.63

Survey - SDF Assessment Basis

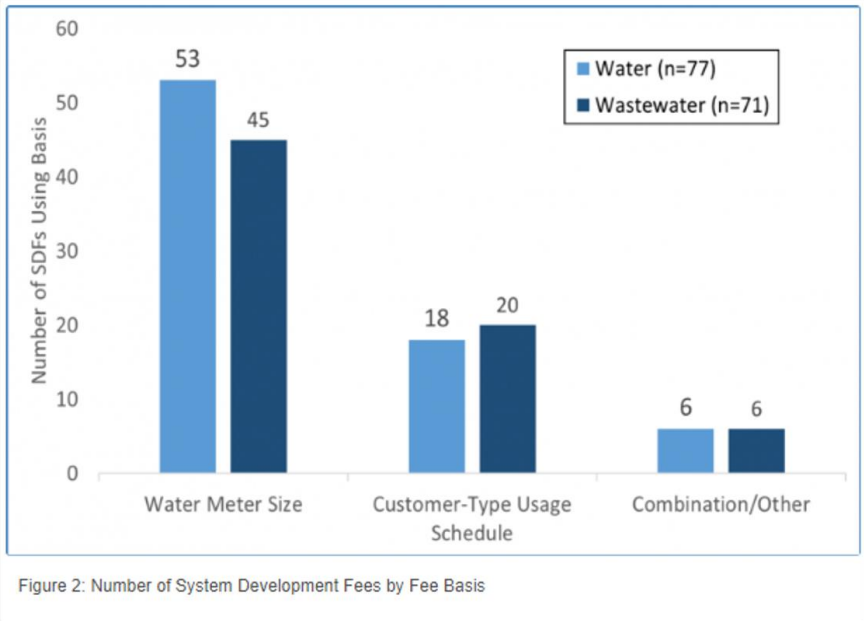
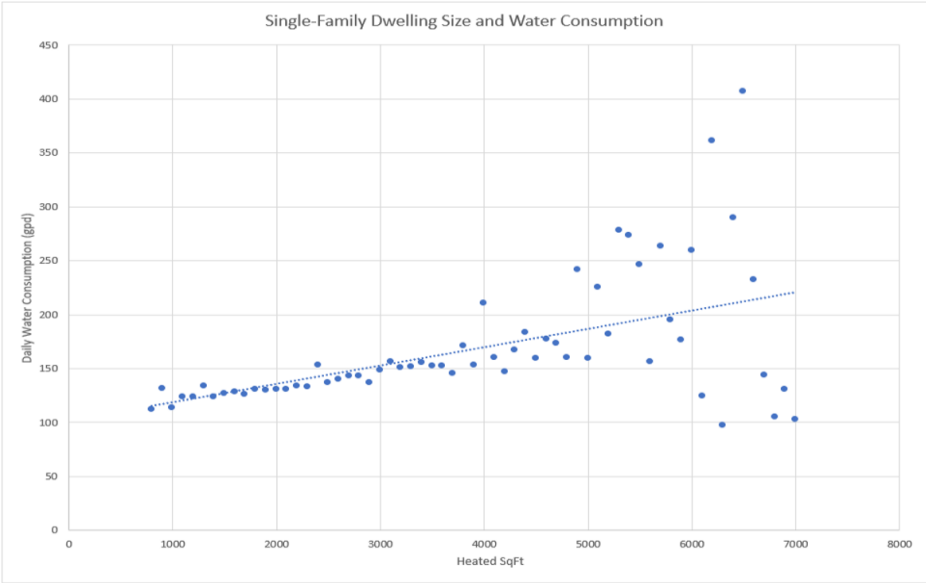


Figure 2: Number of System Development Fees by Fee Basis

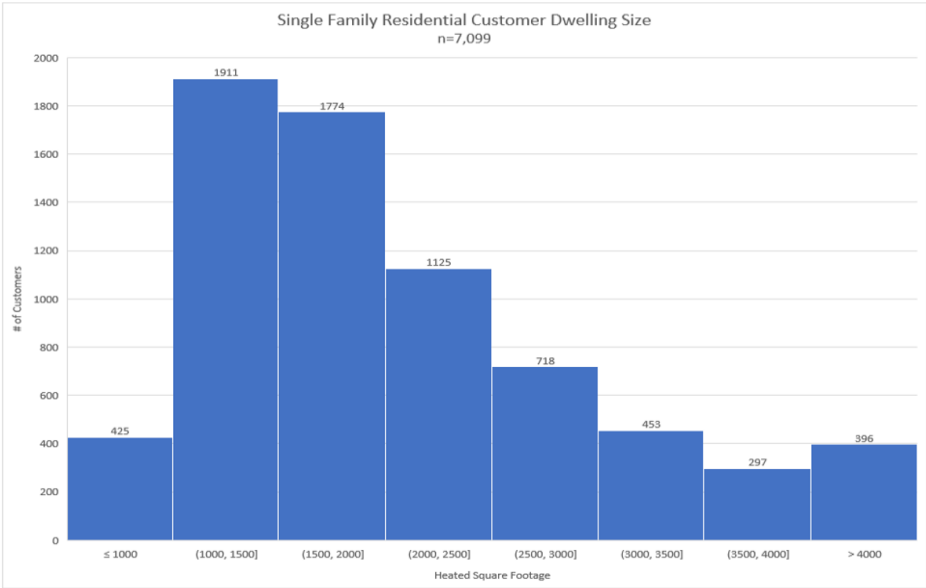
Source: UNC School of Government Environmental Finance Center.
System Development Fees in North Carolina After the New Law. September 24, 2019.

Single Family – Scaling by Dwelling Size



*Based on historical demands

Single Family – Scaling by Dwelling Size



Existing Customer Single-Family Dwelling Size Distribution

Scaling Water Service

Water System (based on historical demands)

Property Type	Average Usage (gpd)	Peaking Factor	Max Day Units of Service (gpd)*
Single Family (Heated sq. ft.)			
<1,000	118	1.50	178
1,000 - 1,500	127	1.50	190
1,501 - 2,000	129	1.50	194
2,001 - 2,500	137	1.50	206
2,501 - 3,000	143	1.50	214
3,001 - 3,500	153	1.50	230
3,501 - 4,000	164	1.50	246
Over 4,000	189	1.50	284
Multi-Family per unit	85	1.50	128
Mobile/Manufactured Home	133	1.50	200
Non-Residential (3/4" water meter)	237	1.50	356

Scaling Sewer Service

Sewer System (based on NC planning requirement and historical demands)

Property Type	Water Use Ratios	Units of Service (gpd)*
Single Family (Heated sq. ft.)		
<1,000	87%	209
1,000 - 1,500	93%	223
1,501 - 2,000	95%	228
2,001 - 2,500	101%	242
2,501 - 3,000	105%	252
3,001 - 3,500	113%	271
3,501 - 4,000	121%	289
Over 4,000	139%	334
Multi-Family per unit	63%	150
Mobile/Manufactured Home	98%	235
Non-Residential (3/4" water meter)	174%	418

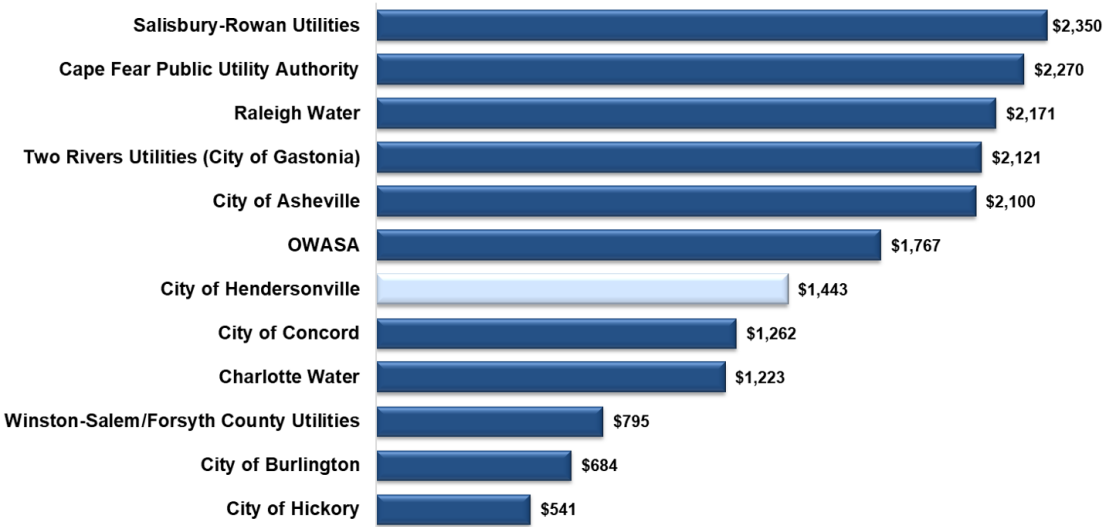
Water Use Ratio : Property Type Usage / ERU usage of 136 gpd

Non-Residential Calculated SDFs

Meter Size	Calculated Water SDF	Calculated Wastewater SDF	Combined SDF	Current No. of Non-Res. Customers
3/4"	\$2,494	\$4,618	\$7,112	1784
1"	\$4,156	\$7,697	\$11,853	378
1 ½"	\$8,312	\$15,393	\$23,706	271
2"	\$13,300	\$24,629	\$37,929	113
3"	\$29,093	\$53,877	\$82,970	22
4"	\$52,368	\$96,978	\$149,347	12
6"	\$108,062	\$200,114	\$308,176	11
8"	\$232,748	\$431,015	\$663,763	0
10"	\$349,122	\$646,522	\$995,644	0

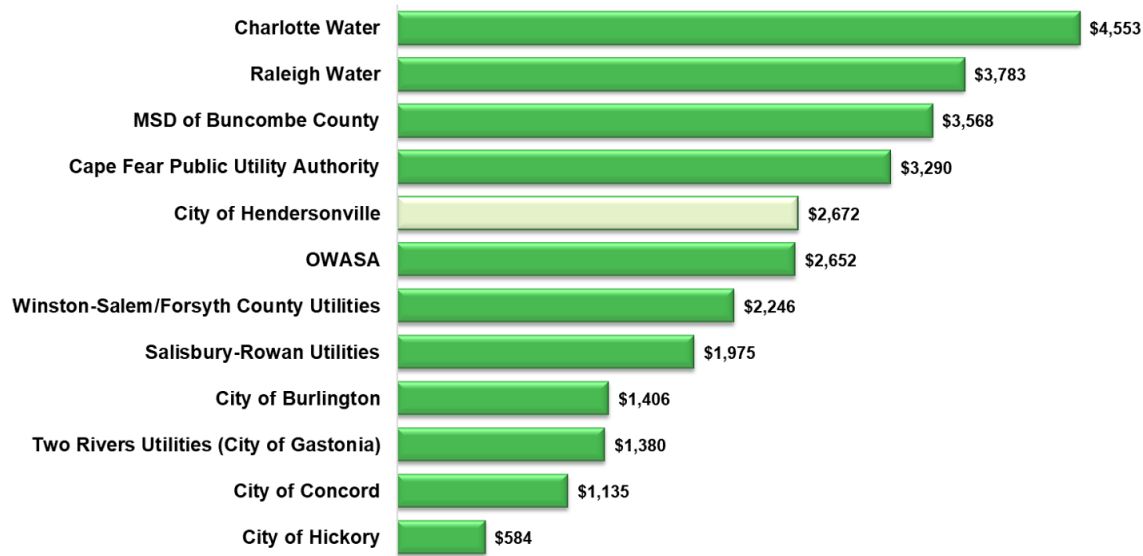
Water SDF Comparison – Residential

Figure 3.1 - Water System Development Fees (Residential 2,100 Sq. Ft.)



Sewer SDF Comparison – Residential

Figures 3.2 - Sewer System Development Fees (Residential 2,100 Sq. Ft.)



*MSD of Buncombe County: - Multi-family per unit \$2,390 (67% of single-family SDF)

Multi-Family Residential SDFs

Meter Size Approach

Example	Master Meter Size	Water SDF	Sewer SDF	Combined SDF
Apartment A	3"	\$17,512	\$32,153	\$49,665
Apartment B	4"	\$31,521	\$57,876	\$89,397

Master-Meter Unit Approach

Example	Number of Dwelling Units	Water SDF	Sewer SDF	Combined SDF
Apartment A	208	\$195,130	\$361,146	\$556,276
Apartment B	340	\$318,963	\$590,335	\$909,298

Single-Family Development

Example	Single-Family Units	Water SDF	Sewer SDF	Combined SDF
SF Subdivision A	208	\$312,208	\$573,248	\$885,456
SF Subdivision B	340	\$510,340	\$937,040	\$1,447,380

The Full Cost – SDF and Tap Fees

Installation	Single Family Size	Calculated Water SDF	Calculated Sewer SDF	Water Tap/Meter	Sewer Tap	Total Cost
City-Installed (3/4") meter	2,001 - 2,500	\$1,443	\$2,672	\$1,625	\$1,600	\$7,340
Developer- Installed (3/4" meter)	2,001 - 2,500	\$1,443	\$2,672	\$350	\$0	\$4,465

SDF- Key Takeaways

- Fees assessed to new connections or connections requiring additional capacity.
- Fees recovers costs necessary for system expansion and additional capacity - “Growth pays for Growth”
- Lack of SDFs places full cost of infrastructure on user rates
- Reduction in future rate increases possible
- Fees assessed equitably based on demands placed on the systems

Schedule

Group	Action	Date	Time
Business Advisory Committee (BAC)	Intro. presentation	07/10/23	11:30am
Water & Sewer Advisory Council (WSAC)	Intro. presentation	07/24/23	6:00pm
City Council	Intro. presentation	08/23/23	4:00pm
City Staff	Analysis published on website	09/04/23	5:00pm
Business Advisory Committee (BAC)	Final presentation & board recommendations	10/09/23	11:30am
Water & Sewer Advisory Council (WSAC)	Final presentation & board recommendations	10/23/23	6:00pm
City Council	Second presentation & board recommendation	10/25/23	4:00pm
Chamber of Commerce-Public Policy Committee	Final presentation	10/26/23	8:30am
City Council	Final presentation/adoption	01/04/24	5:45pm

5. CLOSED SESSION

Council Member Jerry Smith moved that City Council enter closed session pursuant to NCGS § 143-318.11 (a) (1) (3) and (6) to prevent the disclosure of information that is privileged or confidential pursuant to the law of this State or of the United States, or not considered a public record within the meaning of Chapter 132 of the General Statutes, to consult with an attorney employed or retained by the public body in order to preserve the attorney-client privilege between the attorney and the public body and to consider the qualifications, competence, performance, character, fitness of an individual public officer or employee.

6. ADJOURN

There being no further business, the meeting was adjourned at 5:09 p.m. upon unanimous assent of the Council.

Barbara G. Volk, Mayor

ATTEST:

Jill Murray, City Clerk



CITY OF HENDERSONVILLE

AGENDA ITEM SUMMARY

SUBMITTER:

Tyler Morrow

MEETING DATE:

September 7th 2023

AGENDA SECTION:

CONSENT

DEPARTMENT:

Community Development

TITLE OF ITEM:

Annexation: Certificate of Sufficiency- Living Savior Evangelical Lutheran Church (C23-65-ANX) – *Tyler Morrow, Planner II*

SUGGESTED MOTION(S):

I move Council to accept the City Clerk's Certificate of Sufficiency for the petition submitted by Jon Vannice of the Living Savior Evangelical Lutheran Church and set October 5th, 2023, as the date for public hearing.

SUMMARY: *File # C23-65-ANX*

The City of Hendersonville has received a petition from Jon Vannice, Vice President and Secretary of the Living Savior Evangelical Lutheran Church for satellite annexation of PIN 9578-90-1278 located on Upward Road and Vine Road that is approximately 4.72 acres. Please refer to the attached maps for additional information.

Attached is the Clerk's Certificate of Sufficiency finding that the petition is valid. The next step in the annexation process is to accept the Clerk's certificate and set a date for the public hearing on the question of adoption of an ordinance of annexation.

PROJECT/PETITIONER NUMBER:	<ul style="list-style-type: none">C23-65-ANX
PETITIONER NAME:	<ul style="list-style-type: none">Jon Vannice, Vice President and Secretary of the Living Savior Evangelical Lutheran Church
ATTACHMENTS:	<ol style="list-style-type: none">Certificate of SufficiencyResolution setting public hearingAnnexation PlatTyped legal descriptionGIS mapDeedAnnexation Application

CERTIFICATE OF SUFFICIENCY

Re: Petition for Satellite Annexation
Petitioner: Living Savior Evangelical Lutheran Church (Jon Vannice, Vice President and Secretary)
File No. C23-65-ANX

To the Honorable Mayor and members of the City Council of Hendersonville, North Carolina:
I, Jill Murray, City Clerk, being first duly sworn, hereby certify that:

1. A petition has been received for satellite annexation of properties consisting of +/- 4.72 acres located on Upward Road and Vine Road in Hendersonville, NC, being tax parcel PIN 9578-90-1278, and being more particularly described on Exhibit A, attached hereto and incorporated by reference, hereinafter "Petition."
2. An investigation has been completed as required by N.C.G.S. § 160A-58.2 of the Petition for compliance with the requirements of N.C.G.S. § 160A-58.1.

Based upon this investigation, I find that

1. The Petition includes a metes and bounds description of the area proposed for annexation and has attached a map showing the proposed satellite area.
2. The nearest point on the proposed satellite corporate limit is approximately 2,446 from the primary corporate limits of the City of Hendersonville, which is less than 3 miles.
3. The Petition includes the names and addresses and signatures of all owners of real property lying in the area described therein, except those not required to sign by G.S.160A-58.1 (a).
4. No point on the propose satellite corporate limits is closer to the primary corporate limits of another city than to the primary corporate limits of Hendersonville.
5. The area is situated so the City will be able to provide the same services within the proposed corporate limits that is provided within the primary corporate limits.
6. The area proposed for annexation is not subject to subdivision regulation as described N.C.G.S. § 160D-802.
7. The total area within the proposed satellite corporate limits, when added to the area within all the other satellite corporate limits of the City, does not exceed ten (10%) of the area within the primary corporate limits of the City.
8. The area for annexation meets all other requirements defined in NC 160A-58.54 regarding the character of the area to be annexed.

Having made the findings stated above, I hereby certify the Petition appears to be valid.

In witness hereof, I have set my hand and the City Seal on this the 29th day of August, 2023.

(City Seal)




Jill Murray, City Clerk

EXHIBIT A

LEGAL DESCRIPTION

Being all of that real property consisting of PIN 9578-90-1278 described in the plat recorded in Book 2023- ____ [to be inserted at recording of the plat] of the Henderson County Registry, said PIN 9578-90-1278 being described by metes and bounds as follows:

Beginning on a 5/8" rebar, said rebar standing in the southern margin of Vine Road, NC State Road number 1782, and having NC Grid Coordinates of Northing 580599.81 and Easting 9799143.16, and proceeding thence from beginning point thus established, S 80°40'39" E 297.31' to a 1/2" iron pipe, thence S 26°04'49" E 276.79' to a 1/2" iron pipe, said point being located in the existing City of Hendersonville Satellite Limits, thence proceeding with the existing City of Hendersonville Satellite Limits, the following three calls: S 73°26'21" W 72.32' to a 1/2" iron pipe, thence N 14°06'44" 2.38' to a 1/2" iron pipe, thence S 82°49'15" W 111.28' to a 1/2" iron pipe, thence leaving the existing City of Hendersonville Satellite Limits, S 81°10'08" W 5.60' to a point, thence S 73°12'20" 156.49' to a point, thence on a curve to the right with a radius of 1158.20' and a length of 64.42' (chord S 89°17'36" E 64.41') to a point, thence S 83°59'25" E 102.70, S 10°59'23" E 7.12' to a point, thence N 89°21'02" W 105.09' to a point, thence S 89°01'43" W 60.81' to a point, thence S 89°01'43" W 25.34' to a point, thence S 83°44'40" W 97.00' to a point, thence S 80°05'40" W 73.77' to a point, thence S 78°18'45" W 62.76' to a point, thence S 79°58'47" W 68.44' to a point, thence N 42°47'57" W 20.30' to a point, thence N 14°48'09" W 20.91' to a point, thence N 17°46'58" E 19.04' to a point, thence N 22°53'57" 72.56' to a point, thence N 27°14'58" E 459.00' to the point and place of beginning. Containing 4.72 Acres and being all of that property as described in Deed Book 3426, Page 485 as shown on survey by Associated Land Surveyors & Planners, PC bearing job number S-21-172.

Resolution # ____ - ____

**RESOLUTION BY THE CITY OF HENDERSONVILLE CITY COUNCIL FIXING DATE OF
PUBLIC HEARING ON QUESTION OF ANNEXATION PURSUANT TO G.S. 160A-58.2**

WHEREAS, a petition requesting annexation of the satellite area described herein has been received;
and

WHEREAS, certification by the City Clerk as to the sufficiency of the petition has been made;

NOW, THEREFORE BE IT RESOLVED, by the City Council of the City of Hendersonville,
North Carolina that:

Section 1. A public hearing on the question of annexation of the satellite area described herein will be held at City Operations Center located at 305 William St. Hendersonville NC, 28792 at 5:45 p.m. October 5th, 2023, or as soon thereafter as it may be heard.

Section 2. The area proposed for annexation is described as follows:

Being all of that real property consisting of PIN 9578-90-1278 described in the plat recorded in Book 2023- ____ [to be inserted at recording of the plat] of the Henderson County Registry, said PIN 9578-90-1278 being described by metes and bounds as follows:

Beginning on a 5/8" rebar, said rebar standing in the southern margin of Vine Road, NC State Road number 1782, and having NC Grid Coordinates of Northing 580599.81 and Easting 9799143.16, and proceeding thence from beginning point thus established, S 80°40'39" E 297.31' to a 1/2" iron pipe, thence S 26°04'49" E 276.79' to a 1/2" iron pipe, said point being located in the existing City of Hendersonville Satellite Limits, thence proceeding with the existing City of Hendersonville Satellite Limits, the following three calls: S 73°26'21" W 72.32' to a 1/2" iron pipe, thence N 14°06'44" 2.38' to a 1/2" iron pipe, thence S 82°49'15" W 111.28' to a 1/2" iron pipe, thence leaving the existing City of Hendersonville Satellite Limits, S 81°10'08" W 5.60' to a point, thence S 73°12'20" 156.49' to a point, thence on a curve to the right with a radius of 1158.20' and a length of 64.42' (chord S 89°17'36" E 64.41') to a point, thence S 83°59'25" E 102.70, S 10°59'23" E 7.12' to a point, thence N 89°21'02" W 105.09' to a point, thence S 89°01'43" W 60.81' to a point, thence S 89°01'43" W 25.34' to a point, thence S 83°44'40" W 97.00' to a point, thence S 80°05'40" W 73.77' to a point, thence S 78°18'45" W 62.76' to a point, thence S 79°58'47" W 68.44' to a point, thence N 42°47'57" W 20.30' to a point, thence N 14°48'09" W 20.91' to a point, thence N 17°46'58" E 19.04' to a point, thence N 22°53'57" 72.56' to a point, thence N 27°14'58" E 459.00' to the point and place of beginning. Containing 4.72 Acres and being all of that property as described in Deed Book 3426, Page 485 as shown on survey by Associated Land Surveyors & Planners, PC bearing job number S-21-172.

Re: Petition for Satellite Annexation

Petitioner: Living Savior Evangelical Lutheran Church (Jon Vannice, Vice President and Secretary)
File No. C23-65-ANX

Section 3. Notice of the public hearing shall be published once in The Hendersonville Times-News, a newspaper having general circulation in the City of Hendersonville, at least 10 days prior to the date of the public hearing.

Adopted by the City Council of the City of Hendersonville, North Carolina on this ____day of _____ 20____.

Attest:

Barbara G. Volk, Mayor, City of Hendersonville

Jill Murray, City Clerk

Approved as to form:

Angela S. Beeker, City Attorney

Grid North
142023.1 (2011)

This Plat represents the area being annexed to the City of Hendersonville,
N.C. pursuant to NCGS 160A-31, by Ordinance duly adopted (Annexation
Ordinance _____).

This the _____ day of _____, 20____

Jill Murray, City Clerk

State of North Carolina, County of _____ Henderson _____

filed for registration on the _____ day of _____, 20____

at _____ o'clock _____ M and recorded in

slide _____ in the office of the

Register of Deeds of _____ County.

Register of Deeds

By: _____, Deputy.

State of North Carolina

County of _____ Henderson _____

I, _____ Matt Champion _____, Review Officer of _____ Henderson _____ County,

certify that the map or plat to which this certification is affixed

meets all statutory requirements for recording.

Review Officer

Date

Notes:

1. Property is subject to all easements, restrictions and right of ways of record.
2. The locations of underground utilities are based on above-ground structures and record drawings provided to the surveyor. Locations of underground utilities/structures may vary from locations shown hereon. Additional buried utilities/structures may be encountered.
3. Surveyor has made no investigation or independent search for easements of record, encumbrances, restrictive covenants, ownership title evidence, or any other facts that an accurate title search may disclose.
4. The certification of survey and plat was prepared for the entity named in the title block hereon and does not extend to any other entity, unless recertified by the professional land surveyor.
5. All miscellaneous survey related materials, including but not limited to, project plans, deed and ROW research, maps, field notes and data, survey reports, record title report, calculations, working drawings, estimates, and other materials acquired and/or prepared by the surveyor as instruments of service shall remain the property of the surveyor and assigns.
6. This drawing is not valid unless the original signature and stamp are attached. Any reproduction or variance to this survey by electronic or any other means are not to be considered issued by the professional surveyor.
7. Property is currently zoned CC By Henderson County.
8. Property is not located in a Water Supply Watershed.
9. Property is not located within 1/2 mile of a designated Farmland Preservation District.
10. Property is located in Zone X, minimal flood risk as per FRIS Map Panel 9578, Map # 37009578001, effective date 10-02-2008.
11. This area deeded to NCDOT as per D.B. 1361, Pg. 702. No other transfer of title found to NCDOT for right of way for Upward Rd.

Curve	Radius	Length	Chord	Chord Bear.
C1	1158.20'	64.42'	64.41'	S 89°17'36" E

C1, L1, L4-L10 Are Proposed City of Hendersonville Satellite Limits
L2 is a Tie Line

Course	Bearing	Distance
L1	N 17°46'58" E	19.04'
L2	N 74°39'44" E	18.66'
L3	N 14°06'44" W	2.38'
L4	S 81°10'08" W	5.60'
L5	S 10°59'23" E	7.12'
L6	S 89°01'43" W	25.34'
L7	S 78°18'45" W	62.76'
L8	S 79°58'47" W	68.44'
L9	N 42°47'57" W	20.30'
L10	N 14°48'09" W	20.91'

OLD UPWARD ROAD

Public, Asphalt
SR-1722

UPWARD ROAD SR-1783

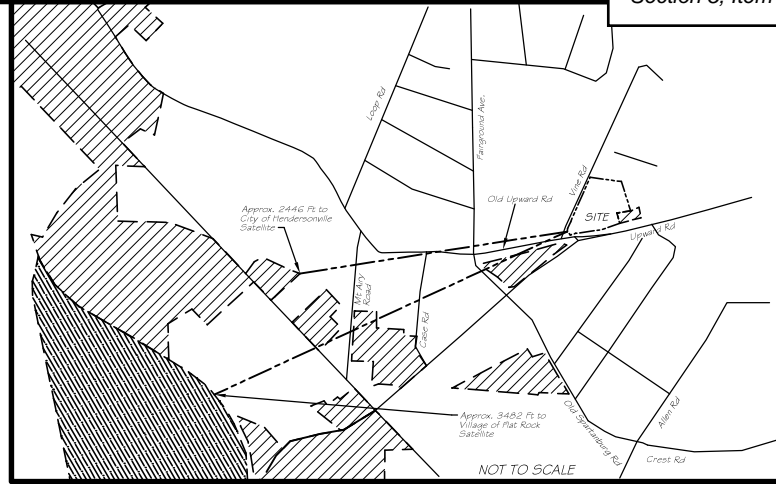
Right-of-Way varies as per
State Project 34623.1.1
Public, Asphalt

4.72 Acres

Area By Coordinate Computation

4.72 Acres

Area By Coordinate Computation



Vicinity Map

I, _____ Cameron S. Baker _____, certify that this plat was
drawn under my supervision from an actual survey under my
supervision, (deed description recorded in Book _____ 3426,
Page 485 _____), that the ratio of precision as calculated by
latitudes and departures does not exceed 1:10,000 and that
this map was prepared in accordance with G.S. 47-30 as amended.
_____, my original signature, license number and seal
this _____ day of _____, 20____.

Professional Land Surveyor No. L-4920

I, _____ Cameron S. Baker _____, certify that this survey
is of another category, such as the recombination of existing
parcels, a court ordered survey, or other exception to the
definition of subdivision such as an easement.

Professional Land Surveyor No. L-4920

Global Positioning System Certification (RTK)
The Positional Accuracy Of The RTK Derived Positional
Information Is 0.03' Horizontal & 0.03' Vertical

Horizontal Positional Are Referenced to NAD 83 (NSRS 2011)

Vertical Positions Are Referenced To NAVD 88 (Geoid 12)

Combined Factor 0.99877470 (Ground To Grid)

Equipment Used: Carlson GPS-BRxB

Existing City of Hendersonville Satellite Limits
As Per Henderson County GIS

Thom
D.B. 955, Pg. 7
Plat State 1221
Pin: 9578-90-4294
County Zoning CHMU

Existing City of Hendersonville Satellite Limits
As Per Henderson County GIS

N 81°06'35" E 95.31'

Tie Line

5/8" EIS W/ Cap

Flush W/ Ground

5/8" EIS W/ Cap
N = 580184.43
E = 979394.70

The Purpose Of This Plat Is To Annex
Pin # 9578-90-1278 (4.72 Satellite Acres) Into
The City of Hendersonville as Shown on this Survey

Being All of the Property as Described in
D.B. 3426, Pg. 485

Annexation Plat for

The City of Hendersonville

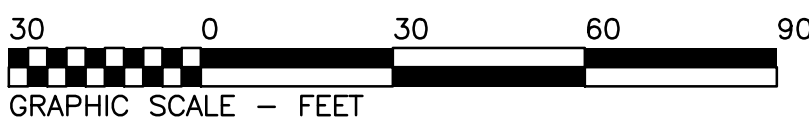
Pin# 9578-90-1278

-Owners-
Living Savior Evangelical Lutheran Church
D.B. 3426, Pg. 485

Pin: 9578-90-1278

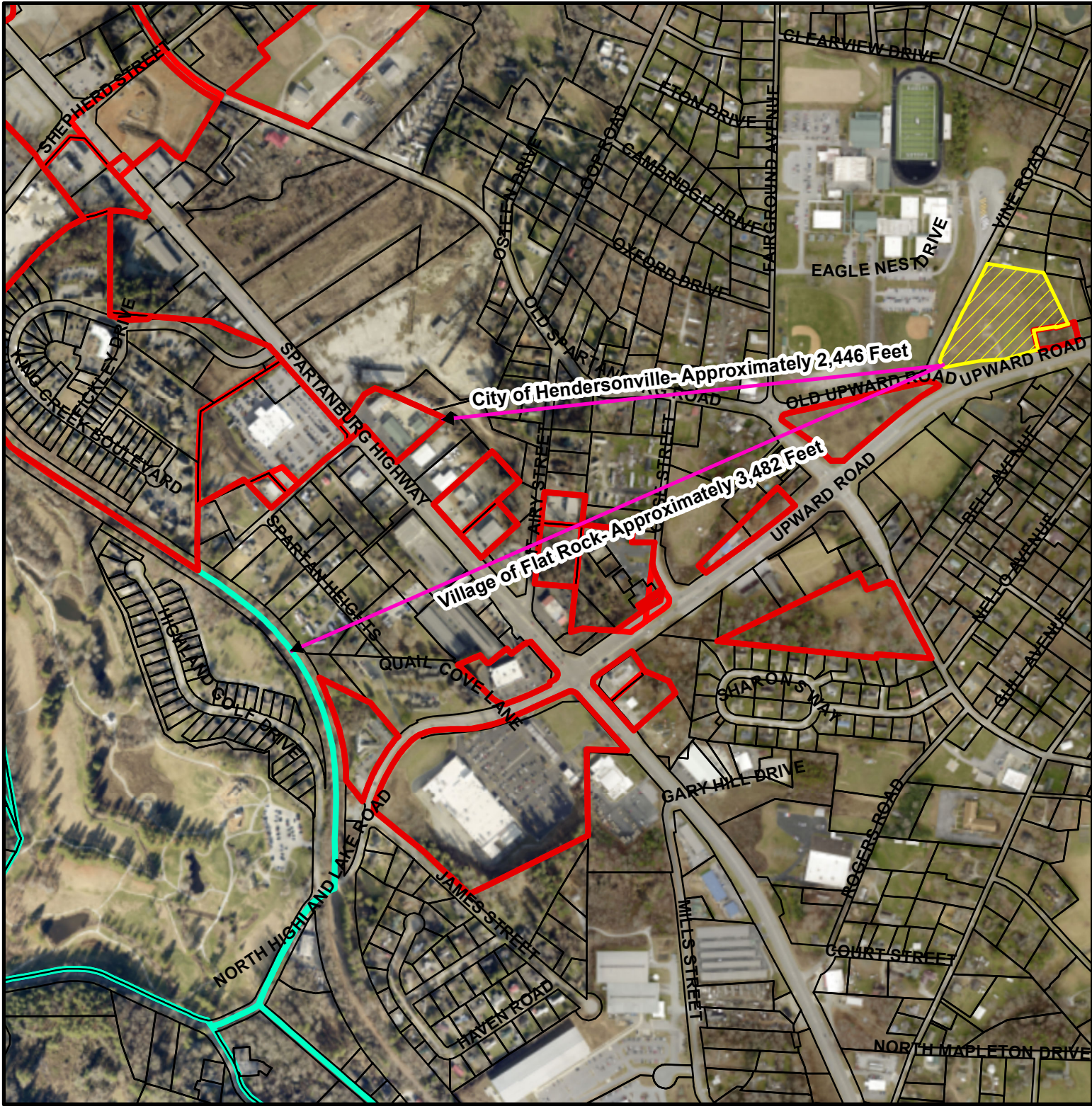
Hendersonville Township	Henderson County, NC
ASSOCIATED LAND SURVEYORS	
& PLANNERS P.C.	
P.O. BOX 578 * HORSE SHOE, NC 28742	
(828) 890-3507 NC BUSINESS LICENSE NO. C-2774	
SCALE: 1" Inch = 30 Feet	DATE: August 15, 2023
JOB NO.: S-21-172	DRAWN BY: KMK/JTB

Legend:
ECM = Existing Concrete Monument
EIP = Existing Iron Pipe
EIS = Existing Iron Stake
IPS = Iron Pipe Set
= Unmarked Point, Unless Otherwise Noted
ROW = Right of Way
RRS = Railroad Spike
UPP = Utility Pole
CMP = Corrugated Metal Pipe
SSMH = Sanitary Sewer Manhole
BSL = Building Setback Line
--- = Fence



Legal Description, PIN 9578-90-1278

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Living Savior Church

C23-61-ANX

PIN:9578-90-1278

Acreage: 4.72

Annexation Map

Community Development Department



Subject Property

Municipal Boundaries



Village of Flat Rock



City of Hendersonville

BK 3426 PG 485 - 494 (10) DOC# 916396
This Document eRecorded: 12/13/2019 09:22:16 AM
Fee: \$26.00
Henderson County, North Carolina
William Lee King, Register of Deeds

NORTH CAROLINA GENERAL WARRANTY DEED

Excise Tax: \$1,340.00

Parcel Identifier No. 9960819 Verified by Henderson County on the ____ day of _____, 20____
By: _____

Mail/Box to: PETER KANIPE, McGUIRE, WOOD & BISSETTE, 44 Patton Avenue, Asheville, NC 28801

This instrument was prepared by: TIKKUN A.S. GOTTSCHALK, a N.C. licensed attorney, DEUTSCH & GOTTSCHALK, P.A.

Delinquent taxes, if any, to be paid by the closing attorney to the county tax collector upon disbursement of closing proceeds.

Brief description for the Index: _____

THIS DEED made this 12th day of December, 2019 by and between

GRANTOR

TOMMY R. KING and wife, SHARON KING, GARY E. KING and wife, ELAINE KING, MELBA K. BALLARD and husband, LARRY W. BALLARD, PAULA J. KING, unmarried, KEVIN P. KING and wife, AMBER KING, KYLA N. JOHNSON and husband, DAVID JOHNSON, JEREMY J. KING and wife, KELLI KING, being all the heirs and spouses of heirs of MARY FRANCES KING, deceased
328 Blackwell Drive
Hendersonville, NC 28792

GRANTEE

LIVING SAVIOR EVANGELICAL LUTHERAN CHURCH, a North Carolina nonprofit and corporation
301 Overlook Road
Asheville, NC 28803

WHEREAS, MARY FRANCES KING was the prior owner of the Property described herein as shown on that Deed recorded in Book 636, at page 715, Henderson County Registry; and

WHEREAS, MARY FRANCES KING died intestate in Henderson County, North Carolina, on December 2, 2012, as set forth in Estate File No. 12-E-981, on file with the Clerk of Superior Court of Henderson County; and

WHEREAS, at the time of the death of MARY FRANCES KING, TOMMY R. KING, GARY E. KING, MELBA K. BALLARD and GRADY P. KING were her sole heirs and devisees; and

WHEREAS, GRADY P. KING died on October 24, 2017 in Henderson County, North Carolina, leaving a wife, PAULA J. KING and three children, KEVIN P. KING, KYLA KING JOHNSON and JEREMY J. KING, who are the sole heirs and devisees of GRADY P. KING; and

WHEREAS, the heirs of MARY FRANCES KING AND GRADY P. KING and their respective spouses, execute this Deed for the purpose of conveying the Property described herein to the Grantees;

NOW, THEREFORE, THIS CONVEYANCE:

WITNESSETH, that the Grantor, for a valuable consideration paid by the Grantee, the receipt of which is hereby acknowledged, has and by these presents does grant, bargain, sell and convey unto the Grantee in fee simple, all that certain lot or parcel of land situated in HENDERSON County, North Carolina and more particularly described as follows:

BEING ALL THAT PROPERTY SET FORTH ON EXHIBIT "A" ATTACHED HERETO AND INCORPORATED HEREIN BY REFERENCE.

THIS DEED HAS BEEN PREPARED BY THE LAW FIRM OF DEUTSCH & GOTTSCHALK, P.A., BY TIKKUN A.S. GOTTSCHALK, A LICENSED NORTH CAROLINA ATTORNEY, WITHOUT REVIEW OR EXAMINATION OF THE HEREIN DESCRIBED PROPERTY AND NO OPINION OR REPRESENTATIONS ARE BEING MADE, EITHER EXPRESS OR IMPLIED, BY SAID LAW FIRM OR ANY OF ITS ATTORNEYS. DELINQUENT TAXES, IF ANY, SHALL BE PAID BY THE CLOSING ATTORNEY TO THE COUNTY TAX COLLECTOR UPON DISBURSEMENT OF CLOSING PROCEEDS.

The property hereinabove described was acquired by Grantor by instrument recorded in Book ____, page ____.

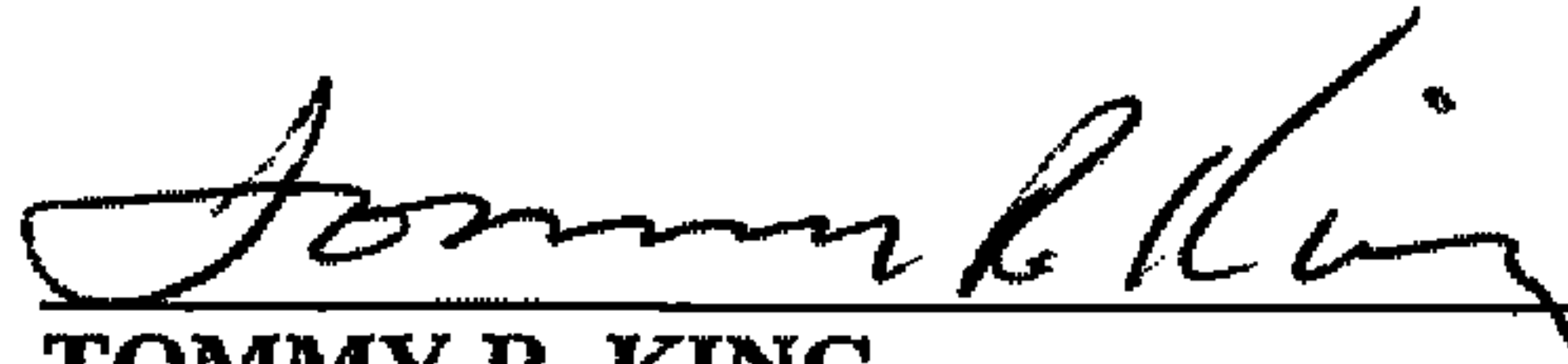
All or a portion of the property herein conveyed ____ includes or X does not include the primary residence of a Grantor.


A map showing the above described property is recorded in Plat Book ____, page ____.

TO HAVE AND TO HOLD the aforesaid lot or parcel of land and all privileges and appurtenances thereto belonging to the Grantee in fee simple.

And the Grantor covenants with the Grantee, that Grantor is seized of the premises in fee simple, has the right to convey the same in fee simple, that title is marketable and free and clear of all encumbrances, and that Grantor will warrant and defend the title against the lawful claims of all persons whomsoever, other than the following exceptions:

IN WITNESS WHEREOF, the Grantor has duly executed the foregoing as of the day and year first above written.

 (Seal)
TOMMY R. KING



 (Seal)
SHARON KING

Henderson
Duncombe County, North Carolina

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: **TOMMY R. KING and wife, SHARON KING, Grantor herein.**

Date: 12-11-19





Printed Name, Notary Public

My Commission expires: 02-04-2024

IN WITNESS WHEREOF, the Grantor has duly executed the foregoing as of the day and year first above written.

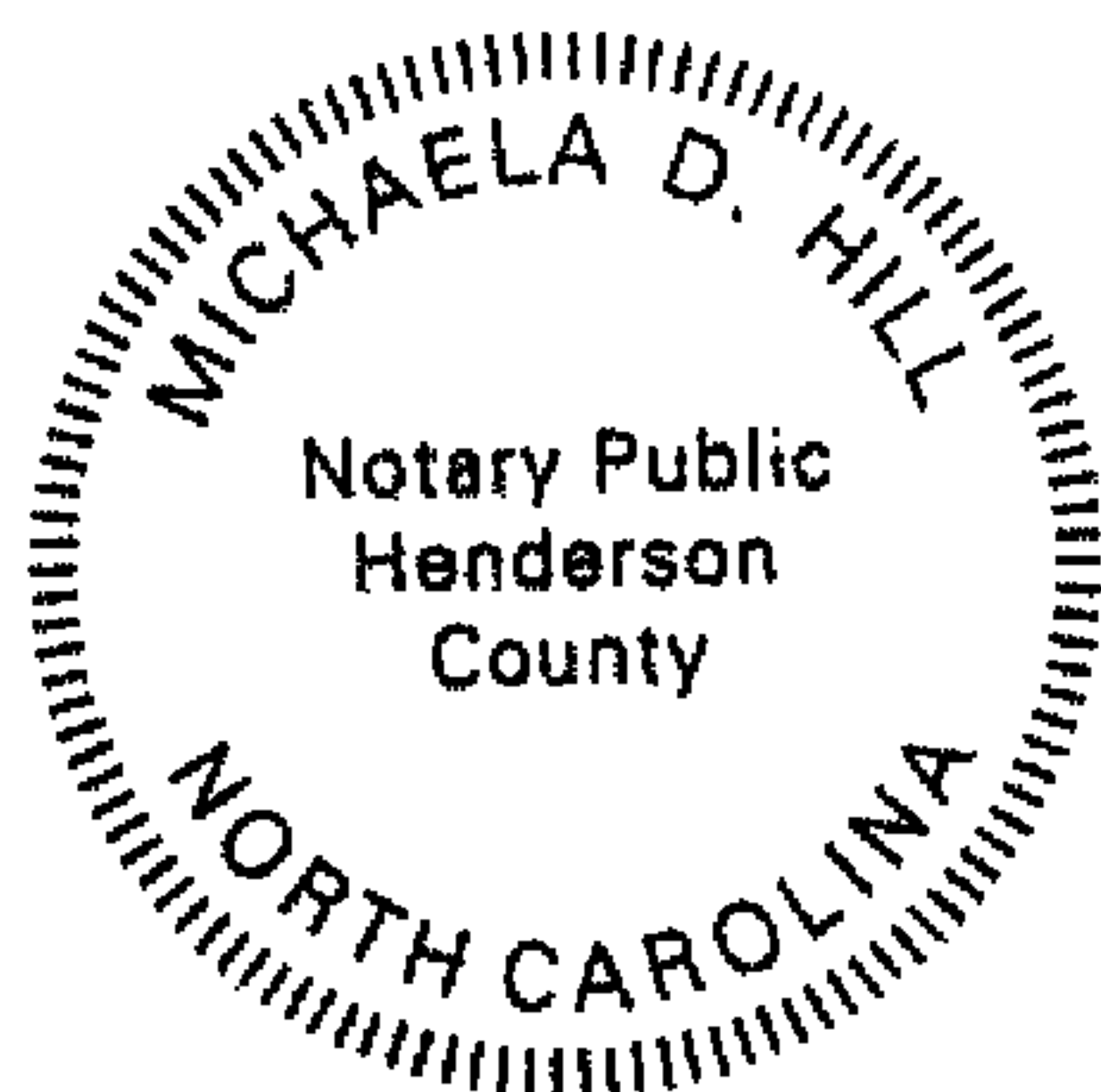
Gary E King (Seal)
GARY E. KING

Elaine King (Seal)
ELAINE KING

Henderson
~~Buncombe~~ County, North Carolina

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: GARY E. KING and wife, ELAINE KING, Grantor herein.

Date: 12-11-19.



Michaela D. Hill
Michaela D. Hill
Printed Name, Notary Public

My Commission expires: 02-04-2024

IN WITNESS WHEREOF, the Grantor has duly executed the foregoing as of the day and year first above written.

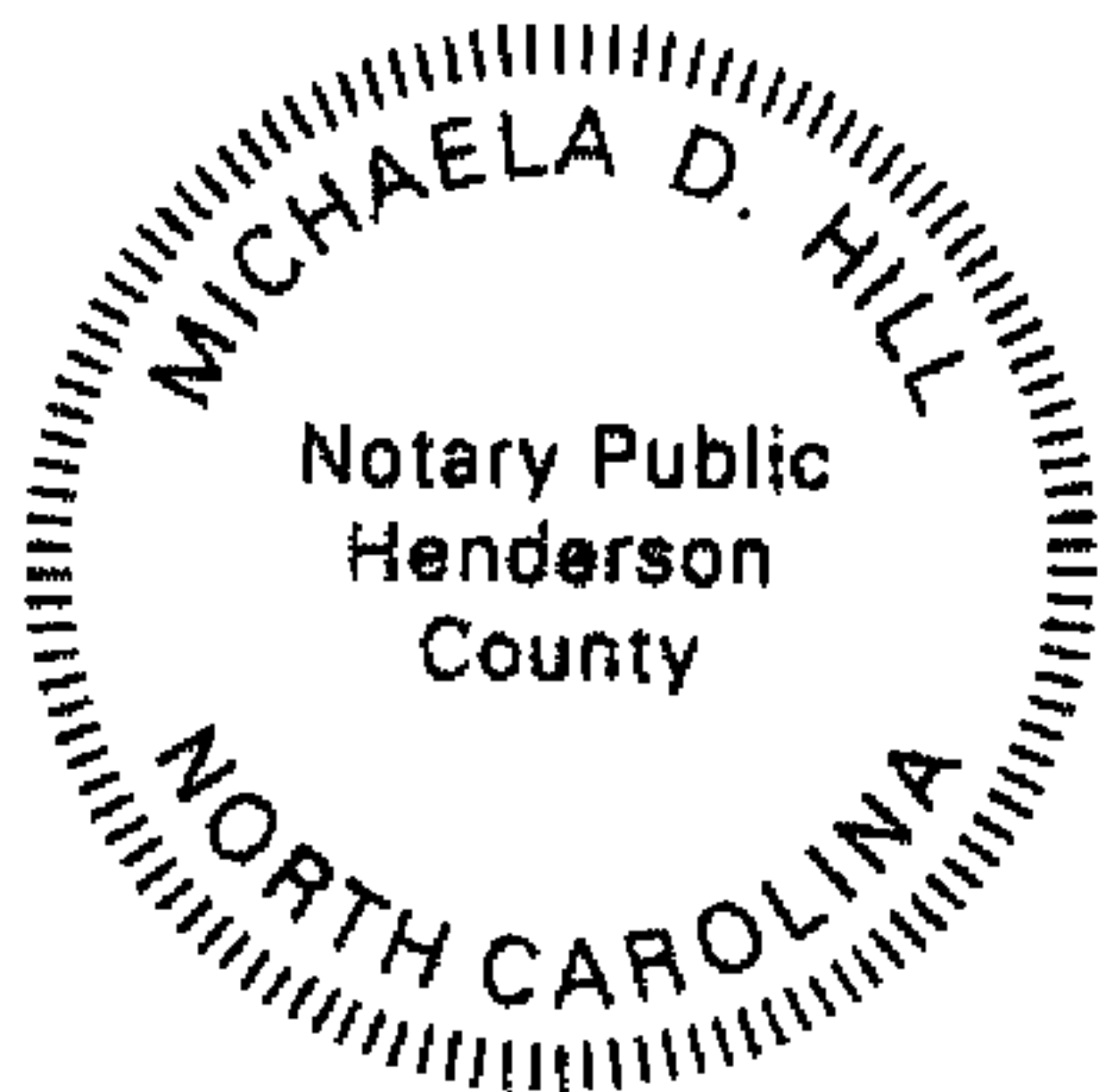
Melba K. Ballard (Seal)
MELBA K. BALLARD

Larry W. Ballard (Seal)
LARRY W. BALLARD

Henderson
~~Buncombe~~ County, North Carolina

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: MELBA K. BALLARD and husband, LARRY W. BALLARD, Grantor herein.

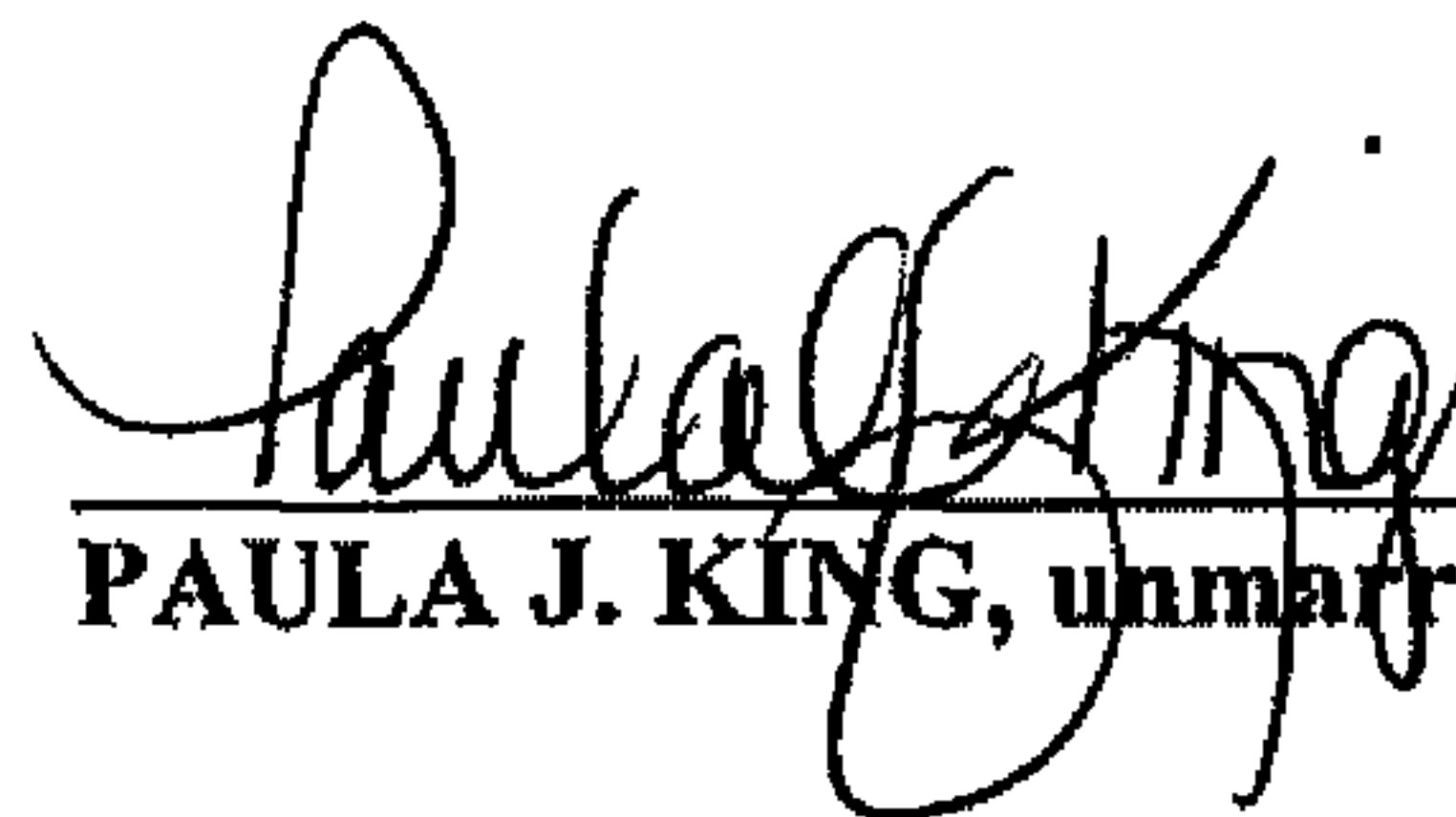
Date: 12-10-19.



Michaela D. Hill
Michaela D. Hill
Printed Name, Notary Public

My Commission expires: 02-04-2024

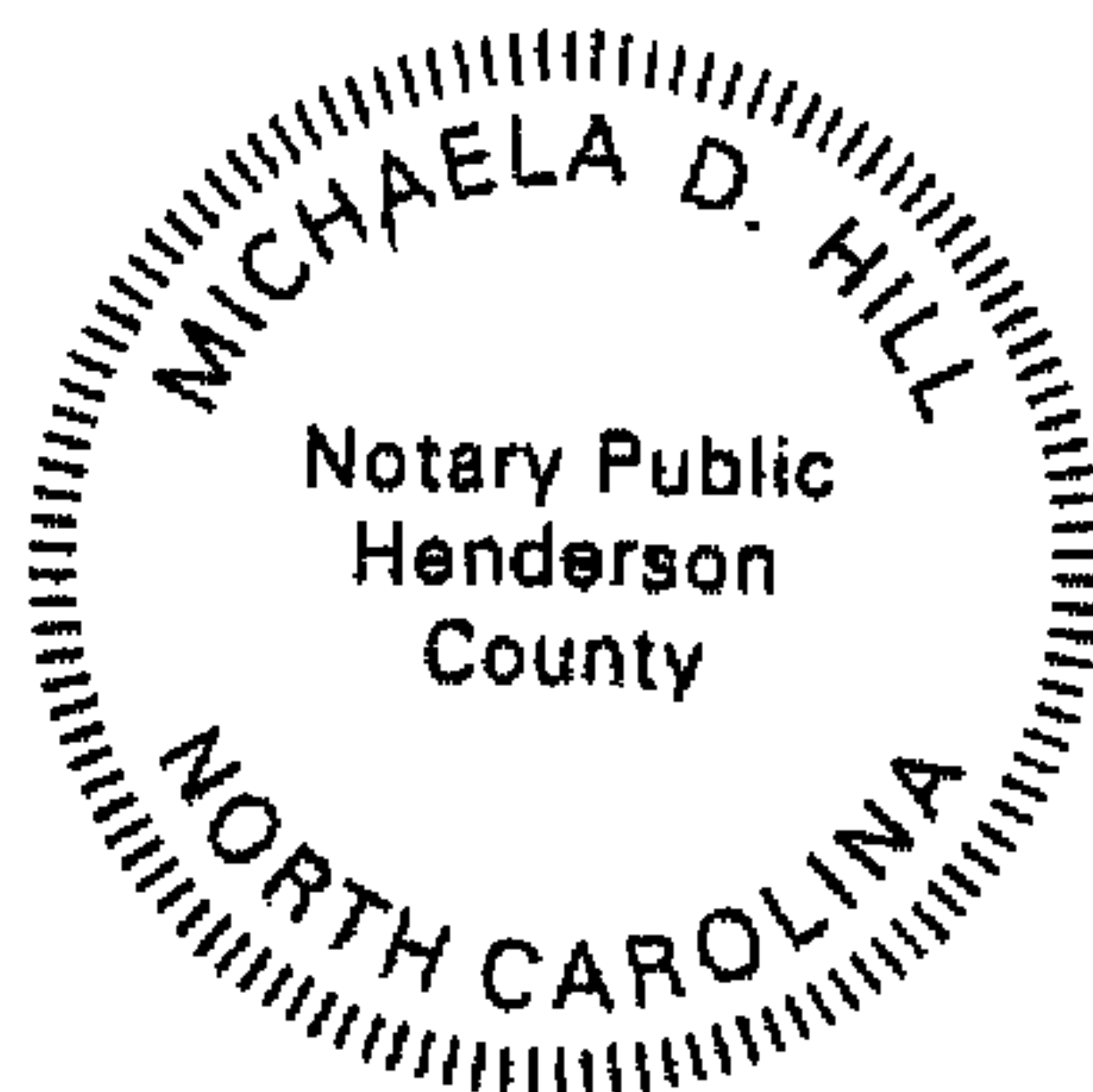
IN WITNESS WHEREOF, the Grantor has duly executed the foregoing as of the day and year first above written.



_____(Seal)
PAULA J. KING, unmarried

Henderson
Buncombe County, North Carolina

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated:
PAULA J. KING, unmarried, Grantor herein.


Date: 12-10-19.

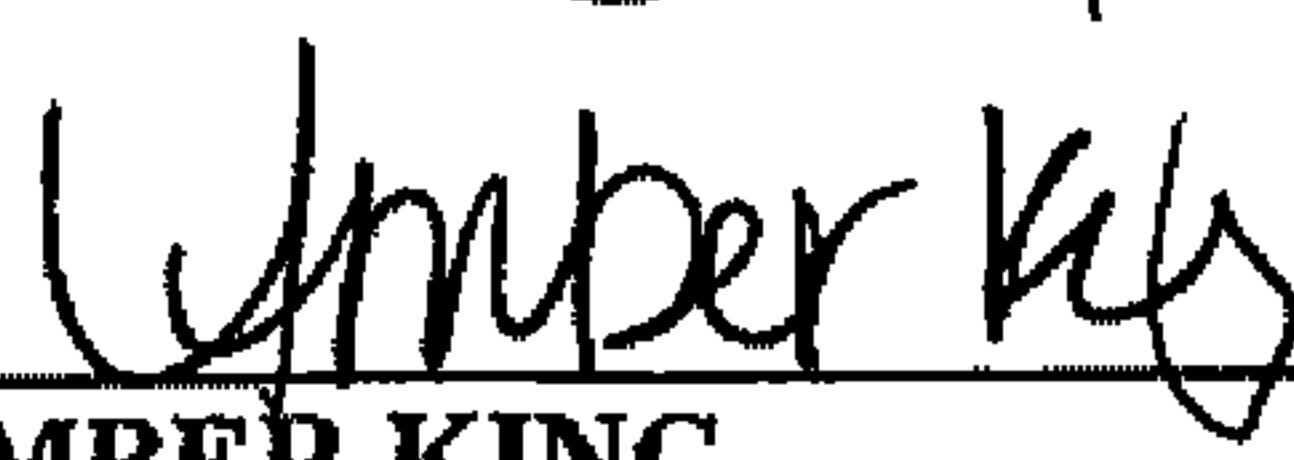




Michaela D. Hill
Printed Name, Notary Public
My Commission expires: 02-04-2024

IN WITNESS WHEREOF, the Grantor has duly executed the foregoing as of the day and year first above written.


_____(Seal)
KEVIN P. KING



_____(Seal)
AMBER KING

~~Henderson~~
Buncombe County, North Carolina

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: **KEVIN P. KING and wife, AMBER KING, Grantor herein.**

Date: 12-10-19.







Michaela D. Hill
Printed Name, Notary Public

My Commission expires: 02-01-2024

IN WITNESS WHEREOF, the Grantor has duly executed the foregoing as of the day and year first above written.

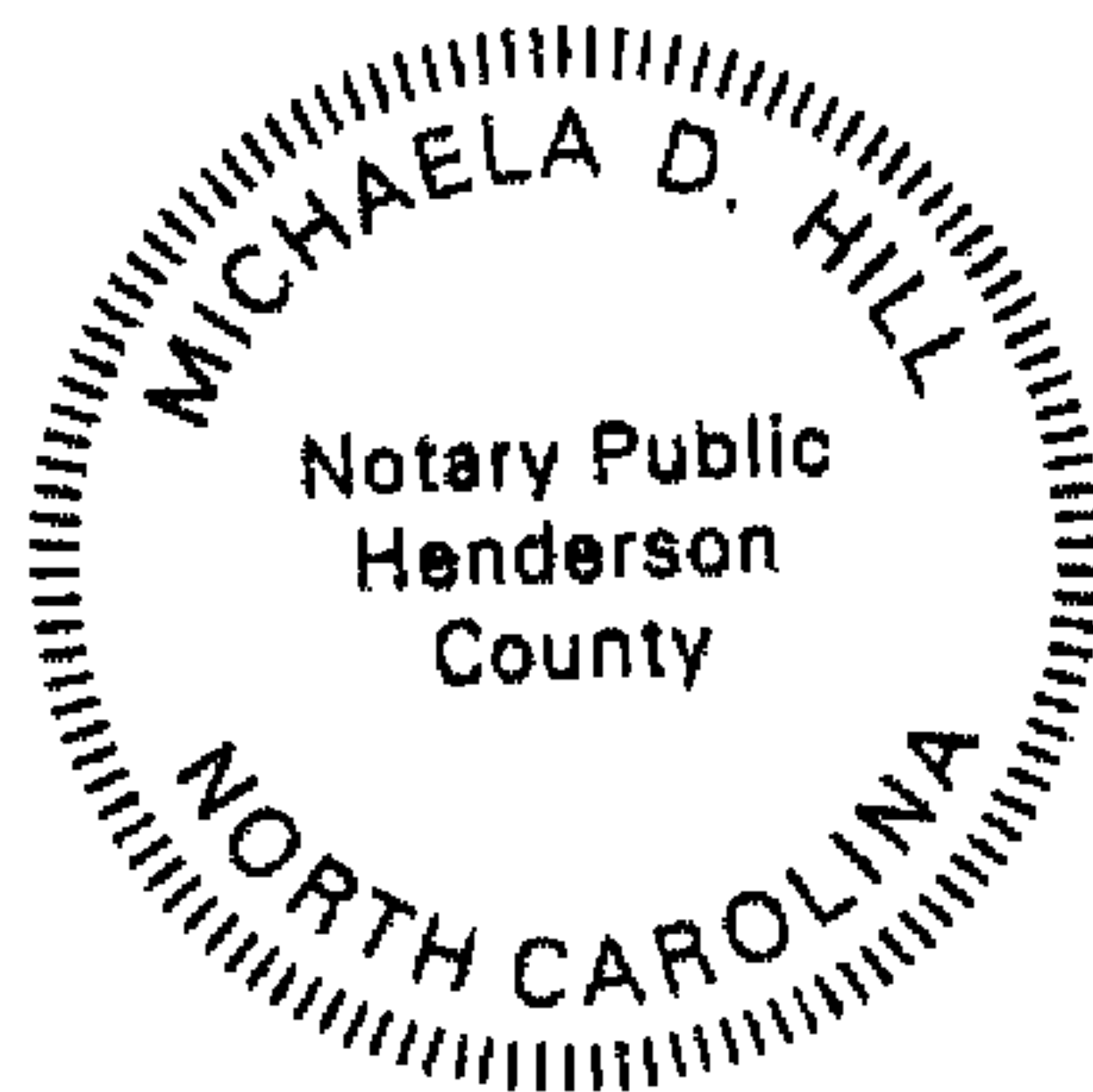

_____(Seal)
KYLA N. JOHNSON


_____(Seal)
DAVID JOHNSON

Henderson
Buncombe County, North Carolina

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: KYLA N. JOHNSON and husband, DAVID JOHNSON, Grantor herein.

Date: 12-11-19.

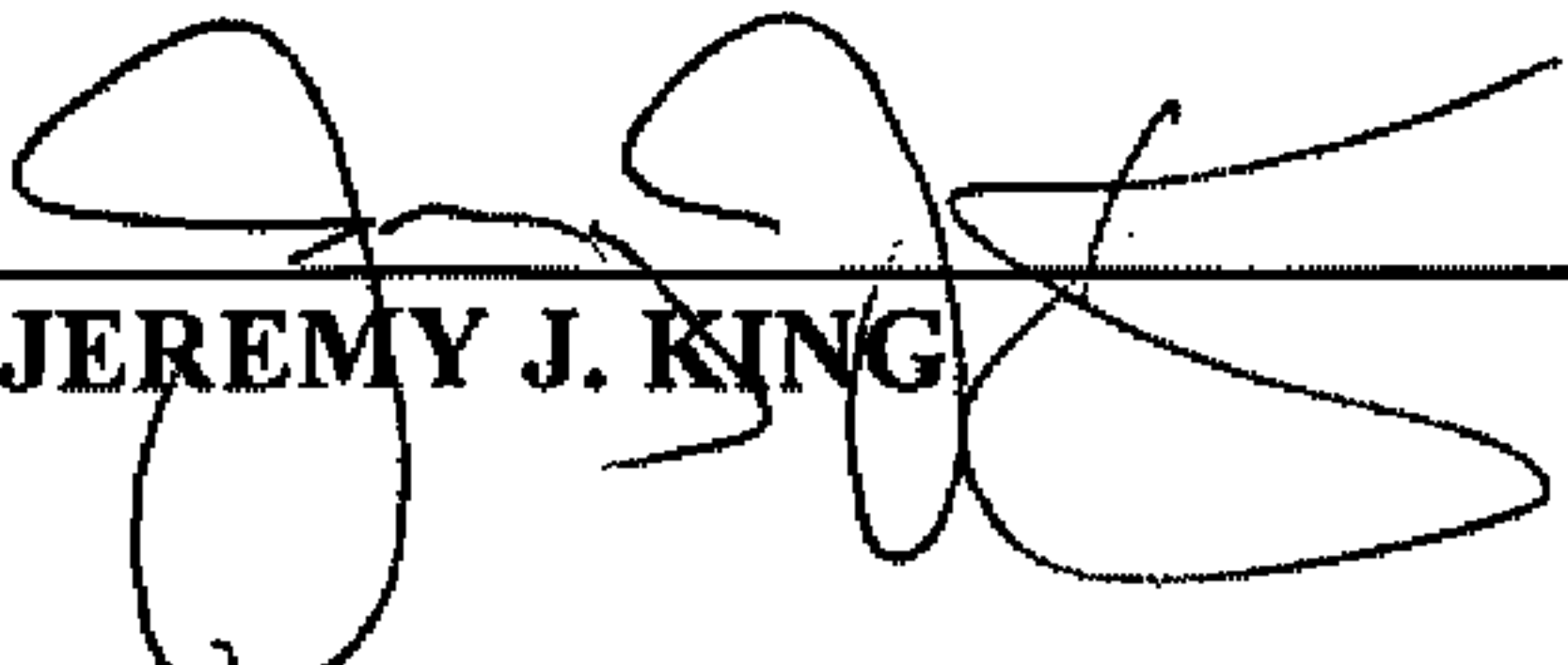




Michaela D. Hill
Printed Name, Notary Public

My Commission expires: 02-01-2024

IN WITNESS WHEREOF, the Grantor has duly executed the foregoing as of the day and year first above written.


_____(Seal)
JEREMY J. KING

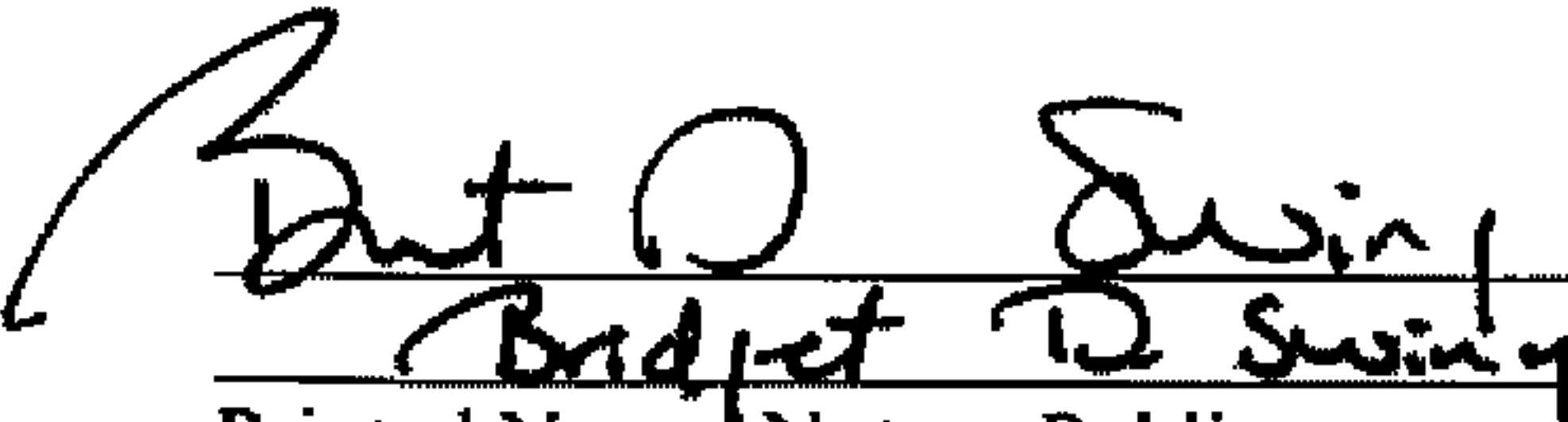

_____(Seal)
KELLI KING

Henderson

~~Buncombe~~ County, North Carolina

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: JEREMY J. KING and wife, KELLI KING, Grantor herein.

Date: 12-11-2019.



Bridget D. Swing
Printed Name, Notary Public

My Commission expires: May 3, 2020

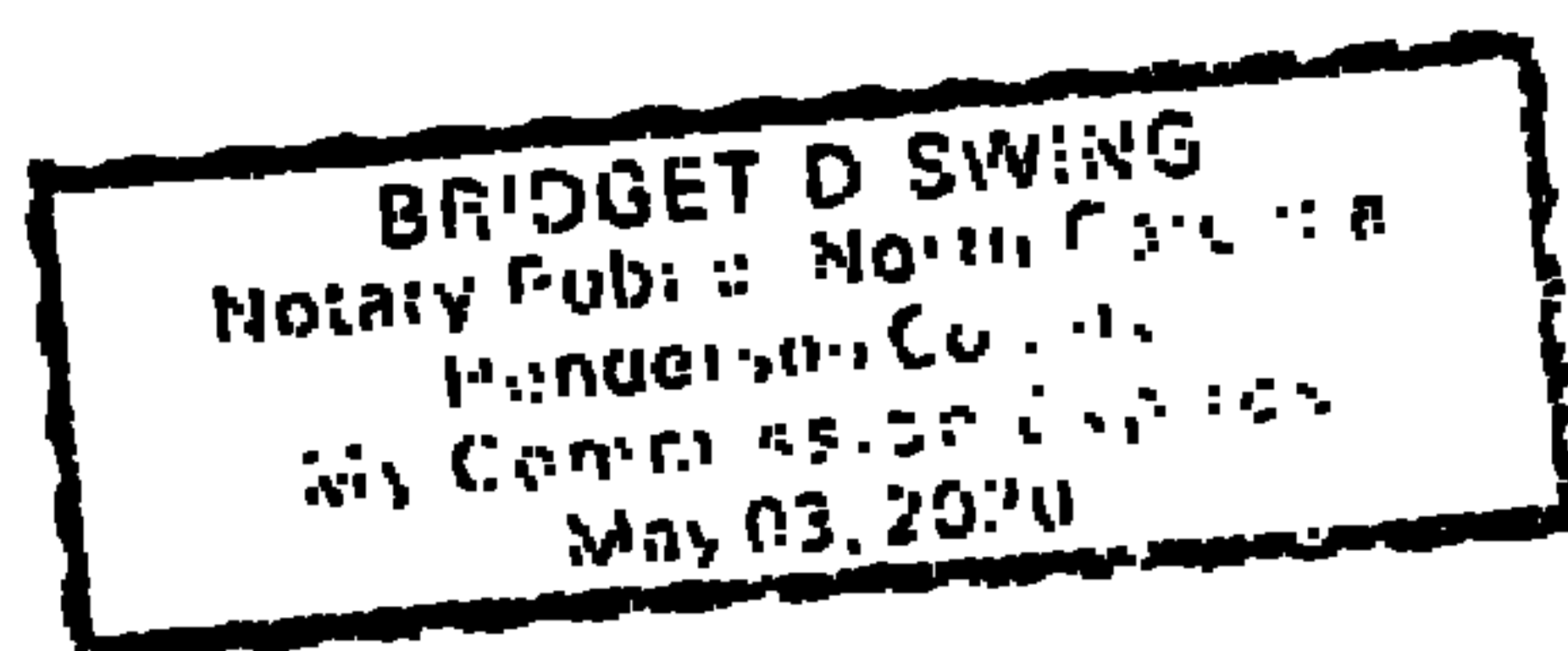


EXHIBIT A

BEGINNING at a stake in the North side of the Hendersonville-Upward Road, said stake standing South 12 deg. West 69.3 feet from the West column of the porch of the former R.L. Jones residence, and running thence North 16 deg. 10 min. 03 sec. West 303.09 feet to a point; thence from said point North 13 deg. 25 min. 03 sec. West 48.99 feet to a point in the S.D. Case property; thence with the S.D. Case property line North 80 deg. 08 min. 40 sec. West 474.39 feet to a metal axle driven in the ground; thence South 27 deg. 46 min. 57 sec. West 459 feet; thence South 23 deg. 25 min. 56 sec. West 72.56 feet to a stake in the edge of the road; thence South 18 deg. 18 min. 57 sec. West 19.04 feet; thence South 14 deg. 16 min. 10 sec. East 20.91 feet; thence South 42 deg. 15 min. 58 sec. East 20.30 feet to a stake in the edge of Upward Road; thence North 80 deg. 30 min. 46 sec. East 68.44 feet to a stake in the edge of the Upward Road; thence North 78 deg. 50 min. 44 sec. East 62.76 feet to a stake to edge of Upward Road; thence North 80 deg. 37 min. 39 sec. East 73.77 feet to a stake in the edge of Upward Road; thence North 84 deg. 16 min. 39 sec. East 97 feet to a stake in edge of said road; thence North 89 deg. 33 min. 42 sec. East 25.34 feet; thence same course 60.81 feet; thence continuing with said road South 88 deg. 49 min. 03 sec. East 106.17 feet to a stake in the edge of said road and the Southwest corner of a lot containing 0.40 acres, thence with the South edge of said lot North 88 deg. 31 min. 05 sec. East to a stake in the edge of said lot and road 56.17 feet; thence North 80 deg. 33 min. 17 sec. East 54.34 feet to a stake the corner of another lot containing 0.345 acres; thence with the South line of said lot and the edge of said road as follows: North 80 deg. 33 min. 17 sec. East 48.42 feet; thence continuing with the edge of said road North 73 deg. 02 min. 45 sec. East 51.43 feet; thence with the South line of lot containing 0.344 acres and the edge of said road, North 73 deg. 02 min. 45 sec. East 171.69 feet to the **BEGINNING**.

BEING ALL of that property described in Book 636, Page 715 of the Henderson County Registry

LESS AND EXCEPT from the above-described property all of those tracts described in Book 783, Page 138; Book 942, Page 659; and Book 1341, Page 213 of the Henderson County Registry.



CITY OF HENDERSONVILLE
COMMUNITY DEVELOPMENT DEPARTMENT
100 N. King Street, Hendersonville, NC 28792
Phone (828) 697-3010|Fax (828) 698-6185
www.hendersonvillenc.gov

Petition Requesting Annexation

The following are the **required** submittals for a complete application for a Voluntary Annexation. Staff will not review applications until each item has been submitted and determined complete. By placing a check mark by each of the following items, you are certifying that you have performed that task.

- ☒ 1. Completed Application Form
- ☒ 2. A copy of the deed indicating ownership of the property.
- ☒ 3. An Annexation Survey Plat of the property prepared by a registered surveyor licensed to practice in the state of North Carolina.
- ☒ 4. A typed boundary description of the property.

A. Property Information

PIN(s): 9578901278
Address(es) / Location of Property: 200 Upward Road

Does this property adjoin the present City Limits? ___ Yes X No
Is the property within the ETJ? ___ Yes X No

Reason for Annexation:
Property Owner would like to tie to City Owned Sanitary Sewer Main and potentially the Water Main across Upward Road.

Office Use:
Date Received: _____ By: _____ Fee Received? Y/N

C. Additional Property Owner Contact Information

Jon Vannice

* Printed Applicant Name

Date

8/17/23

Living Savior Evangelical Lutheran Church

Printed Company Name (if applicable)

☒ Corporation☐ Limited Liability Company☐ Trust☐ Partnership☐ Other: _____

Property Owner Signature

Property Owner Title (if applicable)

Address of Property Owner

City, State, and Zip Code

Telephone

Email

jvannice@amgnational.com



CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

SUBMITTER: Adam Steurer **MEETING DATE:** September 7, 2023

AGENDA SECTION: Consent Agenda **DEPARTMENT:** Utilities

TITLE OF ITEM: Contract Award Fleetwood Water Improvements Project– *Adam Steurer, Utilities Director*

SUGGESTED MOTION(S):

I move City Council to adopt the Resolution By the City of Hendersonville of contract award and authorization for the City Manager to enter into a contract with Cooper Construction Co., Inc. for the construction of the Fleetwood Water Improvements Project

SUMMARY:

The Fleetwood Water Improvements generally consist of installation of approximately 2,000 feet of water main and replacement of an aging and undersized pumping station with a dual domestic and high-service pumping station. After completion of the project, the Fleetwood Community in Laurel Park will have sufficient water flow and pressure for peak domestic demands and fire protection.

On August 10, 2023, formal bids for construction of the project opened. Cooper Construction Co, Inc. of Hendersonville NC is the lowest responsive and responsible bidder.

BUDGET IMPACT: \$1,276,330

Is this expenditure approved in the current fiscal year budget? Yes. Funding is allocated in the Capital Project Ordinance

If no, describe how it will be funded.

ATTACHMENTS:

1. Resolution
2. Bid Tabulation

Resolution #__-____

RESOLUTION BY THE CITY OF HENDERSONVILLE OF CONTRACT AWARD AND AUTHORIZATION FOR THE CITY MANAGER TO ENTER INTO A CONTRACT FOR THE CONSTRUCTION OF THE FLEETWOOD WATER IMPROVEMENTS PROJECT

WHEREAS, the Fleetwood Water Improvements Project (project) generally consist of installation of approximately 2,000 feet of water main and replacement of an aging and undersized pumping station with a dual domestic and high-service pumping station.; and

WHEREAS, after completion of the project, the Fleetwood Community in Laurel Park will have sufficient flow and pressure for peak domestic demands and fire protection; and

WHEREAS, on August 10, 2023, formal bids for construction of the project opened:

Cooper Construction Co., Inc.:	\$1,276,330.00
Carolina Specialties Construction:	\$1,554,560.26
TP Howard's Plumbing Co., Inc.:	\$1,653,000.00;and

WHEREAS, formal bids were reviewed for completeness and accuracy. Cooper Construction Co., Inc. is the lowest responsive, responsible bidder.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Hendersonville, North Carolina that:

1. The City Manager is authorized to award and execute a contract for the construction of the Fleetwood Water Improvements Project to Cooper Construction Co., Inc., the lowest responsive and responsible bidder in the total amount of \$1,276,330.
2. The City Manager is authorized to approve change orders which cumulatively do not exceed 5% of the approved contract amount of \$1,276,330, provided however that any necessary budget ordinance or project ordinance amendments must be brought back to the City Council for approval.

Adopted by the City Council of the City of Hendersonville, North Carolina on this ____ day of _____, 20____.

Attest:

Barbara G. Volk, Mayor, City of Hendersonville

Jill Murray, City Clerk

Approved as to form: _____ Angela S. Beeker, City Attorney

Section 5, Item C.



RTIFIED AS A TRUE CORRECT
BULATION OF BIDS RECEIVED

Fleetwood Plaza Water System Improvements - 22020

City of Hendersonville, NC

BID DATE: August 10, 2023

BID TIME: 2:00 P.M.

PLACE OF BID OPENING: Public Works Building

NUMBER OF BIDS RECD: 3

Summit Engineering Group, Inc.

City of Hendersonville 305 Williams Street Hendersonville, NC 28792		Cooper Construction Co., Inc. P.O. Box 806 Hendersonville, NC 28793		Carolina Specialties Construction P.O. Box 825 Hendersonville, NC 28793		TP Howard's Plumbing Co., Inc 90 Number Nine Rd. Fairview, NC 28730			
Item No.	Description	Quantity	Unit	Unit Price	Total	Unit Price	Total	Unit Price	Total
Division I - Water Line Extensions									
1.	Contractor Mobilization/Demobilization(5%Max)	1	LS	\$ 34,500.00	\$ 34,500.00	\$ 18,840.00	\$ 18,840.00	\$ 49,866.00	\$ 49,866.00
2.	Water Lines (Open Cut):				-		-		-
a.	8" DIP CL. 350	540	LF	\$ 83.30	\$ 44,982.00	\$ 128.00	\$ 69,120.00	\$ 95.00	\$ 51,300.00
b.	6" DIP CL. 350	1,370	LF	\$ 63.60	\$ 87,132.00	\$ 92.00	\$ 126,040.00	\$ 75.00	\$ 102,750.00
c.	2" HDPE DR 9	350	LF	\$ 34.00	\$ 11,900.00	\$ 41.00	\$ 14,350.00	\$ 50.00	\$ 17,500.00
3.	Valves:								
a.	8" Gate Valves	2	EA	\$ 2,925.00	\$ 5,850.00	\$ 2,529.00	\$ 5,058.00	\$ 2,900.00	\$ 5,800.00
b.	6" Gate Valves	10	EA	\$ 2,080.00	\$ 20,800.00	\$ 1,593.00	\$ 15,930.00	\$ 2,000.00	\$ 20,000.00
c.	2" Gate Valves	1	EA	\$ 1,400.00	\$ 1,400.00	\$ 1,132.00	\$ 1,132.00	\$ 1,500.00	\$ 1,500.00
4.	Fire Hydrant Assembly	2	EA	\$ 7,655.00	\$ 15,310.00	\$ 8,624.00	\$ 17,248.00	\$ 10,000.00	\$ 20,000.00
5.	Fire Hydrant Removal	1	EA	\$ 535.00	\$ 535.00	\$ 420.00	\$ 420.00	\$ 1,000.00	\$ 1,000.00
6.	Blow-off Assembly								
a.	2" Blow-off	2	EA	\$ 3,440.00	\$ 6,880.00	\$ 3,405.00	\$ 6,810.00	\$ 4,500.00	\$ 9,000.00
7.	Connections to Ex. Water Distribution								
a.	Tapping Sleeve	2	EA	\$ 4,700.00	\$ 9,400.00	\$ 6,589.00	\$ 13,178.00	\$ 6,000.00	\$ 12,000.00
b.	Cut-In	5	EA	\$ 1,455.00	\$ 7,275.00	\$ 3,156.00	\$ 15,780.00	\$ 4,500.00	\$ 22,500.00
8.	Cut & Plug Ex. Water Lines	8	EA	\$ 700.00	\$ 5,600.00	\$ 501.00	\$ 4,008.00	\$ 1,000.00	\$ 8,000.00
9.	Residential Service Reconnections	5	EA	\$ 1,500.00	\$ 7,500.00	\$ 1,077.00	\$ 5,385.00	\$ 2,000.00	\$ 10,000.00
10.	Erosion/Sedimentation Control Facilities								
a.	Grassing	0	AC	\$ 4,000.00	\$ 400.00	\$ 6,534.00	\$ 653.40	\$ 30,000.00	\$ 3,000.00
b.	Culvert Inlet Protection	4	EA	\$ 180.00	\$ 720.00	\$ 240.00	\$ 960.00	\$ 500.00	\$ 2,000.00
c.	Culvert Outlet Protection	4	EA	\$ 265.00	\$ 1,060.00	\$ 240.00	\$ 960.00	\$ 500.00	\$ 2,000.00
d.	Silt Fencing	200	LF	\$ 6.30	\$ 1,260.00	\$ 7.00	\$ 1,400.00	\$ 5.00	\$ 1,000.00
e.	Sediment tube/Wattle	10	EA	\$ 158.00	\$ 1,580.00	\$ 76.00	\$ 760.00	\$ 85.00	\$ 850.00
11.	Pavement Replacement:								
a.	Asphalt Road Patch	2,000	LF	\$ 72.00	\$ 144,000.00	\$ 40.00	\$ 80,000.00	\$ 65.00	\$ 130,000.00
b.	Asphalt Drive Patch	50	LF	\$ 63.30	\$ 3,165.00	\$ 35.00	\$ 1,750.00	\$ 65.00	\$ 3,250.00
c.	Concrete Drive Patch	50	LF	\$ 66.50	\$ 3,325.00	\$ 71.00	\$ 3,550.00	\$ 150.00	\$ 7,500.00
12	Classified Excavation	60	CY	\$ 175.00	\$ 10,500.00	\$ 200.00	\$ 12,000.00	\$ 10.00	\$ 600.00
	Division 1 Sub-Total				\$ 425,074.00		\$ 415,332.40		\$ 481,416.00



Section 5, Item C.
RTIFIED AS A TRUE CORRECT
BULATION OF BIDS RECEIVED

Fleetwood Plaza Water System Improvements - 22020
City of Hendersonville, NC

BID DATE: August 10, 2023
BID TIME: 2:00 P.M.

PLACE OF BID OPENING: Public Works Building

NUMBER OF BIDS REC'D: 3

Summit Engineering Group, Inc.

City of Hendersonville
305 Williams Street
Hendersonville, NC 28792

Cooper Construction Co., Inc.
P.O. Box 806
Hendersonville, NC 28793

Carolina Specialties Construction
P.O. Box 825
Hendersonville, NC 28793

TP Howard's Plumbing Co., Inc
90 Number Nine Rd.
Fairview, NC 28730

Item No	Description	Quantity	Unit	Unit Price	Total	Unit Price	Total	Unit Price	Total	Unit Price	Total
Division II Booster Pump Station											
1.	Site Clearing and Grubbing	1	LS	\$ 31,000.00	\$ 31,000.00	\$ 15,708.00	\$ 15,708.00	\$ 53,000.00	\$ 53,000.00		
2.	Earthwork/Grading	1	LS	\$ 49,150.00	\$ 49,150.00	\$ 11,319.00	\$ 11,319.00	\$ 63,000.00	\$ 63,000.00		
3.	Booster Pump Station										
a.	Concrete Building Slab (6" thick)	15	CY	\$ 848.00	\$ 12,720.00	\$ 704.00	\$ 10,560.00	\$ 1,625.00	\$ 24,375.00		
a-2	Concrete Footer (includes reinforcement)	13	CY	\$ 545.00	\$ 7,085.00	\$ 487.00	\$ 6,331.00	\$ 1,929.00	\$ 25,077.00		
a-2	#57 Washed Stone (Under Footer and Slab Backfill)	150	Tons	\$ 48.00	\$ 7,200.00	\$ 77.00	\$ 11,550.00	\$ 92.40	\$ 13,860.00		
b.	Roofing	1	LS	\$ 58,170.00	\$ 58,170.00	\$ 150,320.00	\$ 150,320.00	\$ 120,966.00	\$ 120,966.00		
c.	Masonry Structure	2,300	SF	\$ 60.70	\$ 139,610.00	\$ 69.00	\$ 158,700.00	\$ 73.40	\$ 168,820.00		
d.	Stucco	2,000	SF	\$ 23.80	\$ 47,600.00	\$ 25.00	\$ 50,000.00	\$ 22.09	\$ 44,180.00		
e.	Pumps:										
e.1	- Domestic Pump	2	EA	\$ 5,425.00	\$ 10,850.00	\$ 10,620.84	\$ 21,241.68	\$ 15,000.00	\$ 30,000.00		
e.2	- High Service Pump	2	EA	\$ 30,425.00	\$ 60,850.00	\$ 75,773.39	\$ 151,546.78	\$ 45,000.00	\$ 90,000.00		
f.	Electrical	1	LS	\$ 117,605.00	\$ 117,605.00	\$ 206,514.00	\$ 206,514.00	\$ 125,774.00	\$ 125,774.00		
g.	Duke Energy Service Allowance	1	allowance	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00		
h.	Pump Controls, VFDs, Instrumentation										
	SCADA Intergration Allowance	1	allowance	\$ 139,570.00	\$ 139,570.00	\$ 139,570.00	\$ 139,570.00	\$ 139,570.00	\$ 139,570.00		
i	Pump Station Piping, Valves, and Fittings	1	LS	\$ 101,000.00	\$ 101,000.00	\$ 135,504.00	\$ 135,504.00	\$ 150,000.00	\$ 150,000.00		
j.	Landscaping:										
j.1	- Canopy Trees	15	EA	\$ 620.00	\$ 9,300.00	\$ 432.00	\$ 6,480.00	\$ 409.00	\$ 6,135.00		
j.2	- Understory Trees	15	EA	\$ 540.00	\$ 8,100.00	\$ 405.00	\$ 6,075.00	\$ 697.00	\$ 10,455.00		
j.3	- Shrubs	48	EA	\$ 155.00	\$ 7,440.00	\$ 174.00	\$ 8,352.00	\$ 148.00	\$ 7,104.00		
k.	4" Concrete Sidewalk	5	SY	\$ 266.00	\$ 1,330.00	\$ 242.00	\$ 1,210.00	\$ 1,667.00	\$ 8,335.00		
l.	6" Concrete Apron (@ Coiled Door)	6	SY	\$ 280.00	\$ 1,680.00	\$ 311.00	\$ 1,866.00	\$ 1,453.00	\$ 8,718.00		
m.	Concrete Generator Pad	10	SY	\$ 315.00	\$ 3,150.00	\$ 495.00	\$ 4,950.00	\$ 1,065.00	\$ 10,650.00		
n.	Concrete Splash	1	SY	\$ 330.00	\$ 330.00	\$ 308.00	\$ 308.00	\$ 6,565.00	\$ 6,565.00		



Section 5, Item C.
RTIFIED AS A TRUE CORRECT
BULATION OF BIDS RECEIVED

Fleetwood Plaza Water System Improvements - 22020
City of Hendersonville, NC

BID DATE: August 10, 2023
BID TIME: 2:00 P.M.

Al. T. L.
Summit Engineering Group, Inc.

PLACE OF BID OPENING: Public Works Building
NUMBER OF BIDS RECD: 3

City of Hendersonville 305 Williams Street Hendersonville, NC 28792		Cooper Construction Co., Inc. P.O. Box 806 Hendersonville, NC 28793		Carolina Specialties Construction P.O. Box 825 Hendersonville, NC 28793		TP Howard's Plumbing Co., Inc 90 Number Nine Rd. Fairview, NC 28730		Unit Price	Total
Item No.	Description	Quantity	Unit	Unit Price	Total	Unit Price	Total	Unit Price	Total
4.	8" Crusher Run (Driveway)	80	Tons	\$ 57.50	\$ 4,600.00	\$ 35.00	\$ 2,800.00	\$ 70.00	\$ 5,600.00
5.	8" Crusher Run (Parking Area)	120	Tons	\$ 57.50	\$ 6,900.00	\$ 35.00	\$ 4,200.00	\$ 70.00	\$ 8,400.00
6.	12" HDPE N12 Stormwater Pipe	30	LF	\$ 53.00	\$ 1,590.00	\$ 35.00	\$ 1,050.00	\$ 105.00	\$ 3,150.00
7.	Abandonment of Existing Pump Station	1	LS	\$ 3,500.00	\$ 3,500.00	\$ 2,545.00	\$ 2,545.00	\$ 15,000.00	\$ 15,000.00
8.	Erosion/Sediment Control Facilities:								
a.	Grassing	1	AC	\$ 6,400.00	\$ 3,200.00	\$ 4,620.00	\$ 2,310.00	\$ 6,000.00	\$ 3,000.00
b.	Culvert Inlet Protection	2	EA	\$ 750.00	\$ 1,500.00	\$ 534.60	\$ 1,069.20	\$ 850.00	\$ 1,700.00
c.	Culvert Outlet Protection	2	EA	\$ 720.00	\$ 1,440.00	\$ 534.60	\$ 1,069.20	\$ 850.00	\$ 1,700.00
d.	Silt Fencing	500	LF	\$ 6.10	\$ 3,050.00	\$ 8.00	\$ 4,000.00	\$ 6.00	\$ 3,000.00
e.	Sediment Tube/Wattle	10	EA	\$ 300.00	\$ 3,000.00	\$ 594.00	\$ 5,940.00	\$ 115.00	\$ 1,150.00
f.	Construction Entrance/Mud Mat	1	EA	\$ 1,300.00	\$ 1,300.00	\$ 4,043.00	\$ 4,043.00	\$ 4,200.00	\$ 4,200.00
g.	Tree Protection	6	EA	\$ 110.00	\$ 660.00	\$ 116.00	\$ 696.00	\$ 850.00	\$ 5,100.00
h.	Turf Reinforcement Matting	800	SY	\$ 2.22	\$ 1,776.00	\$ 8.00	\$ 6,400.00	\$ 10.00	\$ 8,000.00
	Division II Sub-Total			\$ 851,256.00	\$ 1,139,227.86		\$ 1,171,584.00		
	TOTAL BID			\$ 1,276,330.00	\$ 1,554,560.26		\$ 1,653,000.00		



CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

SUBMITTER: Adam Murr

MEETING DATE: 09/07/2023

AGENDA SECTION: CONSENT

DEPARTMENT: Administration

TITLE OF ITEM: September 2023 Budget Amendments – *Adam Murr, Budget Manager*

SUGGESTED MOTION(S):

I move City Council adopt the budget amendments 09072023-01, 09072023-02, 09072023-03, 09072023-04, 09072023-05, 09072023-06, 09072023-07, 09072023-08, and 09072023-09 as presented.

SUMMARY:

- 09072023-01: An FY24 amendment using \$386,000 of W&S Reserves (Fund 459) to increase the Church St. Sewer Project (#19014) budget to \$1,022,000.
- 09072023-02: An FY24 amendment switching revenue sources for the Blythe (#21042) and Grove (#21043) projects from Transfers In, to Debt Proceeds, keeping appropriated budget consistent.
- 09072023-03: An FY24 amendment moving budgeted contingency to various 401k match accounts following the creation of accounts.
- 09072023-04: An FY23 amendment related to a City Ops property acquisition.
- 09072023-05: An FY23 amendment transferring \$18,000 from the General Fund and \$60,000 from the Water & Sewer Fund to increase the Health & Welfare fund due to MERP claims in FY23.
- 09072023-06: An FY23 amendment related to GASB 87 + 96 accounting rules.
- 09072023-07: An FY23 amendment for end of year audit purposes.
- 09072023-08: FY23 amendment for the Clear Creek project.
- 09072023-09: FY23 amendment for end of year audit purposes related to Edwards Park land.

BUDGET IMPACT: Detailed Above.

Is this expenditure approved in the current fiscal year budget? N/A

If no, describe how it will be funded. N/A

ATTACHMENTS:

1. FY23 and FY24 Budget Amendments 09072023-01 through 09072023-09.

TO MAYOR & COUNCIL
APPROVAL: September 07, 2023

FISCAL YEAR 2024
FORM: 09072023-01

BUDGET AMENDMENT

FUND 459 | 460

ACCOUNT NUMBER	ACCOUNT DESCRIPTION	EXISTING BUDGET	INCREASE	DECREASE	REVISED BUDGET
459-0000-470090	Fund Balance Appropriated	-	386,000	-	386,000
459-0000-598901	Transfer Out (to 460, #19014)	-	386,000	-	386,000
FUND 459	TOTAL REVENUES	-	386,000	-	386,000
	TOTAL EXPENDITURES	-	386,000	-	386,000
460-0000-470010-19014	Debt Proceeds ('23 Rev. Bond)	636,000	-	-	636,000
460-0000-470100-19014	Transfer In (from 459)	-	386,000	-	386,000
460-7055-550103-19014	Capital Outlay CIP	636,000	386,000	-	1,022,000
FUND 460	TOTAL REVENUES	636,000	386,000	-	1,022,000
	TOTAL EXPENDITURES	636,000	386,000	-	1,022,000

A budget amendment to increase the Church St. Sewer Project (#19014) for a total budget of \$1,022,000 using a \$386,000 transfer in from the Water & Sewer Capital Reserve Fund (459).

The City Manager and City Clerk certify budget ordinance amendment 09072023-01 was approved by City Council on September 07, 2023.

City Manager

Date

City Clerk

Date

TO MAYOR & COUNCIL
APPROVAL: September 07, 2023

FISCAL YEAR 2024
FORM: 09072023-02

BUDGET AMENDMENT

FUND 410

ACCOUNT NUMBER	DESCRIPTION OF ACCOUNT	EXISTING BUDGET	INCREASE	DECREASE	REVISED BUDGET
410-0000-470100-21042	Transfer In (from 010, FY23)	53,401	-	53,401	-
410-0000-470010-21042	Debt Proceeds	-	53,401	-	53,401
410-1014-550102-21042	Capital Outlay- Fees and Services	53,401	-	-	53,401
FUND 410 (Blythe)	TOTAL REVENUES	53,401	53,401	53,401	53,401
	TOTAL EXPENDITURES	53,401	-	-	53,401
410-0000-470100-21043	Transfer In (from 010, FY23)	54,700	-	54,700	-
410-0000-470010-21043	Debt Proceeds	-	54,700	-	54,700
410-1014-550102-21043	Capital Outlay- Fees and Services	54,700	-	-	54,700
FUND 410 (Grove)	TOTAL REVENUES	54,700	54,700	54,700	54,700
	TOTAL EXPENDITURES	54,700	-	-	54,700
A budget amendment changing the revenue source for the Blythe and Grove projects to proceeds of debt.					

The City Manager and City Clerk certify budget ordinance amendment 09072023-02 was approved by City Council on September 07, 2023.

City Manager

Date

City Clerk

Date

TO MAYOR & COUNCIL
APPROVAL: September 07, 2023

FISCAL YEAR 2024
FORM: 09072023-03

BUDGET AMENDMENT

FUND 010 | 020 | 021 | 060 | 064 | 067 | 068

ACCOUNT NUMBER	DESCRIPTION OF ACCOUNT	EXISTING BUDGET	INCREASE	DECREASE	REVISED BUDGET
010-0000-534999	Contingency	146,211	-	76,240	69,971
010-1002-502056	COH Retirement Match (401k)	-	9,205	-	9,205
010-1005-502056	COH Retirement Match (401k)	-	2,730	-	2,730
010-1008-502056	COH Retirement Match (401k)	-	4,265	-	4,265
010-1010-502056	COH Retirement Match (401k)	-	885	-	885
010-1014-502056	COH Retirement Match (401k)	-	3,500	-	3,500
010-1200-502056	COH Retirement Match (401k)	-	6,100	-	6,100
010-1300-502056	COH Retirement Match (401k)	-	7,175	-	7,175
010-1400-502056	COH Retirement Match (401k)	-	24,775	-	24,775
010-1502-502056	COH Retirement Match (401k)	-	4,000	-	4,000
010-1521-502056	COH Retirement Match (401k)	-	2,550	-	2,550
010-1523-502056	COH Retirement Match (401k)	-	3,000	-	3,000
010-1525-502056	COH Retirement Match (401k)	-	1,625	-	1,625
010-1555-502056	COH Retirement Match (401k)	-	5,450	-	5,450
010-1560-502056	COH Retirement Match (401k)	-	870	-	870
010-7855-502056	COH Retirement Match (401k)	-	110	-	110
FUND 010	TOTAL REVENUES	-	-	-	-
	TOTAL EXPENDITURES	-	76,240	76,240	-
020-0000-534999	Contingency	7,600	-	2,365	5,235
020-1502-502056	COH Retirement Match (401k)	-	70	-	70
020-1523-502056	COH Retirement Match (401k)	-	160	-	160
020-1525-502056	COH Retirement Match (401k)	-	95	-	95
020-1560-502056	COH Retirement Match (401k)	-	45	-	45
020-2102-502056	COH Retirement Match (401k)	-	1,860	-	1,860
020-7855-502056	COH Retirement Match (401k)	-	135	-	135
FUND 020	TOTAL REVENUES	-	-	-	-
	TOTAL EXPENDITURES	-	2,365	2,365	-

021-0000-534999	Contingency	750	-	690	60
021-1502-502056	COH Retirement Match (401k)	-	20	-	20
021-1521-502056	COH Retirement Match (401k)	-	40	-	40
021-1525-502056	COH Retirement Match (401k)	-	25	-	25
021-1556-502056	COH Retirement Match (401k)	-	20	-	20
021-2202-502056	COH Retirement Match (401k)	-	555	-	555
021-7855-502056	COH Retirement Match (401k)	-	30	-	30
FUND 021	TOTAL REVENUES	-	-	-	-
	TOTAL EXPENDITURES	-	690	690	-
060-0000-534999	Contingency	214,297	-	81,603	132,694
060-1002-502056	COH Retirement Match (401k)	-	5,176	-	5,176
060-1005-502056	COH Retirement Match (401k)	-	2,727	-	2,727
060-1008-502056	COH Retirement Match (401k)	-	9,075	-	9,075
060-1010-502056	COH Retirement Match (401k)	-	2,879	-	2,879
060-1014-502056	COH Retirement Match (401k)	-	8,766	-	8,766
060-1502-502056	COH Retirement Match (401k)	-	380	-	380
060-1521-502056	COH Retirement Match (401k)	-	1,543	-	1,543
060-1523-502056	COH Retirement Match (401k)	-	2,972	-	2,972
060-7002-502056	COH Retirement Match (401k)	-	15,318	-	15,318
060-7032-502056	COH Retirement Match (401k)	-	4,997	-	4,997
060-7035-502056	COH Retirement Match (401k)	-	5,244	-	5,244
060-7050-502056	COH Retirement Match (401k)	-	3,072	-	3,072
060-7055-502056	COH Retirement Match (401k)	-	8,535	-	8,535
060-7132-502056	COH Retirement Match (401k)	-	2,461	-	2,461
060-7135-502056	COH Retirement Match (401k)	-	2,475	-	2,475
060-7150-502056	COH Retirement Match (401k)	-	1,778	-	1,778
060-7155-502056	COH Retirement Match (401k)	-	4,205	-	4,205
FUND 060	TOTAL REVENUES	-	-	-	-
	TOTAL EXPENDITURES	-	81,603	81,603	-

064-7455-534999	Contracted Services	5,000	-	155	4,845
064-1560-502056	COH Retirement Match (401k)	-	155	-	155
FUND 064	TOTAL REVENUES	-	-	-	-
	TOTAL EXPENDITURES	-	155	155	-
067-0000-534999	Contingency	5,600	-	5,300	300
067-1008-502056	COH Retirement Match (401k)	-	325	-	325
067-1014-502056	COH Retirement Match (401k)	-	150	-	150
067-1502-502056	COH Retirement Match (401k)	-	325	-	325
067-1525-502056	COH Retirement Match (401k)	-	600	-	600
067-1555-502056	COH Retirement Match (401k)	-	1,300	-	1,300
067-7555-502056	COH Retirement Match (401k)	-	2,600	-	2,600
FUND 067	TOTAL REVENUES	-	-	-	-
	TOTAL EXPENDITURES	-	5,300	5,300	-
068-0000-534999	Contingency	29,600	-	5,910	23,690
068-1502-502056	COH Retirement Match (401k)	-	850	-	850
068-1521-502056	COH Retirement Match (401k)	-	460	-	460
068-7855-502056	COH Retirement Match (401k)	-	4,600	-	4,600
FUND 068	TOTAL REVENUES	-	-	-	-
	TOTAL EXPENDITURES	-	5,910	5,910	-

A budget amendment to move budgeted funds from Contingency accounts across various funds to appropriately budget for a Council-adopted 401k match following the creation of needed account codes.

The City Manager and City Clerk certify budget ordinance amendment 09072023-03 was approved by City Council on September 07, 2023.

City Manager

Date

City Clerk

Date

TO MAYOR & COUNCIL
APPROVAL: September 07, 2023

FISCAL YEAR 2023
FORM: 09072023-04

BUDGET AMENDMENT

FUND 060

ACCOUNT NUMBER	DESCRIPTION OF ACCOUNT	EXISTING BUDGET	INCREASE	DECREASE	REVISED BUDGET
060-7002-534000	Non-Capital Equipment	172,175	-	2,500	169,675
060-7002-551000	C/O - Land/Easement/ROW	118,500	2,500	-	121,000
FUND 060	TOTAL REVENUES	-	-	-	-
	TOTAL EXPENDITURES	-	2,500	2,500	-

An FY23 budget amendment related to the City Operations property acquisition - the amendment allocates FY23 funds for the earnest money needed from the Water and Sewer Fund (\$2,500).

The City Manager and City Clerk certify budget ordinance amendment 09072023-04 was approved by City Council on September 07, 2023.

City Manager

Date

City Clerk

Date

TO MAYOR & COUNCIL
APPROVAL: September 07, 2023

FISCAL YEAR 2023
FORM: 09072023-05

BUDGET AMENDMENT

FUND 010 | 060 | 080

ACCOUNT NUMBER	DESCRIPTION OF ACCOUNT	EXISTING BUDGET	INCREASE	DECREASE	REVISED BUDGET
010-1002-534000	Non-Capital Equipment	96,120	-	18,000	78,120
010-1002-539005	Health & Welfare Expenditures	179,785	18,000	-	197,785
FUND 010	TOTAL REVENUES	-	-	-	-
	TOTAL EXPENDITURES	-	18,000	18,000	-
060-7002-534000	Non-Capital Equipment	169,675	-	60,000	109,675
060-7002-539005	Health & Welfare Expenditures	132,241	60,000	-	192,241
FUND 060	TOTAL REVENUES	-	-	-	-
	TOTAL EXPENDITURES	-	60,000	60,000	-
080-0000-435001	H&W Charges	312,026	78,000	-	390,026
080-3101-519200	Contracted Services	93,526	-	23,400	70,126
080-3101-539006	MERP Claims - General Fund	110,400	32,200	-	142,600
080-3101-539007	MERP Claims - Water & Sewer Fund	75,500	69,200	-	144,700
FUND 080	TOTAL REVENUES	-	78,000	-	-
	TOTAL EXPENDITURES	-	101,400	23,400	-
An FY23 budget amendment to cover higher than anticipated MERP claims using resources from the General Fund and Water and Sewer Fund.					

The City Manager and City Clerk certify budget ordinance amendment 09072023-05 was approved by City Council on September 07, 2023.

City Manager

Date

City Clerk

Date

TO MAYOR & COUNCIL
APPROVAL: September 07, 2023

FISCAL YEAR 2023
FORM: 09072023-06

BUDGET AMENDMENT

FUND 010 | 060

ACCOUNT NUMBER	DESCRIPTION OF ACCOUNT	EXISTING BUDGET	INCREASE	DECREASE	REVISED BUDGET
010-0000-470025	Lease & Sub. Debt GASB 87+96	176,054	293,035	-	469,089
010-0000-470010	Debt Proceeds	521,000	396,130	-	917,130
010-1010-557001	Lease & Sub.GASB 87+96	67,522	129,610	-	197,132
010-1300-557001	Lease & Sub.GASB 87+96	-	163,425	-	163,425
010-0900-560011	Debt Prin. GASB 87+96	-	101,790	-	101,790
010-0900-560511	Debt Int. GASB 87+96	-	1,660	-	1,660
010-1010-531210	Permits, Licenses, and Fees	236,000	-	69,010	166,990
010-1300-554001	C/O - Equipment	127,000	396,130	34,440	488,690
FUND 010	TOTAL REVENUES	-	689,165	-	-
	TOTAL EXPENDITURES	-	792,615	103,450	-
060-0000-470025	Lease & Sub. Debt GASB 87+96	67,522	552,080	-	619,602
060-1010-557001	Lease & Sub.GASB 87+96	67,522	552,080	-	619,602
060-0900-560011	Debt Prin. GASB 87+96	-	118,700	-	118,700
060-0900-560511	Debt Int. GASB 87+96	-	1,655	-	1,655
060-1010-531210	Permits, Licenses, and Fees	432,000	-	120,355	311,645
FUND 060	TOTAL REVENUES	-	552,080	-	-
	TOTAL EXPENDITURES	-	672,435	120,355	-

An FY23 budget amendment correcting the General Fund and Water and Sewer Fund related to GASB 87 and 96 rules (accounting standards).

The City Manager and City Clerk certify budget ordinance amendment 09072023-06 was approved by City Council on September 07, 2023.

City Manager

Date

City Clerk

Date

TO MAYOR & COUNCIL
APPROVAL: September 07, 2023

FISCAL YEAR 2023
FORM: 09072023-07

BUDGET AMENDMENT

FUND 010 | 020 | 060

ACCOUNT NUMBER	DESCRIPTION OF ACCOUNT	EXISTING BUDGET	INCREASE	DECREASE	REVISED BUDGET
010-0900-560001	Debt Principal	1,501,267	59,000	-	1,560,267
010-1010-534000	Non-Capital Equipment	71,000	-	12,000	59,000
010-1200-519000	Contracted Services	240,000	-	97,000	143,000
010-1300-519200	Contracted Services	54,450	-	24,000	30,450
010-1300-534000	Non-Capital Equipment	135,014	-	23,000	112,014
010-1400-501001	Salaries Regular	2,290,678	46,700	-	2,337,378
010-1400-501010	Salaries Overtime	147,000	35,900	-	182,900
010-1400-501011	Salaries-Holiday	86,453	-	24,290	62,163
010-1400-501013	Salaries Halftime	78,756	2,780	-	81,536
010-1400-502001	FICA	195,070	7,000	-	202,070
010-1400-502005	Group Med & Life	412,265	9,000	-	421,265
010-1400-502050	Retirement	299,271	21,000	-	320,271
010-1400-502091	Worker's Comp Ins	53,040	600	-	53,640
010-1502-501001	Salaries Regular	308,173	4,200	-	312,373
010-1523-524020	R&M Equipmemt	11,000	-	10,000	1,000
010-1525-501002	Salaries-Board/Part Time/Temp/Aux	20,000	-	10,000	10,000
010-1555-501001	Salaries Regular	505,860	12,600	-	518,460
010-1556-524040	R&M Streets and Sidewalks	600,000	28,000	-	628,000
010-1560-501001	Salaries Regular	140,624	-	20,000	120,624
010-1560-524020	R&M Equipmemt	17,000	-	6,490	10,510
FUND 010	TOTAL REVENUES		-	-	
	TOTAL EXPENDITURES		226,780	226,780	
020-0900-560500	Debt Interest	14,366	326	-	14,692
020-2102-519104	Prof Servicees- Engring	2,000	-	326	1,674
FUND 020	TOTAL REVENUES		-	-	
	TOTAL EXPENDITURES		326	326	

060-1008-501001	Salaries Regular	707,958	7,520	-	715,478
060-1010-501001	Salaries Regular	190,551	1,095	-	191,646
060-7035-501001	Salaries Regular	679,851	2,630	-	682,481
060-7050-501001	Salaries Regular	463,093	5,270	-	468,363
060-7055-501010	Salaries Overtime	114,000	11,665	-	125,665
060-7155-501001	Salaries Regular	542,115	6,890	-	549,005
060-7155-554001	Capital Outlay- Other Than Vehicles	-	5,660	-	5,660
060-7155-555002	Capital Outlay-Line	12,140	1,250	-	13,390
060-7002-519200	Contract Services	328,990	-	41,980	287,010
FUND 060	TOTAL REVENUES		-	-	
	TOTAL EXPENDITURES		41,980	41,980	

An FY23 budget amendment making corrections for the annual audit process.

The City Manager and City Clerk certify budget ordinance amendment 09072023-07 was approved by City Council on September 07, 2023.

City Manager

Date

City Clerk

Date

TO MAYOR & COUNCIL
APPROVAL: September 07, 2023

FISCAL YEAR 2024
FORM: 09072023-01

BUDGET AMENDMENT

FUND 459 | 460

ACCOUNT NUMBER	ACCOUNT DESCRIPTION	EXISTING BUDGET	INCREASE	DECREASE	REVISED BUDGET
459-0000-470090	Fund Balance Appropriated	-	386,000	-	386,000
459-0000-598901	Transfer Out (to 460, #19014)	-	386,000	-	386,000
FUND 459	TOTAL REVENUES	-	386,000	-	386,000
	TOTAL EXPENDITURES	-	386,000	-	386,000
460-0000-470010-19014	Debt Proceeds ('23 Rev. Bond)	636,000	-	-	636,000
460-0000-470100-19014	Transfer In (from 459)	-	386,000	-	386,000
460-7055-550103-19014	Capital Outlay CIP	636,000	386,000	-	1,022,000
FUND 460	TOTAL REVENUES	636,000	386,000	-	1,022,000
	TOTAL EXPENDITURES	636,000	386,000	-	1,022,000

A budget amendment to increase the Church St. Sewer Project (#19014) for a total budget of \$1,022,000 using a \$386,000 transfer in from the Water & Sewer Capital Reserve Fund (459).

The City Manager and City Clerk certify budget ordinance amendment 09072023-01 was approved by City Council on September 07, 2023.

City Manager

Date

City Clerk

Date

TO MAYOR & COUNCIL
APPROVAL: September 07, 2023

FISCAL YEAR 2024
FORM: 09072023-02

BUDGET AMENDMENT

FUND 410

ACCOUNT NUMBER	DESCRIPTION OF ACCOUNT	EXISTING BUDGET	INCREASE	DECREASE	REVISED BUDGET
410-0000-470100-21042	Transfer In (from 010, FY23)	53,401	-	53,401	-
410-0000-470010-21042	Debt Proceeds	-	53,401	-	53,401
410-1014-550102-21042	Capital Outlay- Fees and Services	53,401	-	-	53,401
FUND 410 (Blythe)	TOTAL REVENUES	53,401	53,401	53,401	53,401
	TOTAL EXPENDITURES	53,401	-	-	53,401
410-0000-470100-21043	Transfer In (from 010, FY23)	54,700	-	54,700	-
410-0000-470010-21043	Debt Proceeds	-	54,700	-	54,700
410-1014-550102-21043	Capital Outlay- Fees and Services	54,700	-	-	54,700
FUND 410 (Grove)	TOTAL REVENUES	54,700	54,700	54,700	54,700
	TOTAL EXPENDITURES	54,700	-	-	54,700
A budget amendment changing the revenue source for the Blythe and Grove projects to proceeds of debt.					

The City Manager and City Clerk certify budget ordinance amendment 09072023-02 was approved by City Council on September 07, 2023.

City Manager

Date

City Clerk

Date

TO MAYOR & COUNCIL
APPROVAL: September 07, 2023

FISCAL YEAR 2024
FORM: 09072023-03

BUDGET AMENDMENT

FUND 010 | 020 | 021 | 060 | 064 | 067 | 068

ACCOUNT NUMBER	DESCRIPTION OF ACCOUNT	EXISTING BUDGET	INCREASE	DECREASE	REVISED BUDGET
010-0000-534999	Contingency	146,211	-	76,240	69,971
010-1002-502056	COH Retirement Match (401k)	-	9,205	-	9,205
010-1005-502056	COH Retirement Match (401k)	-	2,730	-	2,730
010-1008-502056	COH Retirement Match (401k)	-	4,265	-	4,265
010-1010-502056	COH Retirement Match (401k)	-	885	-	885
010-1014-502056	COH Retirement Match (401k)	-	3,500	-	3,500
010-1200-502056	COH Retirement Match (401k)	-	6,100	-	6,100
010-1300-502056	COH Retirement Match (401k)	-	7,175	-	7,175
010-1400-502056	COH Retirement Match (401k)	-	24,775	-	24,775
010-1502-502056	COH Retirement Match (401k)	-	4,000	-	4,000
010-1521-502056	COH Retirement Match (401k)	-	2,550	-	2,550
010-1523-502056	COH Retirement Match (401k)	-	3,000	-	3,000
010-1525-502056	COH Retirement Match (401k)	-	1,625	-	1,625
010-1555-502056	COH Retirement Match (401k)	-	5,450	-	5,450
010-1560-502056	COH Retirement Match (401k)	-	870	-	870
010-7855-502056	COH Retirement Match (401k)	-	110	-	110
FUND 010	TOTAL REVENUES	-	-	-	-
	TOTAL EXPENDITURES	-	76,240	76,240	-
020-0000-534999	Contingency	7,600	-	2,365	5,235
020-1502-502056	COH Retirement Match (401k)	-	70	-	70
020-1523-502056	COH Retirement Match (401k)	-	160	-	160
020-1525-502056	COH Retirement Match (401k)	-	95	-	95
020-1560-502056	COH Retirement Match (401k)	-	45	-	45
020-2102-502056	COH Retirement Match (401k)	-	1,860	-	1,860
020-7855-502056	COH Retirement Match (401k)	-	135	-	135
FUND 020	TOTAL REVENUES	-	-	-	-
	TOTAL EXPENDITURES	-	2,365	2,365	-

021-0000-534999	Contingency	750	-	690	60
021-1502-502056	COH Retirement Match (401k)	-	20	-	20
021-1521-502056	COH Retirement Match (401k)	-	40	-	40
021-1525-502056	COH Retirement Match (401k)	-	25	-	25
021-1556-502056	COH Retirement Match (401k)	-	20	-	20
021-2202-502056	COH Retirement Match (401k)	-	555	-	555
021-7855-502056	COH Retirement Match (401k)	-	30	-	30
FUND 021	TOTAL REVENUES	-	-	-	-
	TOTAL EXPENDITURES	-	690	690	-
060-0000-534999	Contingency	214,297	-	81,603	132,694
060-1002-502056	COH Retirement Match (401k)	-	5,176	-	5,176
060-1005-502056	COH Retirement Match (401k)	-	2,727	-	2,727
060-1008-502056	COH Retirement Match (401k)	-	9,075	-	9,075
060-1010-502056	COH Retirement Match (401k)	-	2,879	-	2,879
060-1014-502056	COH Retirement Match (401k)	-	8,766	-	8,766
060-1502-502056	COH Retirement Match (401k)	-	380	-	380
060-1521-502056	COH Retirement Match (401k)	-	1,543	-	1,543
060-1523-502056	COH Retirement Match (401k)	-	2,972	-	2,972
060-7002-502056	COH Retirement Match (401k)	-	15,318	-	15,318
060-7032-502056	COH Retirement Match (401k)	-	4,997	-	4,997
060-7035-502056	COH Retirement Match (401k)	-	5,244	-	5,244
060-7050-502056	COH Retirement Match (401k)	-	3,072	-	3,072
060-7055-502056	COH Retirement Match (401k)	-	8,535	-	8,535
060-7132-502056	COH Retirement Match (401k)	-	2,461	-	2,461
060-7135-502056	COH Retirement Match (401k)	-	2,475	-	2,475
060-7150-502056	COH Retirement Match (401k)	-	1,778	-	1,778
060-7155-502056	COH Retirement Match (401k)	-	4,205	-	4,205
FUND 060	TOTAL REVENUES	-	-	-	-
	TOTAL EXPENDITURES	-	81,603	81,603	-

064-7455-534999	Contracted Services	5,000	-	155	4,845
064-1560-502056	COH Retirement Match (401k)	-	155	-	155
FUND 064	TOTAL REVENUES	-	-	-	-
	TOTAL EXPENDITURES	-	155	155	-
067-0000-534999	Contingency	5,600	-	5,300	300
067-1008-502056	COH Retirement Match (401k)	-	325	-	325
067-1014-502056	COH Retirement Match (401k)	-	150	-	150
067-1502-502056	COH Retirement Match (401k)	-	325	-	325
067-1525-502056	COH Retirement Match (401k)	-	600	-	600
067-1555-502056	COH Retirement Match (401k)	-	1,300	-	1,300
067-7555-502056	COH Retirement Match (401k)	-	2,600	-	2,600
FUND 067	TOTAL REVENUES	-	-	-	-
	TOTAL EXPENDITURES	-	5,300	5,300	-
068-0000-534999	Contingency	29,600	-	5,910	23,690
068-1502-502056	COH Retirement Match (401k)	-	850	-	850
068-1521-502056	COH Retirement Match (401k)	-	460	-	460
068-7855-502056	COH Retirement Match (401k)	-	4,600	-	4,600
FUND 068	TOTAL REVENUES	-	-	-	-
	TOTAL EXPENDITURES	-	5,910	5,910	-

A budget amendment to move budgeted funds from Contingency accounts across various funds to appropriately budget for a Council-adopted 401k match following the creation of needed account codes.

The City Manager and City Clerk certify budget ordinance amendment 09072023-03 was approved by City Council on September 07, 2023.

City Manager

Date

City Clerk

Date

TO MAYOR & COUNCIL
APPROVAL: September 07, 2023

FISCAL YEAR 2023
FORM: 09072023-04

BUDGET AMENDMENT

FUND 060

ACCOUNT NUMBER	DESCRIPTION OF ACCOUNT	EXISTING BUDGET	INCREASE	DECREASE	REVISED BUDGET
060-7002-534000	Non-Capital Equipment	172,175	-	2,500	169,675
060-7002-551000	C/O - Land/Easement/ROW	118,500	2,500	-	121,000
FUND 060	TOTAL REVENUES	-	-	-	-
	TOTAL EXPENDITURES	-	2,500	2,500	-

An FY23 budget amendment related to the City Operations property acquisition - the amendment allocates FY23 funds for the earnest money needed from the Water and Sewer Fund (\$2,500).

The City Manager and City Clerk certify budget ordinance amendment 09072023-04 was approved by City Council on September 07, 2023.

City Manager

Date

City Clerk

Date

TO MAYOR & COUNCIL
APPROVAL: September 07, 2023

FISCAL YEAR 2023
FORM: 09072023-05

BUDGET AMENDMENT

FUND 010 | 060 | 080

ACCOUNT NUMBER	DESCRIPTION OF ACCOUNT	EXISTING BUDGET	INCREASE	DECREASE	REVISED BUDGET
010-1002-534000	Non-Capital Equipment	96,120	-	18,000	78,120
010-1002-539005	Health & Welfare Expenditures	179,785	18,000	-	197,785
FUND 010	TOTAL REVENUES	-	-	-	-
	TOTAL EXPENDITURES	-	18,000	18,000	-
060-7002-534000	Non-Capital Equipment	169,675	-	60,000	109,675
060-7002-539005	Health & Welfare Expenditures	132,241	60,000	-	192,241
FUND 060	TOTAL REVENUES	-	-	-	-
	TOTAL EXPENDITURES	-	60,000	60,000	-
080-0000-435001	H&W Charges	312,026	78,000	-	390,026
080-3101-519200	Contracted Services	93,526	-	23,400	70,126
080-3101-539006	MERP Claims - General Fund	110,400	32,200	-	142,600
080-3101-539007	MERP Claims - Water & Sewer Fund	75,500	69,200	-	144,700
FUND 080	TOTAL REVENUES	-	78,000	-	-
	TOTAL EXPENDITURES	-	101,400	23,400	-
An FY23 budget amendment to cover higher than anticipated MERP claims using resources from the General Fund and Water and Sewer Fund.					

The City Manager and City Clerk certify budget ordinance amendment 09072023-05 was approved by City Council on September 07, 2023.

City Manager

Date

City Clerk

Date

TO MAYOR & COUNCIL
APPROVAL: September 07, 2023

FISCAL YEAR 2023
FORM: 09072023-06

BUDGET AMENDMENT

FUND 010 | 060

ACCOUNT NUMBER	DESCRIPTION OF ACCOUNT	EXISTING BUDGET	INCREASE	DECREASE	REVISED BUDGET
010-0000-470025	Lease & Sub. Debt GASB 87+96	176,054	293,035	-	469,089
010-0000-470010	Debt Proceeds	521,000	396,130	-	917,130
010-1010-557001	Lease & Sub.GASB 87+96	67,522	129,610	-	197,132
010-1300-557001	Lease & Sub.GASB 87+96	-	163,425	-	163,425
010-0900-560011	Debt Prin. GASB 87+96	-	101,790	-	101,790
010-0900-560511	Debt Int. GASB 87+96	-	1,660	-	1,660
010-1010-531210	Permits, Licenses, and Fees	236,000	-	69,010	166,990
010-1300-554001	C/O - Equipment	127,000	396,130	34,440	488,690
FUND 010	TOTAL REVENUES	-	689,165	-	-
	TOTAL EXPENDITURES	-	792,615	103,450	-
060-0000-470025	Lease & Sub. Debt GASB 87+96	67,522	552,080	-	619,602
060-1010-557001	Lease & Sub.GASB 87+96	67,522	552,080	-	619,602
060-0900-560011	Debt Prin. GASB 87+96	-	118,700	-	118,700
060-0900-560511	Debt Int. GASB 87+96	-	1,655	-	1,655
060-1010-531210	Permits, Licenses, and Fees	432,000	-	120,355	311,645
FUND 060	TOTAL REVENUES	-	552,080	-	-
	TOTAL EXPENDITURES	-	672,435	120,355	-

An FY23 budget amendment correcting the General Fund and Water and Sewer Fund related to GASB 87 and 96 rules (accounting standards).

The City Manager and City Clerk certify budget ordinance amendment 09072023-06 was approved by City Council on September 07, 2023.

City Manager

Date

City Clerk

Date

TO MAYOR & COUNCIL
APPROVAL: September 07, 2023

FISCAL YEAR 2023
FORM: 09072023-07

BUDGET AMENDMENT

FUND 010 | 020 | 060

ACCOUNT NUMBER	DESCRIPTION OF ACCOUNT	EXISTING BUDGET	INCREASE	DECREASE	REVISED BUDGET
010-0900-560001	Debt Principal	1,501,267	59,000	-	1,560,267
010-1010-534000	Non-Capital Equipment	71,000	-	12,000	59,000
010-1200-519000	Contracted Services	240,000	-	97,000	143,000
010-1300-519200	Contracted Services	54,450	-	24,000	30,450
010-1300-534000	Non-Capital Equipment	135,014	-	23,000	112,014
010-1400-501001	Salaries Regular	2,290,678	46,700	-	2,337,378
010-1400-501010	Salaries Overtime	147,000	35,900	-	182,900
010-1400-501011	Salaries-Holiday	86,453	-	24,290	62,163
010-1400-501013	Salaries Halftime	78,756	2,780	-	81,536
010-1400-502001	FICA	195,070	7,000	-	202,070
010-1400-502005	Group Med & Life	412,265	9,000	-	421,265
010-1400-502050	Retirement	299,271	21,000	-	320,271
010-1400-502091	Worker's Comp Ins	53,040	600	-	53,640
010-1502-501001	Salaries Regular	308,173	4,200	-	312,373
010-1523-524020	R&M Equipmemt	11,000	-	10,000	1,000
010-1525-501002	Salaries-Board/Part Time/Temp/Aux	20,000	-	10,000	10,000
010-1555-501001	Salaries Regular	505,860	12,600	-	518,460
010-1556-524040	R&M Streets and Sidewalks	600,000	28,000	-	628,000
010-1560-501001	Salaries Regular	140,624	-	20,000	120,624
010-1560-524020	R&M Equipmemt	17,000	-	6,490	10,510
FUND 010	TOTAL REVENUES		-	-	
	TOTAL EXPENDITURES		226,780	226,780	
020-0900-560500	Debt Interest	14,366	326	-	14,692
020-2102-519104	Prof Servicees- Engring	2,000	-	326	1,674
FUND 020	TOTAL REVENUES		-	-	
	TOTAL EXPENDITURES		326	326	

060-1008-501001	Salaries Regular	707,958	7,520	-	715,478
060-1010-501001	Salaries Regular	190,551	1,095	-	191,646
060-7035-501001	Salaries Regular	679,851	2,630	-	682,481
060-7050-501001	Salaries Regular	463,093	5,270	-	468,363
060-7055-501010	Salaries Overtime	114,000	11,665	-	125,665
060-7155-501001	Salaries Regular	542,115	6,890	-	549,005
060-7155-554001	Capital Outlay- Other Than Vehicles	-	5,660	-	5,660
060-7155-555002	Capital Outlay-Line	12,140	1,250	-	13,390
060-7002-519200	Contract Services	328,990	-	41,980	287,010
FUND 060	TOTAL REVENUES		-	-	
	TOTAL EXPENDITURES		41,980	41,980	

An FY23 budget amendment making corrections for the annual audit process.

The City Manager and City Clerk certify budget ordinance amendment 09072023-07 was approved by City Council on September 07, 2023.

City Manager

Date

City Clerk

Date

TO MAYOR & COUNCIL
APPROVAL: September 07, 2023

FISCAL YEAR 2023
FORM: 09072023-08

BUDGET AMENDMENT

FUND 459 | 460

ACCOUNT NUMBER	ACCOUNT DESCRIPTION	EXISTING BUDGET	INCREASE	DECREASE	REVISED BUDGET
459-0000-470090	Fund Balance Appropriated	-	32,000	-	32,000
459-0000-598901	Transfer Out (to 460, #19014)	-	32,000	-	32,000
FUND 459	TOTAL REVENUES	-	32,000	-	32,000
	TOTAL EXPENDITURES	-	32,000	-	32,000
460-0000-470010-19014	Debt Proceeds	4,585,000	-	-	4,585,000
460-0000-470100-19014	Transfer In (from 459)	-	32,000	-	32,000
460-7055-550103-19014	Capital Outlay CIP	4,585,000	32,000	-	4,617,000
FUND 460	TOTAL REVENUES	4,585,000	32,000	-	4,617,000
	TOTAL EXPENDITURES	4,585,000	32,000	-	4,617,000
An FY23 amendmend transferring \$32,000 to the Clear Creek Sewer Interceptor proejct (#18033) from the Water and Sewer Capital Reserve Fund.					

The City Manager and City Clerk certify budget ordinance amendment 09072023-08 was approved by City Council on September 07, 2023.

City Manager

Date

City Clerk

Date

TO MAYOR & COUNCIL
APPROVAL: September 07, 2023

FISCAL YEAR 2023
FORM: 09072023-09

BUDGET AMENDMENT

FUND 410

ACCOUNT NUMBER	DESCRIPTION OF ACCOUNT	EXISTING BUDGET	INCREASE	DECREASE	REVISED BUDGET
410-0000-470100-19019	Transfer In (from 010)	415,529	-	-	415,529
410-0000-420050-19019	Grant Revenue (Stormwater)	70,000	-	-	70,000
410-0000-470010-19019	Bond Proceeds (2022 IFC)	13,691,943	-	-	13,691,943
410-1002-550103-19019	Capital Outlay - CIP	14,177,472	-	-	14,177,472
FUND 410 (Fire Station #1)	TOTAL REVENUES	14,177,472	-	-	14,177,472
	TOTAL EXPENDITURES	14,177,472	-	-	14,177,472
410-0000-470010-19019	Bond Proceeds (2022 IFC)	652,204	-	-	652,204
410-1002-550103-19019	Capital Outlay - CIP	652,204	-	-	652,204
FUND 410 (Temp. Fire Station)	TOTAL REVENUES	652,204	-	-	652,204
	TOTAL EXPENDITURES	652,204	-	-	652,204
410-0000-460090-21019	Contribution (Henderson County)	100,000	-	100,000	-
410-0000-460090-21019	Contribution (Other Agencies)	17,500	-	-	17,500
410-0000-470010-21019	Bond Proceeds (2022 IFC)	2,157,853	-	-	2,157,853
410-0000-470050-21019	Sale of Capital Assets (Land)	-	350,000	-	350,000
410-0000-470100-21019	Transfer In (From 010)	75,000	-	-	75,000
410-1002-551000-21019	Capital Outlay-Land/Easement/ROW	-	250,000	-	250,000
410-1002-550103-21019	Capital Outlay-CIP	2,350,353	-	-	2,350,353
FUND 410 (Edwards Park)	TOTAL REVENUES	2,350,353	-	-	2,600,353
	TOTAL EXPENDITURES	2,350,353	-	-	2,600,353
410-0000-470010-19021	Bond Proceeds (2022 IFC)	1,500,000	-	-	1,500,000
410-1400-550103-19021	Capital Outlay - CIP	1,500,000	-	-	1,500,000
FUND 410 (Replace HFD Ladder)	TOTAL REVENUES	1,500,000	-	-	1,500,000
	TOTAL EXPENDITURES	1,500,000	-	-	1,500,000
410-0000-470010-19020	Bond Proceeds (2022 IFC)	800,000	-	-	800,000
410-1400-550103-19020	Capital Outlay - CIP	800,000	-	-	800,000
FUND 410 (Replace HFD Engine)	TOTAL REVENUES	800,000	-	-	800,000
	TOTAL EXPENDITURES	800,000	-	-	800,000
2022 Installment Financing Subtotal					18,802,000

Other Financing Sources Subtotal	578,029
Total Project Revenues (19019, 19020, 19021, and 21019)	19,730,029
Total Project Appropriation (19019, 19020, 19021, and 21019)	19,730,029
An end of year FY23 budget amendment to prepare for the annual audit process.	

The City Manager and City Clerk certify budget ordinance amendment 09072023-09 was approved by City Council on September 07, 2023.

City Manager

Date

City Clerk

Date

Resolution #__-____

**RESOLUTION BY THE CITY OF HENDERSONVILLE CITY COUNCIL TO APPLY FOR
FUNDING FOR THE LEAD SERVICE LINE INVESTIGATION AND REPLACEMENT
PROJECT**

WHEREAS, The City of Hendersonville has need for and intends to construct, plan for, or conduct a study in a project described as Lead Service Line Investigation and Replacement.

WHEREAS, The City of Hendersonville intends to request State loan and/or grant assistance for the project.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Hendersonville, North Carolina that:

1. That City of Hendersonville, the Applicant, will arrange financing for all remaining costs of the project, if approved for a State loan and/or grant award.
2. That the Applicant will adopt and place into effect on or before completion of the project a schedule of fees and charges and other available funds which will provide adequate funds for proper operation, maintenance, and administration of the system and the repayment of all principal and interest on the debt.
3. That the governing body of the Applicant agrees to include in the loan agreement a provision authorizing the State Treasurer, upon failure of the City of Hendersonville to make scheduled repayment of the loan, to withhold from the City of Hendersonville any State funds that would otherwise be distributed to the local government unit in an amount sufficient to pay all sums then due and payable to the State as a repayment of the loan.
4. That the Applicant will provide for efficient operation and maintenance of the project on completion of construction thereof.
5. That John Connet, City Manager, the Authorized Official, and successors so titled, is hereby authorized to execute and file an application on behalf of the Applicant with the State of North Carolina for a loan and/or grant to aid in the study of or construction of the project described above.
6. That the Authorized Official, and successors so titled, is hereby authorized and directed to furnish such information as the appropriate State agency may request in connection with such application or the project: to make the assurances as contained above; and to execute such other documents as may be required in connection with the application.
7. That the Applicant has substantially complied or will substantially comply with all Federal, State, and local laws, rules, regulations, and ordinances applicable to the project and to Federal and State grants and loans pertaining thereto.

Adopted by the City Council of the City of Hendersonville, North Carolina on this seventh day of September, 2023.

Attest: _____
Barbara G. Volk, Mayor, City of Hendersonville

Jill Murray, City Clerk

Approved as to form:

Angela S. Beeker, City Attorney

CERTIFICATION BY RECORDING OFFICER

The undersigned duly qualified and acting City Clerk of the City of Hendersonville does hereby certify: That the above/attached resolution is a true and correct copy of the resolution authorizing the filing of an application with the State of North Carolina, as regularly adopted at a legally convened meeting of the City of Hendersonville City Council duly held on the seventh day of September, 2023; and, further, that such resolution has been fully recorded in the journal of proceedings and records in my office. IN WITNESS WHEREOF, I have hereunto set my hand this seventh day of September 2023.

Jill Murray, City Clerk



CITY OF HENDERSONVILLE

AGENDA ITEM SUMMARY

SUBMITTER:	Gracie Erwin	MEETING DATE:	September 7, 2023
AGENDA SECTION:	Consent Agenda	DEPARTMENT:	Utilities
TITLE OF ITEM, Presenter Name, Title:	Resolution to Apply for Funding for the Lead Service Line Investigation and Replacement Project – Gracie Erwin, Environmental Compliance Coordinator		
<u>SUGGESTED MOTION(S):</u>	I move City Council to adopt the Resolution by the City Council to apply for funding for the Lead Service Line Investigation and Replacement Project		

SUMMARY:
The North Carolina Department of Environmental Quality Division of Water Infrastructure is accepting funding applications by September 15, 2023, for State loan and/or grant assistance for water service utilities to identify and replace lead service lines. Replacement of lead service lines is a requirement from the EPA’s revised Lead and Copper Rule effective December 16th, 2021. Staff recommends applying for funding assistance for lead water service line investigation and replacement to aid the development of an accurate inventory, while being proactive and cost efficient in the replacement of any found lead service lines within the City’s distribution system. In 2022, the City’s consultant, Hazen and Sawyer, performed a desktop analysis and records review of water services in the City’s distribution system and developed a compliance strategy with recommended actions. This previous work utilized historical information and data analysis to identify 88 high priority and 167 medium priority water services and recommended field investigation methods for verification. The proposed project would investigate and replace, if needed, these high and medium priority water services.

The attached resolution is required for the funding application.

BUDGET IMPACT: \$573,419.54

Is this expenditure approved in the current fiscal year budget? No

If no, describe how it will be funded. Funding will be come from a successful application and award

ATTACHMENTS:

Resolution

Resolution #__-__

RESOLUTION BY THE CITY OF HENDERSONVILLE CITY COUNCIL TO ACCEPT FUNDING FROM THE NORTH CAROLINA DEPARTMENT OF ENVIRONMENTAL QUALITY FOR THE COMPREHENSIVE STORMWATER MASTER PLANNING PROJECT

WHEREAS, the American Rescue Plan Act (ARPA), funded from the State Fiscal Recovery Fund, was established in Session Law (S.L.) 2021-180 to assist eligible units of local government with meeting their drinking water and/or wastewater and/or stormwater infrastructure needs, and

WHEREAS, the North Carolina Department of Environmental Quality has offered LASII ARPA funding in the amount of \$400,000 to perform the work detailed in the submitted application, and

WHEREAS, the City of Hendersonville, NC intends to perform said project in accordance with the agreed scope of work,

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Hendersonville, North Carolina that:

1. That the City of Hendersonville, NC does hereby accept the ARPA grant offer of \$400.000; and
2. That the City of Hendersonville, NC does hereby give assurance to the North Carolina Department of Environmental Quality that any Conditions or Assurances contained in the Funding Offer and Acceptance (award offer) will be adhered to; has substantially complied, or will substantially comply, with all federal, State of North Carolina (State), and local laws, rules, regulations, and ordinances applicable to the project; and to federal and State grants and loans pertaining thereto; and
3. That John Connet, City Manager, and successors so titled, is hereby authorized and directed to furnish such information as the appropriate State agency may request in connection with this project; to make the assurances as contained above; and to execute such other documents as may be required by the North Carolina Department of Environmental Quality, Division of Water Infrastructure.

Adopted by the City Council of the City of Hendersonville, North Carolina on this 3rd day of August 2023.

Attest:

Barbara G. Volk, Mayor, City of Hendersonville

Jill Murray, City Clerk

Approved as to form: _____Angela S. Beeker, City Attorney



CITY OF HENDERSONVILLE

AGENDA ITEM SUMMARY

SUBMITTER:

Michael Huffman

MEETING DATE:

September 7, 2023

AGENDA SECTION:

CONSENT

DEPARTMENT:

Eng. - Stormwater

TITLE OF ITEM,
Presenter Name, Title:

Resolution Accepting Award of DEQ LASII Planning Funds – *Michael Huffman, Stormwater Division Manager*

SUGGESTED MOTION(S):

I move City Council approve the resolution to accept funding from the NCDEQ LASII program in the amount of \$400,000

SUMMARY: The City of Hendersonville, NC was awarded \$400,000 in funding through the NCDEQ Local Assistance for Stormwater Infrastructure Investments program to support the Comprehensive Stormwater Master Plan project. The grant agency has requested a resolution from the City Council accepting the award of these funds.

BUDGET IMPACT: \$400,000

Is this expenditure approved in the current fiscal year budget? Yes

If no, describe how it will be funded.

PROJECT NUMBER: 22016

PETITION NUMBER: N/A

ADDITIONAL PETITION NUMBER: N/A

PETITIONER NAME: N/A

ATTACHMENTS:

082823 Council Resolution_Approval of LASII Planning Funds



NORTH CAROLINA
Environmental Quality

Section 5, Item F.

ROY COOPER

Governor

ELIZABETH S. BISER

Secretary

SHADI ESKAF

Director

August 18, 2023

Mr. John Connet
City of Hendersonville
160 6th Ave E.
Hendersonville, North Carolina 28792

Subject: Preliminary Project-Scope Approval &
Transmittal of Offer-and-Acceptance Funding Award
Stormwater Planning Grant
Hendersonville Comprehensive Stormwater Master
Plan
DWI Project No(s): SRP-SW-ARP-0034

Dear Mr. Connet:

The Division of Water Infrastructure (**Division**) has reviewed the recently submitted preliminary project scope information, and we have no objections concerning the document(s) provided. Therefore, we are pleased to inform you the preliminary scoping document is approved herein.

In addition, with this document's approval, the above-referenced project, thusly, is now authorized to receive its intended *American Rescue Plan Act (ARPA)* funding, provided from the State Fiscal Recovery Fund (SFRF), as established in Session Law (S.L.) 2021-180 please note projects funded from the SFRF must meet applicable federal law and guidance for the ARPA funds. *The ARPA grant funding will cover one hundred percent (100%) of eligible, stormwater study, design or plan costs from the S.L. 2021-180 appropriation.*

Accordingly, enclosed are two (2) copies of an "offer-and-acceptance" document extending the **City of Hendersonville** a **funding award** in the total amount of **\$400,000**. This award is made by the Division subject to the "Assurances" and "Conditions" set forth in the enclosed offer-and-acceptance document.

Upon your acceptance, please submit the following items to the Division, and addressed directly to the attention of **Pam Whitley**, Division of Water Infrastructure, 1633 Mail Service Center, Raleigh NC 27699-1633 (Pam.Whitley@deq.nc.gov):

1. A resolution (sample copy attached), adopted by your governing body, accepting the ARPA grant offer, and making the applicable assurances contained therein; and
2. One (1) original copy of the "offer-and-acceptance" document, executed by the designated Authorized Representative for the project, along with the signed "Standard Conditions" and "Assurances". Please retain the fully executed, second original copy for your files.

Reimbursement requests must be prepared using our standardized reimbursement-request form. A reference copy of this form has been enclosed for your convenience. You are free to reproduce this form should



North Carolina Department of Environmental Quality | Division of Water Infrastructure
512 N. Salisbury Street | 1633 Mail Service Center | Raleigh, North Carolina 27699-1633
919.707.9160

Mr. Connet
City of Hendersonville
August 18, 2023
Page 2 of 2


additional copies be needed. Reimbursement requests shall be forwarded to a DWI Accountant at dwibusinessoffice@deq.nc.gov. *Once work referenced within the approved scoping document commences, an updated, fully-completed, current and signed/dated copy of our Reimbursement Request Form must be submitted with all reimbursement requests.*

Finally, regarding reimbursements, please note the following:

Disbursement is based on the progress made on the project. To obtain payment, you must document the expenditures for which the payment is requested. Final disbursement (10%) will be made only after receiving a final deliverables documenting the completion and findings of the study, as approved herein. **All costs incurred prior to March 3, 2021, are not eligible for ARPA funds, and all ARPA funds must be expended prior to December 31, 2026.**

On behalf of the Department of Environmental Quality, I am pleased to make this offer of ARPA funds, made available by the SFRF. If you have any questions, please contact Jason Robinson, P.E., by telephone at 919.707.3887 or by e-mail at jason.t.robinson@deq.nc.gov.

Sincerely,

DocuSigned by:

6309A872077B4C5...
Shadi Eskaf, Director
Division of Water Infrastructure, NCDEQ

Enclosures: ARPA Grant Offer-and-Acceptance Document (2 copies)
Reimbursement-Request Form
Resolution-to-Accept ARPA Grant Offer (suggested format)
Professional Engineering Services Procurement Certification

cc: John Connet, City of Hendersonville (via email at jconnet@hvlnc.gov)
Lisa Wells, P.E., WK Dickson, Raleigh (via email at lwells@wkdickson.com)
Tom Murray, P.E., WK Dickson, Raleigh (via email at tmurray@wkdickson.com)
Antonio V. Evans, P.E. (DWI, via e-mail)
Mark Hubbard, P.E. (DWI, via e-mail)
Jason Robinson, P.E. (DWI, via e-mail)
Karin Britt (DWI, via e-mail)
DWI Administrative Unit (DWI, via e-mail)
Pam Whitley (DWI, via e-mail)
Jennifer House (DWI, via e-mail)
ARPA File (EREID – ERAL)
Project Agreement #: 2000067017

**STATE OF NORTH CAROLINA
DEPARTMENT OF ENVIRONMENTAL QUALITY
DIVISION OF WATER INFRASTRUCTURE**

Funding Offer and Acceptance – Stormwater Planning Grant

Legal Name and Address of Award Recipient (i.e., Applicant): City of Hendersonville
160 6th Ave E.
Hendersonville, North Carolina 28792

Project Number: SRP-SW-ARP-0034
UEID#: PNGBNJ8ALA81
Assistance Listing Number: 21.027

Funding Program:

Drinking Water	<input type="checkbox"/>	Additional Amount for Funding Increases	Previous Total	Total Offered
Stormwater	<input checked="" type="checkbox"/>			
Wastewater	<input type="checkbox"/>			
American Rescue Plan Act (ARPA) Grant	<input checked="" type="checkbox"/>	--	--	\$400,000

Project Description:

Hendersonville Comprehensive Stormwater
Master Plan

Total Financial Assistance Offer: **\$400,000**
Total Project Cost: **\$500,000**
Estimated Closing Fee: **\$ - 0 -**

Pursuant to North Carolina Session Law 2021-180:

- The Applicant is eligible under Federal and State law;
- The Project is eligible under Federal and State law; and
- The Project has been approved by the Department of Environmental Quality as having sufficient priority to receive financial assistance.

The Department of Environmental Quality, acting on behalf of the State of North Carolina, hereby offers the financial assistance described in this document.

For The State of North Carolina: **Shadi Eskaf, Director, Division of Water Infrastructure**
North Carolina Department of Environmental Quality

DocuSigned by:



8/24/2023

Signature

Date

On Behalf of:

City of Hendersonville

Name of Representative in Resolution:

Title (Type or Print):

I, the undersigned, being duly authorized to take such action, as evidenced by the attached CERTIFIED COPY OF AUTHORIZATION BY THE APPLICANT'S GOVERNING BODY, do hereby accept this Financial Award Offer and will comply with the Assurances and the Standard Conditions.

Signature

Date

STANDARD CONDITIONS

1. Acceptance of this funding offer does not exempt the Applicant from complying with requirements stated in the U.S. Treasury's [Final Rule](#) for the Coronavirus State and Local Fiscal Recovery Funds (SLFRF) and the [SLFRF Compliance and Reporting Guidance](#) (not explicitly referred to in this document) and any future requirements implemented by the U.S. Treasury.
2. Applicants shall comply fully with Subpart C of 2 CFR Part 180 entitled, "Responsibilities of Participants Regarding Transactions Doing Business with Other Persons," as implemented and supplemented by 2 CFR Part 1532. The Applicant is responsible for ensuring that any lower-tier-covered transaction, as described in Subpart B of 2 CFR Part 180, entitled "Covered Transactions," includes a term or condition requiring compliance with Subpart C. The Applicant is responsible for further requiring the inclusion of a similar term or condition in any subsequent, lower-tier-covered transactions. Applicants may access suspension and debarment information at: <http://www.sam.gov>. This system allows applicants the means to perform searches determining whether an entity or individual is excluded from receiving federal assistance.
3. The Uniform Guidance 2 CFR 200.317 through 2 CFR 200.327 gives minimum requirements for procurement, with 2 CFR 200.319(b) addressing engineering services procurement guidelines. ARPA-funded projects also must adhere to North Carolina (NC) State law, specifically NC General Statute (NCGS) §143-64.31, Article 3D, Procurement of Architectural, Engineering, and Surveying (A/E) Services. NCGS §143-64.32 cannot be used to exempt funding recipients (i.e., applicants) from a qualification-based selection for A/E. The State provides applicable certification forms that must be completed prior to receiving funds for any engineering services covered under this funding offer.
4. Local government units designated as "distressed" must complete the associated requirements of NCGS §159G-45(b).
5. Funds made available by the ARPA to the entity accepting the funds in this document (i.e., the Applicant) must only cover eligible costs incurred on or after March 3, 2021. Funds that are not disbursed by December 31st, 2026, will no longer be available for the project. Unused federal funds will revert from the State of North Carolina to the U.S. Treasury.

ASSURANCES

- 1. The Applicant intends to complete the project in accordance with the Application approved for financial assistance by the Division of Water Infrastructure.
- 2. The Applicant is responsible for paying for those costs ineligible for ARPA funding including, but not limited to, any amount in excess of the amount of this funding offer. The Applicant agrees to establish and to maintain a financial management system that adequately accounts for revenues and expenditures. Adequate accounting and fiscal records shall be maintained during the completion of the project, and these records shall be retained and made available for a period of at least three (3) years following completion of the project.
- 3. All ARPA funds shall be expended solely for carrying out the approved project, and an audit shall be performed in accordance with NCGS §159-34. Partial disbursements on this Award will be made promptly, upon request, subject to adequate documentation of incurred eligible costs, and subject to the Applicant’s compliance with the Standard Conditions of this Award. The Applicant agrees to make prompt payment to its professional services’ provider(s), and to retain only such amount(s) as allowed by NCGS.
- 4. The Applicant shall expend all of the requisitioned funds for the purpose of paying the costs of the project within three (3) banking days following the receipt of the funds from the State.
- 5. Funds must be spent fully (i.e., fully reimbursed to the Applicant) by December 31st, 2026.

Acknowledgement of Standard Conditions and Assurances

The Applicant hereby gives assurance to the Department of Environmental Quality that the declarations, assurances, representations, and statements made by the Applicant in the Application, and all documents, amendments, and communications filed with the Department of Environmental Quality by the Applicant in support of its request for financial assistance, shall be fulfilled.

..... Signature Date
--------------------	---------------

REIMBURSEMENT REQUEST FORM

NC Division of Water Infrastructure

Funding Recipient: _____
DWI Project No. _____

Payment No. _____ Page No. _____
Period Covered From: _____ To: _____

CONSTRUCTION <i>(Rename as appropriate)</i>	Cumulative Cost to Date	Minus Ineligibles	Minus Overruns Not App'd By Change Order	Subtotal of Payable Cost	Minus Retainage on Payable Cost	Minus Cumulative Sales Tax	Other Adjustments (Other Funds e.g.)	Minus Previously Paid to Date	Requested For This Pay Request
Contract 1	\$1,200,000	(\$100,000)	(\$100,000)	\$1,000,000	(\$50,000)	(\$50,000)	(\$500,000)	(\$300,000)	\$100,000
Contract 2	\$505,000		(\$5,000)	\$500,000	(\$25,000)	(\$10,000)		(\$400,000)	\$65,000
Contract 3									
Contract 4									
Contract 5									
ENGINEERING <i>(Rename as appropriate)</i>	Cumulative Cost to Date						Other Adjustments (Other Funds e.g.)	Minus Previouslly Paid to Date	Requested For This Pay Request
Item 1	\$250,000							(\$250,000)	\$0
Item 2									
Item 3									
Item 4									
OTHER COSTS <i>(Rename as Appropriate)</i>	Cumulative Cost to Date						Other Adjustments (Other Funds e.g.)	Minus Previously Paid to Date	Requested For This Pay Request
Item 1									
Item 2									
Item 3									
PAY REQUEST TOTALS	Cumulative Cost to Date	Minus Ineligibles	Minus Overruns Not App'd By Change Order		Minus Retainage on Payable Cost	Minus Cumulative Sales Tax	Other Adjustments (Other Funds e.g.)	Minus Previously Paid to Date	Total Requested For This Pay Request
	\$1,955,000	(\$100,000)	(\$105,000)		(\$75,000)	(\$60,000)	(\$500,000)	(\$950,000)	\$165,000

Certification

- I certify that to the best of my knowledge and belief the billed costs or disbursements are in accordance with terms of the project and that this request represents the monies due which have not been previously received and that an inspection has been performed and all work is in accordance with the terms and conditions of the award.

- For applicable SRF projects, the project remains in compliance with Davis-Bacon and American Iron and Steel conditions or is the process of remediating noncompliance.

Grant Percentage for SRF Projects: _____ %

You must check ONE of the boxes below or your payment will not be processed:

The funds requested above have already been paid to the respective vendors, consultants & contractors by the funding recipient ☐

OR

The funds requested above have not been paid to the respective vendors, consultants & contractors.
Funds received from the State will be disbursed to these entities within three (3) banking days. ☐

Type or Print Name and TitleSignature of Authorized RepresentativeDate

DWI comments

Instructions and notes on how to use this form

- Complete guidance for preparing reimbursements can be found in section G.2. of the North Carolina SRF Program Overview and Guidance that was included with your Funding offer (applicable to State grants and loans too) .
- **The form, as downloaded, is filled out with sample numbers. It is suggested that the sample be used as a reference (saved or printed).**
- Please submit ONE COPY of this form and backup documents when requesting funds.
- Only the Authorized Representative can sign this form, unless declared otherwise in a resolution.
- Construction contract line item overruns and engineering contract overruns must have approved change orders or engineering amendments before those costs will be paid.

(Suggested Format)

RESOLUTION BY GOVERNING BODY OF RECIPIENT

- WHEREAS,** the American Rescue Plan Act (ARPA), funded from the State Fiscal Recovery Fund, was established in Session Law (S.L.) 2021-180 to assist eligible units of local government with meeting their drinking water and/or wastewater and/or stormwater infrastructure needs, and
- WHEREAS,** the North Carolina Department of Environmental Quality has offered LASII ARPA funding in the amount of \$ _____ to perform the work detailed in the submitted application, and
- WHEREAS,** the **(unit of local government)** intends to perform said project in accordance with the agreed scope of work,

NOW, THEREFORE, BE IT RESOLVED BY THE (GOVERNING BODY'S NAME) OF THE (UNIT OF LOCAL GOVERNMENT):

That the **(unit of local government)** does hereby accept the ARPA grant offer of \$ _____; and

That the **(unit of local government)** does hereby give assurance to the North Carolina Department of Environmental Quality that any *Conditions* or *Assurances* contained in the *Funding Offer and Acceptance* (award offer) will be adhered to; has substantially complied, or will substantially comply, with all federal, State of North Carolina (State), and local laws, rules, regulations, and ordinances applicable to the project; and to federal and State grants and loans pertaining thereto; and

That **(name and title of authorized representative)**, and successors so titled, is hereby authorized and directed to furnish such information as the appropriate State agency may request in connection with this project; to make the assurances as contained above; and to execute such other documents as may be required by the North Carolina Department of Environmental Quality, Division of Water Infrastructure.

Adopted this the **(date adopted)** at **(place)**, North Carolina.

(Signature of Chief Executive Officer)

Date

NC DEQ Division of Water Infrastructure Professional Engineering Services Procurement

Section 602(b)(14) of the Clean Water Act requires projects receiving Clean Water State Revolving Fund funding to comply with engineering procurement guidelines. North Carolina Session Law 2021-180 authorizes the Division of Water Infrastructure (Division) to award grant funds from the American Rescue Plan Act (ARPA) State Fiscal Recovery Fund for drinking water, wastewater, and stormwater infrastructure projects. The Uniform Guidance 2 CFR 200.317 through 2 CFR 200.327 gives minimum requirements for procurement, with 2 CFR 200.319(b) addressing engineering services procurement guidelines.

To comply, you must follow North Carolina General Statute 143-64.31, Article 3D Procurement of Architectural, Engineering, and Surveying Services. You cannot exempt yourself using NCGS 143-64.32. Complete and sign this form and provide the information indicated to ensure that engineering services for your project are eligible for reimbursement.

Applicant: [Click or tap here to enter text.](#)

Project Name: [Click or tap here to enter text.](#)

Division Funding Number: [Click or tap here to enter text.](#)

- 1) List the basic services being provided: (i.e., planning, design, inspection etc.)
[Click or tap here to enter text.](#)
- 2) Describe the method of announcement for the project.
[Click or tap here to enter text.](#)
- 3) List the firms the announcement was discussed with or that proposals were received from in order of quality.
[Click or tap here to enter text.](#)
- 4) Was a contract negotiated with the best qualified firm? ☐ Yes ☐ No (Check one)
If no, explain why.
[Click or tap here to enter text.](#)

NOTE: Documentation of Qualification-Based-Selection of Engineering Services shall be provided to the Division upon request (to include announcement and qualifications requested).

By signing below, I [Click or tap here to enter text.](#), the Authorized Representative designated for this project in the project application, attest that the contract pricing, as seen in the attached contract(s), contains pricing that is fair and reasonable based on scope, complexity, professional nature, and the estimated value of the services being provided and the firm selected, was selected based on their qualifications.

(signed name, title and date)

(DWI staff use only – Check and initial here if debarment status checked and firm is NOT debarred ☐ _____)

Clean Water Act, Section 602(b)(14)	<p>(14) a contract to be carried out using funds directly made available by a capitalization grant under this title for program management, construction management, feasibility studies, preliminary engineering, design, engineering, surveying, mapping, or architectural related services <u>shall be negotiated in the same manner as a contract for architectural and engineering services is negotiated under chapter 11 of title 40, United States Code, or an equivalent State qualifications-based requirement (as determined by the Governor of the State).</u></p> <p>From: water resources reform and development act guidance.pdf (epa.gov) <i>The requirements of 40 U.S.C. 1101 et seq. are:</i></p> <ul style="list-style-type: none"> • <i>Public announcement of the solicitation (e.g., a Request for Qualifications);</i> • <i>Evaluation and ranking of the submitted qualifications statements based on established, publicly available criteria (e.g., identified in the solicitation); o Evaluation criteria should be based on demonstrated competence and qualification for the type of professional services required (e.g., past performance, specialized experience, and technical competence in the type of work required);</i> • <i>Discussion with at least three firms to consider anticipated concepts and compare alternative methods for furnishing services;</i> • <i>Selection of at least three firms considered to be the most highly qualified to provide the services required; and</i> • <i>Contract negotiation with the most highly qualified firm to determine compensation that is fair and reasonable based on a clear understanding of the project scope, complexity, professional nature, and the estimated value of the services to be rendered;</i> <ul style="list-style-type: none"> ▪ <i>In the event that a contract cannot be negotiated with the most highly qualified firm, negotiation continues in order of qualification.</i>
Uniform Guidance 2 CFR 200.319(b)	<p>Competition.</p> <p>The non-Federal entity must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts state licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.</p>
NC General Statute 143-64.31	<p>Procurement of Architectural, Engineering, and Surveying Services (NC “Mini-Brooks”)</p> <p>...It is the public policy of this State... and Local Governmental Units..., to announce all requirements for architectural, engineering, surveying, construction management at risk services, design-build services,..., to select firms qualified to provide such services on the basis of demonstrated competence and qualification for the type of professional services required without regard to fee other than unit price information at this stage, and thereafter to negotiate a contract for those services at a fair and reasonable fee with the best qualified firm. If a contract cannot be negotiated with the best qualified firm, negotiations with that firm shall be terminated and initiated with the next best qualified firm. ...</p>

<p>NC General Statute 143-64.32</p>	<p><u>NOTE: CWSRF and ARPA funding: NCGS 143-64.32 cannot be used to exempt a local government unit from abiding by NCGS 143-63.31. This is because there is no minimum dollar exemption allowed in the Federal Brooks Act, the Clean Water Act Section 602(b)(14), or 2 CFR 200.319.</u></p> <p>Written exemption of particular contracts.</p> <p>Units of local government or the North Carolina Department of Transportation may in writing exempt particular projects from the provisions of this Article in the case of proposed projects where an estimated professional fee is in an amount less than fifty thousand dollars (\$50,000). (1987, c. 102, s. 2; 2013-401, s. 2.)</p>
<p>21 NCAC 56.0701(f)</p>	<p>SECTION .0700 – RULES OF PROFESSIONAL CONDUCT, adopted in accordance with NC General Statute 89C-20 (Board Rules for Professional Engineers, etc.)</p> <p>(f) A licensee shall solicit or accept work only on the basis of qualifications and:</p> <ul style="list-style-type: none"> (1) Shall not offer to pay, either directly or indirectly, any commission, political contribution, gift, or other consideration in order to secure work, exclusive of securing salaried positions through employment agencies; (2) Shall compete for employment on the basis of professional qualification and competence to perform the work. The licensee shall not solicit or submit proposals for professional services containing a false, fraudulent, misleading, deceptive or unfair statement or claim regarding the cost, quality or extent of services to be rendered; (3) Shall, with regard to fee bidding on public projects, comply with the provisions of G.S. 143-64.31 et seq., (or for federal projects, the Brooks Act, 40 U.S. Code 541 et seq.) and shall not knowingly cooperate in a violation of any provision of G.S. 143-64.31 et seq. (or of 40 U.S. Code 541 et seq.); <p>...</p>



CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

SUBMITTER: John Connet

MEETING DATE: 9/7/2023

AGENDA SECTION: CONSENT

DEPARTMENT: Administration

TITLE OF ITEM: Consideration of Resolution of Support to Name the U.S. 64 Bridge in Honor of Deputy Ryan P. Hendrix – *Jennifer Hensley, Council Member*

SUGGESTED MOTION(S):

I move that the City Council adopt the resolution of support to name the U.S. 64 bridge in honor of Ryan P. Hendrix.

SUMMARY:

Henderson County Sheriff's Department has submitted an application to name the U.S. 64 bridge that crosses I-26 in honor of Ryan P. Hendrix. Deputy Hendrix was killed in the line of duty. The application require resolutions of support from the City of Hendersonville and Henderson County.

BUDGET IMPACT: \$

Is this expenditure approved in the current fiscal year budget? NA

If no, describe how it will be funded. NA

ATTACHMENTS:

Proposed Resolution

Resolution # R-23-__

**RESOLUTION OF SUPPORT ENDORSING BRIDGE NAMING
IN HONOR OF DEPUTY RYAN P. HENDRIX**

WHEREAS, the Henderson County Sheriff's Office has requested the North Carolina Department of Transportation (NCDOT) to name the US64 bridge over Interstate 26 in honor of Deputy Ryan P. Hendrix; and

WHEREAS, Deputy Ryan P. Hendrix was killed in the line of duty in service to the citizens of Henderson County on September 10, 2020; and

WHEREAS, in 2004 Deputy Ryan P. Hendrix enlisted with the United States Marine Corps and volunteered to serve a tour of duty in Iraq in 2006; and

WHEREAS, Deputy Ryan P. Hendrix began his career with the Henderson County Sheriff's Office as a Detention Officer in June 2012, and rose through the ranks as a patrol deputy, a field training officer, an active member of the SWAT team and was assigned as a Patrol Detective on his squad; and

WHEREAS, even in death, Deputy Ryan P. Hendrix continued to exemplify a servant's heart, as an organ donor helping countless strangers; and

WHEREAS, NCDOT requires a Resolution of Support from local governing boards to consider the bridge naming request.

NOW, THEREFORE, BE IT RESOLVED the City Council of the City of Hendersonville offers its support and endorses the naming of the US64 bridge over Interstate 26 in honor of Deputy Ryan P. Hendrix.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the City of Hendersonville to be affixed.

Adopted this, the 7th day of September, 2023.

Attest:

Barbara G. Volk, Mayor, City of Hendersonville

Jill Murray, City Clerk

Approved as to form:

Angela S. Beeker, City Attorney

Resolution # _____

**RESOLUTION BY THE CITY OF HENDERSONVILLE CITY COUNCIL TO
AUTHORIZE THE SOLE-SOURCE PURCHASE OF CHLORINE FOR THE WATER
TREATMENT PLANT**

WHEREAS, the City's Water Treatment Plant utilizes Chlorine; and,

WHEREAS, Chlorine is required by the state for certain levels in the treatment train for certain CT/Contact Times and a certain residual level must be maintained in the distribution system; and,

WHEREAS, there are no other suppliers in our region. If we did go outside of our region – product availability, cost, safety, and would be an issue; and,

WHEREAS, requesting department has been looking for additional chlorine suppliers each year. When current staff took over position, staff was informed by other staff that there weren't any suppliers/vendors close enough that could provide chlorine in the containers nor amount used by the City. Requesting department has made several attempts to locate additional suppliers and has inquired to everyone in the industry contacts – with no success. Attached are example emails of the latest search efforts. Additionally, requesting department has also brought in Brenntag chemical in the past to look things over. It was learned that the vendor is unable to supply the amount needed by the City in ton containers and is not equipped to supply currently. This was basically the only lead requesting department had, and this vendor is not located in NC. The others with applicable capabilities were in either Florida or South Georgia. They, however, have to keep their regional customers supplied, so the City would not have a place of priority if that route was selected. The cost would also be higher due to shipping. In addition to increased cost, this distance is not in line with best safety practices; and,

WHEREAS, the City's RMP Risk Management Plan (which is filed with the USEPA, NCDEQ) and Emergency Management require certain safety training along with training at City facilities to be documented. The inspectors are more pleased when you stick with the same vendor as much as possible from a safe handling aspect.; and,

WHEREAS, Overall, there are no other viable options other than JCI Jones Chemical (out of Charlotte, NC) who can provide chlorine gas in the ton containers and in the volume the City requires for water treatment disinfection at the City's 12 million per gallon a day rated water treatment facility. The City uses 2000 lb. cylinders and one ton will last about 10 days. The City's maximum allowed facility storage amount at any one time is 8 tons/16,000 lbs. This is regulated by the State and Federal government. The current market price is \$2,158 per ton delivered. The volatile market is continuing at this time. The City also has much email documentation regarding extensive market volatility and price increases over the past year. Due to the cost escalation in the current market, chlorine costs are now exceeding formal bid thresholds. Costs have nearly quadrupled over the past year. Therefore, we are seeking council approval to continue use of JCI Jones Chemicals in order to ensure that we are able to consistently source this chemical safely and to ensure effective operation of our facilities; and,

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Hendersonville, North Carolina that the City's Water Treatment Plant is authorized to continue to utilize JCI Chemical as the source for Chlorine.

Adopted by the City Council of the City of Hendersonville, North Carolina on this 1st day of September 7, 2023.

Attest:

Barbara G. Volk, Mayor, City of Hendersonville

Jill Murray, City Clerk

Approved as to form:

Angela S. Beeker, City Attorney

market price is \$2,158 per ton delivered. The volatile market is continuing at this time. The City also has much email documentation regarding extensive market volatility and price increases over the past year. Due to the cost escalation in the current market, chlorine costs are now exceeding formal bid thresholds. Costs have nearly quadrupled over the past year. Therefore, we are seeking council approval to continue use of JCI Jones Chemicals in order to ensure that we are able to consistently source this chemical safely and to ensure effective operation of our facilities. See attachments for further details.

BUDGET IMPACT: \$64,000.00

Is this expenditure approved in the current fiscal year budget? Yes

ATTACHMENTS:

Resolution

Proclamation

Childhood Cancer Awareness Month

WHEREAS, the month of September is designated as National Childhood Cancer Awareness Month and serves as an outlet to honor the young lives taken too soon, and as a means to increase public awareness of this disease affecting children across the United States; and

WHEREAS, childhood cancer is the leading cause of death by disease in children with 1 in 260 children in the United States being diagnosed by their 20th birthday; and

WHEREAS, the average age of diagnosis is 6 years old, compared to 66 years for adults' cancer, 80% of childhood cancer patients are diagnosed late and with metastatic disease; and

WHEREAS, in 2018, 47 children per day or 17,293 children (age 0-19) were diagnosed with cancer in the U.S. More than 95% of childhood cancer survivors will have chronic health conditions as a result of their treatment toxicity, with one quarter being classified as severe to life-threatening; and

WHEREAS, approximately one half of childhood cancer families rate the associated financial toxicity due to out-of-pocket expenses as considerable to severe; and

WHEREAS, in the last 20 years only four new drugs have been approved by the FDA to specifically treat childhood cancer, and

WHEREAS, recognizing the unique research needs of childhood cancer and the associated need for increased funding is critical to allow healthcare professionals to work diligently dedicating their expertise to treat and cure children with cancer; and

WHEREAS, many parents and family members feel terrified and are overwhelmed following a child's cancer diagnosis therefore it is important to encourage additional non-profit organizations at the local and national level to assist children with cancer and their families in coping through educational, emotional and financial support.

NOW, THEREFORE, I, Barbara Volk, Mayor of the City of Hendersonville hereby proclaim the month of September, 2023 as

"Childhood Cancer Awareness Month"

in the City of Hendersonville and I encourage citizens, government agencies, private businesses, nonprofit organizations, the media, and other interested groups to increase awareness of what citizens can do to support the fight against childhood cancer.

PROCLAIMED this 7th day of September, 2023.

Seal



Barbara G. Volk
Barbara G. Volk, Mayor
City of Hendersonville

Attest:
Jill Murray
Jill Murray, City Clerk
City of Hendersonville

ATTACHMENTS:	<ol style="list-style-type: none"> 1. Ordinance 2. Signed Certificate of Sufficiency 3. Signed Resolution setting public hearing 4. Annexation Plat 5. Typed legal description 6. GIS map 7. Deeds 8. Annexation Applications
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Ordinance #____-____

**AN ORDINANCE OF THE CITY OF HENDERSONVILLE CITY COUNCIL TO EXTEND
THE CORPORATE LIMITS OF THE CITY AS A CONTIGUOUS ANNEXATION**

IN RE: Petition for Contiguous Annexation
Parcel Number: 9569-47-1183 and 9569-47-2203.
2203 and 2205 N. Stoney View Court (File# C23-61-ANX)

WHEREAS, The City of Hendersonville has been petitioned by Chris Miller, Manager of Bullets Contracting, LLC pursuant to North Carolina General Statutes (NCGS) 160A-31, as amended, to annex the area described herein below; and

WHEREAS, the City Clerk has investigated and certified the sufficiency of said petition; and,

WHEREAS, a public hearing on the question of this annexation was held at 305 Williams Street (City Operations Center), Hendersonville, NC at 5:45 pm, on the 7th day of September 2023, after due notice by publication as provided by law on August 20th, 2023; and

WHEREAS, the City Council further finds the areas described therein meets the standards of N.C. G.S. 160A-31.

WHEREAS, the City further finds that the petition has been signed by all the owners of real property in the area who are required by law to sign; and

WHEREAS, the City further finds that the petition is otherwise valid, and that the public health, safety and welfare of the City and of the area proposed for annexation will be best served by annexing the area described;

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Hendersonville, North Carolina that:

- 1: By virtue of the authority granted by N.C.G.S. 160A-31, as amended, the following described contiguous area is hereby annexed and made part of the City of Hendersonville as of the 7th day of September 2023.

Being all of that real property consisting of PINs 9569-47-1183 and 9569-47-2203 described in the plat recorded in Book 2023- _____ [to be inserted at recording of the plat] of the Henderson County Registry, said PINs 9569-47-1183 and 9569-47-2203 being described by metes and bounds as follows:

Being Lots 3 & 4 of Block A of Stoney Crest Subdivision, as shown on the plat thereof recorded in Plat Cabinet C at Slide 23, in the Office of the Register of Deeds for Henderson County, North Carolina, and being more particularly described as follows:

Beginning at a point on the northwestern right of way line of North Stone View Court at the common corner of Lots 4 & 5 of the aforementioned subdivision; thence along the common line between Lots 4 & 5 running North 74°31'01" West for 141.80 feet to a point on the southeastern limits of the City of Hendersonville; thence along the southeastern limits of the City of Hendersonville the following three (3) course to wit: (1) North 15°23'02" East for 74.40 feet; (2) North 14°50'43" East for 24.81 feet; (3) North 14°50'43" East for 99.55 feet to a point at common corner of Lots 2 & 3 of the aforementioned subdivision; thence leaving the limits of the City of Hendersonville and along the common line between Lots 2 & 3 running South 74°39'12" East for 141.09 feet to a point on the Northwestern right of way line of North Stone View Court; thence along the northwestern right of way line of North Stone View Court the following two (2) courses to wit: (1) South 14°53'55" W for 99.55 feet; (2) South 14°53'55" W for 99.55 feet to the Point of Beginning.

Containing 0.64 acres (28,074 square feet), more or less.

- 2: Upon and after the seventh day of September 2023, the above-described territory, and its citizens, and property shall be subject to all debts, laws, ordinances, and regulations in force in the City of Hendersonville and shall be entitled to the same privileges and benefits as other parts of the City of Hendersonville. Said territory shall be subject to municipal taxes according to NCGS 160A-58.10, as amended.
- 3: The Mayor of the City of Hendersonville shall cause to be recorded in the office of the Register of Deeds of Henderson County and at the Office of the Secretary of State in Raleigh, North Carolina, an accurate map of the annexed territory, described in Section 1, above, together with a duly certified copy of this ordinance. Such a map shall also be delivered to the Henderson County Board of Elections, as required by G. S. 163-288.1.

Adopted by the City Council of the City of Hendersonville, North Carolina on this ____ day of _____ 20____.

Attest:

Barbara G. Volk, Mayor, City of Hendersonville

Jill Murray, City Clerk

Approved as to form:

Angela S. Beeker, City Attorney

STATE OF NORTH CAROLINA, COUNTY OF HENDERSON

I, _____, a Notary Public in Henderson County, State of North Carolina, do hereby certify that Barbara G. Volk in her capacity of Mayor of the City of Hendersonville, and Jill Murray, in her capacity of City Clerk personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and notarial seal, this _____ day of _____, 2023.

My commission expires: _____

CERTIFICATE OF SUFFICIENCY

Re: Petition for Contiguous Annexation
Petitioner: Bullets Contracting, LLC- Chris Miller, Manager
File No. C23-61-ANX

To the Honorable Mayor and members of the City Council of Hendersonville, North Carolina:
I, Jill Murray, City Clerk, being first duly sworn, hereby certify that:

1. A petition has been received for contiguous annexation of property consisting of +/- 0.64 acres located on N. Stoney View Court in Hendersonville, NC, being tax parcels PIN 9569-47-1183 and 9569-47-2203, and being more particularly described on Exhibit A, attached hereto and incorporated by reference, hereinafter "Petition."
2. An investigation has been completed as required by N.C.G.S. § 160A-31 of the Petition for compliance with the requirements of N.C.G.S. § 160A-31.

Based upon this investigation, I find that

1. The Petition includes the names and addresses and signatures of all owners of real property lying in the area described therein.
2. The Petition was prepared in substantially the form prescribed by 160A-31(b).
3. The area described in the petition is contiguous to the City of Hendersonville's primary corporate limits, as defined by N.C.G.S. 160A-31(f).
4. The area for annexation meets all other requirements defined in NC 160A-31 regarding the character of the area to be annexed.

Having made the findings stated above, I hereby certify the Petition appears to be valid.
In witness hereof, I have set my hand and the City Seal on this the 1st day of August, 2023.

(City Seal)




Jill Murray, City Clerk

EXHIBIT A
LEGAL DESCRIPTION

Being all of that real property consisting of PINs 9569-47-1183 and 9569-47-2203 described in the plat recorded in Book 2023- _____ [to be inserted at recording of the plat] of the Henderson County Registry, said PINs 9569-47-1183 and 9569-47-2203 being described by metes and bounds as follows:

Being Lots 3 & 4 of Block A of Stoney Crest Subdivision, as shown on the plat thereof recorded in Plat Cabinet C at Slide 23, in the Office of the Register of Deeds for Henderson County, North Carolina, and being more particularly described as follows:

Beginning at a point on the northwestern right of way line of North Stone View Court at the common corner of Lots 4 & 5 of the aforementioned subdivision; thence along the common line between Lots 4 & 5 running North 74°31'01" West for 141.80 feet to a point on the southeastern limits of the City of Hendersonville; thence along the southeastern limits of the City of Hendersonville the following three (3) course to wit: (1) North 15°23'02" East for 74.40 feet; (2) North 14°50'43" East for 24.81 feet; (3) North 14°50'43" East for 99.55 feet to a point at common corner of Lots 2 & 3 of the aforementioned subdivision; thence leaving the limits of the City of Hendersonville and along the common line between Lots 2 & 3 running South 74°39'12" East for 141.09 feet to a point on the Northwestern right of way line of North Stone View Court; thence along the northwestern right of way line of North Stone View Court the following two (2) courses to wit: (1) South 14°53'55" W for 99.55 feet; (2) South 14°53'55" W for 99.55 feet to the Point of Beginning.

Containing 0.64 acres (28,074 square feet), more or less.

Resolution #R-23-84

**RESOLUTION BY THE CITY OF HENDERSONVILLE CITY COUNCIL FIXING DATE OF
PUBLIC HEARING ON QUESTION OF ANNEXATION PURSUANT TO G.S. 160A-31**

WHEREAS, a petition requesting annexation of the contiguous area described herein has been received; and

WHEREAS, certification by the City Clerk as to the sufficiency of the petition has been made;

NOW, THEREFORE BE IT RESOLVED, by the City Council of the City of Hendersonville, North Carolina that:

Section 1. A public hearing on the question of annexation of the contiguous area described herein will be held at the City Operations Center located at 305 William St. Hendersonville NC, 28792 at 5:45 p.m. September 7th, 2023, or as soon thereafter as it may be heard.

Section 2. The area proposed for annexation is described as follows:

Being all of that real property consisting of PINs 9569-47-1183 and 9569-47-2203 described in the plat recorded in Book 2023- ____ [to be inserted at recording of the plat] of the Henderson County Registry, said PINs 9569-47-1183 and 9569-47-2203 being described by metes and bounds as follows:

Being Lots 3 & 4 of Block A of Stoney Crest Subdivision, as shown on the plat thereof recorded in Plat Cabinet C at Slide 23, in the Office of the Register of Deeds for Henderson County, North Carolina, and being more particularly described as follows:

Beginning at a point on the northwestern right of way line of North Stone View Court at the common corner of Lots 4 & 5 of the aforementioned subdivision; thence along the common line between Lots 4 & 5 running North 74°31'01" West for 141.80 feet to a point on the southeastern limits of the City of Hendersonville; thence along the southeastern limits of the City of Hendersonville the following three (3) course to wit: (1) North 15°23'02" East for 74.40 feet; (2) North 14°50'43" East for 24.81 feet; (3) North 14°50'43" East for 99.55 feet to a point at common corner of Lots 2 & 3 of the aforementioned subdivision; thence leaving the limits of the City of Hendersonville and along the common line between Lots 2 & 3 running South 74°39'12" East for 141.09 feet to a point on the Northwestern right of way line of North Stone View Court; thence along the northwestern right of way line of North Stone View Court the following two (2) courses to wit: (1) South 14°53'55" W for 99.55 feet; (2) South 14°53'55" W for 99.55 feet to the Point of Beginning.


Containing 0.64 acres (28,074 square feet), more or less.

Re: Petition for Contiguous Annexation
Petitioner: Bullets Contracting, LLC- Chris Miller, Manager
File No. C23-61-ANX

Section 3. Notice of the public hearing shall be published once in The Hendersonville Times-News, a newspaper having general circulation in the City of Hendersonville, at least 10 days prior to the date of the public hearing.

Adopted by the City Council of the City of Hendersonville, North Carolina on this 9th day of August, 2023.

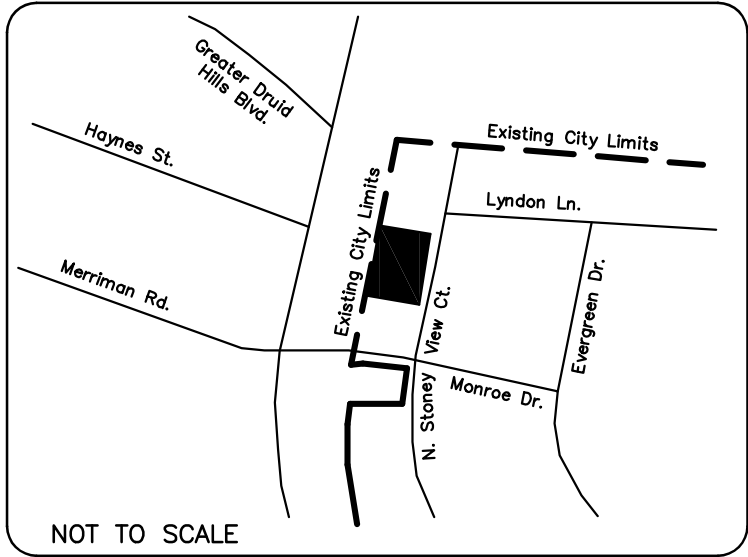
Attest:


Barbara G. Volk, Mayor, City of Hendersonville


Jill Murray, City Clerk

Approved as to form:


Angela S. Beeker, City Attorney



LINE	BEARING	DISTANCE
L1	N14°50'43"E	24.81'

KLM Real Estate, LLC
D.B. 1588, Pg. 299
PIN: 9569-47-1304

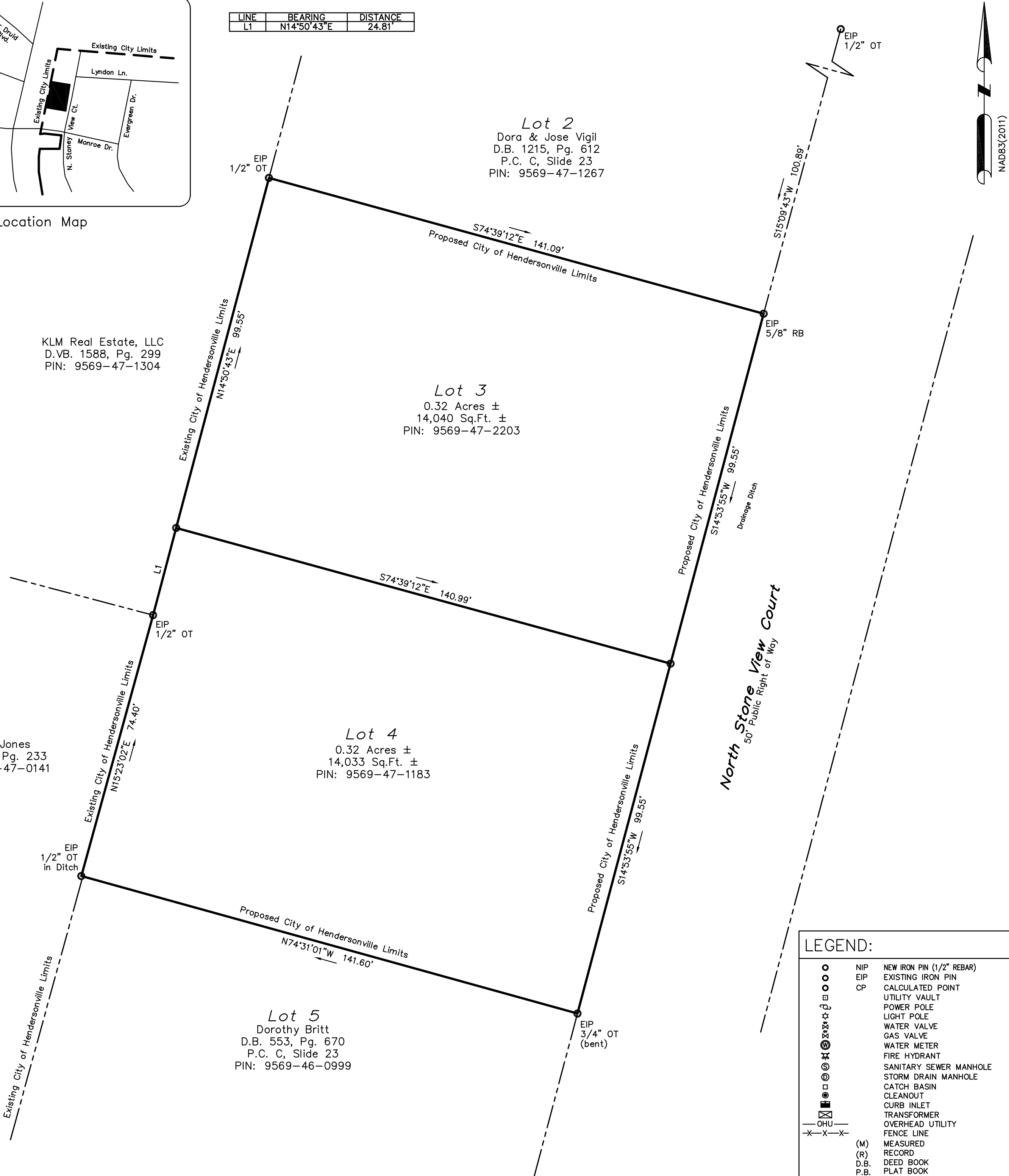
Joseph Jones
D.B. 1217, Pg. 233
PIN: 9569-47-0141

Lot 2
Dora & Jose Vigil
D.B. 1215, Pg. 612
P.C. C, Slide 23
PIN: 9569-47-1267

Lot 3
0.32 Acres ±
14,040 Sq.Ft. ±
PIN: 9569-47-2203

Lot 4
0.32 Acres ±
14,033 Sq.Ft. ±
PIN: 9569-47-1183

Lot 5
Dorothy Britt
D.B. 553, Pg. 670
P.C. C, Slide 23
PIN: 9569-46-0999



LEGEND:	
NIP	NEW IRON PIN (1/2" REBAR)
EIP	EXISTING IRON PIN
CP	CALCULATED POINT
UV	UTILITY VAULT
PP	POWER POLE
LP	LIGHT POLE
WV	WATER VALVE
GV	GAS VALVE
WM	WATER METER
FH	FIRE HYDRANT
SSMH	SANITARY SEWER MANHOLE
SDMH	STORM DRAIN MANHOLE
CB	CATCH BASIN
CN	CLEANOUT
CI	CURB INLET
TR	TRANSFORMER
OU	OVERHEAD UTILITY
FL	FENCE LINE
(M)	MEASURED
(R)	RECORD
D.B.	DEED BOOK
P.B.	PLAT BOOK
R/W	RIGHT-OF-WAY

I, Fulton V. Clinkscales, Jr., certify that this plat was drawn under my supervision from an actual survey made under my supervision (Deed description recorded in Book 3947, page 183, etc.) that the boundaries not surveyed are clearly indicated as drawn from information found in Book _____, Page _____; that the ratio of precision as calculated is 1:10,000; that this plat was prepared in accordance with G.S. 47-30 as amended. Witness my original signature, registration number and seal this 18th day of July, 2023, A.D.

G.S. 47-30(f)(11)(c)(1) This survey is of an existing parcel or parcels of land or one or more existing easements and does not create a new street or change an existing street.

F. V. Clinkscales, Jr.
Fulton V. Clinkscales, Jr.
L-2614



This plat represents the area being annexed to the City of Hendersonville, NC pursuant to NCGS 160A-31, by Ordinance duly adopted (Annexation Ordinance _____).

This the _____ day of _____, 2023

Jill Murray, City Clerk

Date

State of North Carolina
Henderson County

I, _____, Review Officer of Henderson County, certify that the map or plat to which this certification is affixed meets all statutory requirements for recording.

Review Officer

Date

NOTES:

- 1) The Basis of Bearings for this survey is NAD83(2011)
- 2) The purpose of this plat is to annex Parcel Nos. 9569-47-1183 & 9569-47-2203 (0.64 contiguous acres) into the City Limits of Hendersonville, as shown on this Plat.

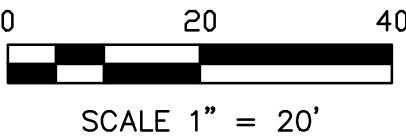
ANNEXATION PLAT FOR THE
City of Hendersonville

Tax Parcels: 9569-47-1183 & 9569-47-2203

Bullets Contracting, LLC

(OWNER)

North Stoney View Court
Hendersonville Township
Henderson County
State of North Carolina
Lots 3 & 4, Stoney Crest



RLS: F. V. CLINKSCALES JR., P.E.
ND: L-2614 Firm No. C-1562

FREELAND — CLINKSCALES
& ASSOCIATES, INC. of NC
Engineers * Land Surveyors
201 2nd AVE. EAST
HENDERSONVILLE, N.C. 28792
(828) 697-6539
info@fcaofnc.com

REF. PLAT CAB.	C/23
REF. DEED BOOK	3947/183
TAX MAP	Various
PARTY CHIEF	TEC
DRAWN	TEC
DATE	July 18, 2023
DWG.NO.	H4231

Lots 3 & 4 Stoney Crest Annexation Description

Being Lots 3 & 4 of Block A of Stoney Crest Subdivision, as shown on the plat thereof recorded in Plat Cabinet C at Slide 23, in the Office of the Register of Deeds for Henderson County, North Carolina, and being more particularly described as follows:

Beginning at a point on the northwestern right of way line of North Stone View Court at the common corner of Lots 4 & 5 of the aforementioned subdivision; thence along the common line between Lots 4 & 5 running North 74°31'01" West for 141.80 feet to a point on the southeastern limits of the City of Hendersonville; thence along the southeastern limits of the City of Hendersonville the following three (3) course to wit: (1) North 15°23'02" East for 74.40 feet; (2) North 14°50'43" East for 24.81 feet; (3) North 14°50'43" East for 99.55 feet to a point at common corner of Lots 2 & 3 of the aforementioned subdivision; thence leaving the limits of the City of Hendersonville and along the common line between Lots 2 & 3 running South 74°39'12" East for 141.09 feet to a point on the Northwestern right of way line of North Stone View Court; thence along the northwestern right of way line of North Stone View Court the following two (2) courses to wit: (1) South 14°53'55" W for 99.55 feet; (2) South 14°53'55" W for 99.55 feet to the Point of Beginning.

Containing 0.64 acres (28,074 square feet), more or less.



065130
Feet

Section 7, Item A.

City of Hendersonville
July 2023

E

S

2203 & 2205 N. Stoney View Court
C23-61-ANX
PINs:9569-47-1183 & 9569-47-2203
Acreage: 0.64
Annexation Map
Community Development Department

Subject Property

Hendersonville City Limits

BK 3947 PG 183 - 185 (3)

This Document eRecorded:
Fee: \$26.00

DOC# 984406

08/05/2022 12:50:12 PM

Henderson County, North Carolina
William Lee King, Register of Deeds

NORTH CAROLINA GENERAL WARRANTY DEED

Excise Tax:\$ 34.00

Parcel Identifier No. 104917 Verified by _____ County on the ____ day of _____, 20____
By: _____

Mail/Box to: McDuffy Law Firm, PLLC Atty. Scott McDuffy, 317 Banner Farm Rd. Ste. A, Mills River, NC 28759

This instrument was prepared by: Atty. Scott McDuffy, 317 Banner Farm Rd. Ste. A, Mills River, NC 28759

Delinquent taxes, if any, to be paid by the closing attorney to the county tax collector upon disbursement of closing proceeds.

Brief description for the Index: Lots 3 and 4 of Block A of Stoney Crest Subdivision

THIS DEED made this <u> 1 </u> day of <u> August </u> , 20 <u>22</u> by and between	
GRANTOR	GRANTEE
 Donna Graham Duerr, unmarried	 Bullets Contracting, LLC a North Carolina Limited Liability Company
 1308 Old Spartanburg Rd. Apt 203 Hendersonville NC 28792	 113 Harrison Pond Rd. Campobello, SC 29322

The designation Grantor and Grantee as used herein shall include said parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine or neuter as required by context.

WITNESSETH, that the Grantor, for a valuable consideration paid by the Grantee, the receipt of which is hereby acknowledged, has and by these presents does grant, bargain, sell and convey unto the Grantee in fee simple, all that certain lot or parcel of land situated in Henderson County, North Carolina and more particularly described as follows:

SEE ATTACHED EXHIBIT A

The property hereinabove described was acquired by Grantor by instrument recorded in Book 1018 page 337.

All or a portion of the property herein conveyed _____ includes or X does not include the primary residence of a Grantor.

A map showing the above described property is recorded in Plat Book C at page 23.

NC Bar Association Form No. 3 © 1976, Revised © 1977, 2002

Printed by Agreement with the NC Bar Association – 1981 - Chicago Title Insurance Company

submitted electronically by "The McDuffy Law Firm"
in compliance with North Carolina statutes governing recordable documents
and the terms of the submitter agreement with the Henderson County Register of Deeds.

TO HAVE AND TO HOLD the aforesaid lot or parcel of land and all privileges and appurtenances thereto belonging to the Grantee in fee simple.

And the Grantor covenants with the Grantee, that Grantor is seized of the premises in fee simple, has the right to convey the same in fee simple, that title is marketable and free and clear of all encumbrances, and that Grantor will warrant and defend the title against the lawful claims of all persons whomsoever, other than the following exceptions:

Subject to Henderson County ad valorem taxes.
Subject to Restrictions, Easements, and Rights of Way of Record.

IN WITNESS WHEREOF, the Grantor has duly executed the foregoing as of the day and year first above written.

Donna Graham Duerr

(SEAL)

Donna Graham Duerr

State of North Carolina - County of Henderson

I, the undersigned Notary Public of the County and State aforesaid, certify that **Donna Graham Duerr** personally appeared before me this day and acknowledged the due execution of the foregoing instrument for the purposes therein expressed. Witness my hand and Notarial stamp or seal this 1st day of August, 20 22

My Commission Expires: 10/7/25

P. ANAHI PEREZ MCDUFFY
NOTARY PUBLIC
Henderson County
North Carolina
My Commission Expires Oct. 7, 2025

Charli P. McDuffy

Notary Public

Exhibit A

BEING Lots Three (3) and Four (4) of Block A of Stoney Crest Subdivision, as shown on the plat thereof recorded in Plat Cabinet C, Slide Number 23 (formerly appearing of record in Plat Book 5, at Page 117), in the Office of the Register of Deeds for Henderson County, North Carolina, reference to which plat is hereby made for a more complete description.

Lots Three (3) and Four (4) of Block A of Stoney Crest Subdivision as shown on plat thereof recorded in Plat Cabinet C, Slide Number 23, are conveyed subject to the following restrictions which are covenants running with the land and shall be binding upon the grantees, and their successors and assigns:

1. These lots may be used only for residential purposes.
2. Only single-family residences may be built on these lots and only one single-family residence may be built upon Lot Three (3) and only one single-family residence may be built upon Lot Four (4).
3. Owners of these lots shall at all times be subject to suit for damages by residential lot owners in this subdivision for the violation of any of the above restrictions.

BEING the same property described in deed recorded in Book 1018 at Page 337, Henderson County Registry.



CITY OF HENDERSONVILLE
COMMUNITY DEVELOPMENT DEPARTMENT
100 N. King Street, Hendersonville, NC 28792
Phone (828) 697-3010|Fax (828) 698-6185
www.hendersonvillenc.gov

Petition Requesting Annexation

The following are the **required** submittals for a complete application for a Voluntary Annexation. Staff will not review applications until each item has been submitted and determined complete. By placing a check mark by each of the following items, you are certifying that you have performed that task.

- ☒ 1. Completed Application Form
- ☒ 2. A copy of the deed indicating ownership of the property.
- ☒ 3. A Survey Plat of the property prepared by a registered surveyor licensed to practice in the state of North Carolina.
- ☒ 4. A typed boundary description of the property.

A. Property Information

PIN(s): 9569471183

Address(es) / Location of Property: 2203 N Storey View CT

Does this property adjoin the present City Limits? ☒ Yes ☐ No

Is the property within the ETJ? ☒ Yes ☐ No

Reason for Annexation:
Connection to Sewer

Office Use:
Date Received: _____ By: _____ Fee Received? Y/N

B. Property Owner Contact Information

Chris Miller 7-18-2023
 * Printed Applicant Name Date

Bullets Contracting LLC
 Printed Company Name (if applicable)

☐ Corporation ☒ Limited Liability Company ☐ Trust ☐ Partnership

☐ Other: _____


 Property Owner Signature

MANAGER
 Property Owner Title (if applicable)

P.O. Box 2261
 Address of Property Owner

H'ville NC 28793
 City, State, and Zip Code

828-329-9195
 Telephone

Chrisbullet985@gmail.com
 Email



CITY OF HENDERSONVILLE
COMMUNITY DEVELOPMENT DEPARTMENT
100 N. King Street, Hendersonville, NC 28792
Phone (828) 697-3010|Fax (828) 698-6185
www.hendersonvillenc.gov

Petition Requesting Annexation

The following are the **required** submittals for a complete application for a Voluntary Annexation. Staff will not review applications until each item has been submitted and determined complete. By placing a check mark by each of the following items, you are certifying that you have performed that task.

- ☒ 1. Completed Application Form
- ☒ 2. A copy of the deed indicating ownership of the property.
- ☒ 3. A Survey Plat of the property prepared by a registered surveyor licensed to practice in the state of North Carolina.
- ☐ 4. A typed boundary description of the property.

A. Property Information

PIN(s): 9569472203

Address(es) / Location of Property: 2205 N Storey View Ct.

Does this property adjoin the present City Limits? ☒ Yes ☐ No

Is the property within the ETJ? ☒ Yes ☐ No

Reason for Annexation:

Connecting TO Sewer

Office Use:
Date Received: _____ By: _____ Fee Received? Y/N

B. Property Owner Contact Information

Chris Miller 7-18-2023
 * Printed Applicant Name Date

Bullet's CONTRACTING
 Printed Company Name (if applicable)

☐ Corporation ☒ Limited Liability Company ☐ Trust ☐ Partnership

☐ Other: _____


 Property Owner Signature

Manager
 Property Owner Title (if applicable)

P.O. Box 2261
 Address of Property Owner

H'ville NC 28793
 City, State, and Zip Code

828-329-7195
 Telephone

Chrisbullet985@gmail.com
 Email

Ad Preview

Section 7, Item A.

PUBLIC HEARING NOTICE

Notice is hereby given that the City of Hendersonville City Council will hold three public hearings on Thursday, September 7, 2023, at 5:45 p.m., or as soon thereafter as possible in the City Operations Assembly Room located at 305 Williams Street, Hendersonville NC to consider the following:

Annexation Petition – 2203 and 2205 N. Stoney View Court (C23-61-ANX) - Application from Chris Miller of Bullets Contracting, LLC for the contiguous annexation of two parcels identified as tax parcels 9569-47-1183 and 9569-47-2203 located on N. Stoney View Court.

Digital/written public hearing comments must be received twenty-four hours prior to the meeting (by 5:45 p.m. on Wednesday September 6th 2023) to be considered by the City Council and must comply with security criteria in the Council's Public Comment Policy, available on the City's website.

Public hearing comments will also be accepted during the meeting from those attending in person and from those participating live via ZOOM at the designated time at this meeting. For security reasons screen sharing will not be allowed. Anyone wishing to submit written/digital public hearing comments for these public hearings prior to the meeting may visit <https://www.hendersonvillenc.gov/comment> to submit their comment. It is not necessary to submit digital comments if you are planning to address City Council during the meeting.

The meeting instructions to join by Zoom will be available on the City's website calendar by visiting <https://www.hendersonvillenc.gov/events-calendar> and as follows:

Zoom information for the meeting is:
<https://zoom.us/join>
Dial-in by phone: (646) 558-8656
Meeting ID: 822 0104 2528
Passcode: 1847

The City of Hendersonville is committed to providing accessible facilities, programs, and services for all people in compliance with the Americans with Disabilities Act (ADA). Should you need assistance or a particular accommodation for this meeting please contact the City Clerk no later than 24 hours in advance of the meeting (828) 697-3005.
9181052 8/20/23

ATTACHMENTS:	<ol style="list-style-type: none"> 1. Ordinance 2. Signed Certificate of Sufficiency 3. Signed Resolution setting public hearing 4. Annexation Plat 5. Typed legal description 6. GIS map 7. Deed 8. Annexation Application
---------------------	---

Ordinance #____-____

**AN ORDINANCE OF THE CITY OF HENDERSONVILLE CITY COUNCIL TO
EXTEND THE CORPORATE LIMITS OF THE CITY AS A SATELLITE ANNEXATION**

Re: Petition for Satellite Annexation
Petitioners: Townes at Martha Kate LLC (Rick Moore, Manager)
File No. C23-62-ANX

WHEREAS, The City of Hendersonville has been petitioned by Rick Moore of Townes at Martha Kate LLC pursuant to North Carolina General Statutes (NCGS) 160A-58.1, as amended, to annex the area described herein below; and,

WHEREAS, the City Clerk has investigated and certified the sufficiency of said petition; and,

WHEREAS, a public hearing on the question of this annexation was held at the City Operations Center at 305 Williams Street, Hendersonville, NC at 5:45 pm, on the 7th day of September 2023, after due notice by publication as provided by law on August 20, 2023; and

WHEREAS, the City Council further finds the areas described therein meets the standards of N.C. G.S. 160A-58.1(b), to wit;

- a. All of the proposed satellite corporate limits are less than three miles from the primary corporate limits of Hendersonville. The map distance is approximately 6.5 feet.
- b. No point on the proposed satellite corporate limit is closer to the primary corporate limits of another city than to the primary corporate limits of Hendersonville.
- c. The area described is so situated that the City of Hendersonville will be able to provide the same services within the proposed satellite corporate limits that it provides within its primary corporate limits.
- d. The area proposed for annexation is subject to subdivision regulation as described N.C.G.S. § 160D-802 and all of the subdivision is included in the petition.

- e. The area within the proposed satellite corporate limits, when added to the areas within all other satellite corporate limits does not exceed 10 percent (10%) of the area within the primary corporate limits of the City of Hendersonville.

WHEREAS, the City further finds that the petition has been signed by all the owners of real property in the area who are required by law to sign; and

WHEREAS, the City further finds that the petition is otherwise valid, and that the public health, safety and welfare of the City and of the area proposed for annexation will be best served by annexing the area described;

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Hendersonville, North Carolina:

- 1: By virtue of the authority granted by N.C.G.S. 160A-58.2, as amended, the following described noncontiguous area is hereby annexed and made part of the City of Hendersonville as of the seventh day of September 2023.

Being all of that real property consisting of PIN 9569-75-0342 described in the plat recorded in Book 2023- ____ [to be inserted at recording of the plat] of the Henderson County Registry, said PIN 9569-75-0342 being described by metes and bounds as follows:

Tract 1

Beginning on a 1/2" rebar, said rebar bearing NC Grid Coordinates of Northing – 596039.0349 and Easting – 966861.2601, and proceeding thence from beginning point thus established, S 21°59'23" E 26.02' to a 1/2" rebar, thence S 28°05'48" E 69.57' to a point in Queen Street, thence along with Queen Street the following five calls, S 46°01'56" E 13.80' to a point, S 57°10'21" E 210.36' to a point, S 46°42'31" E 113.30' to a point, S 38°33'02" E 135.50' to a point, S 38°10'56" E 267.63' to a point, thence leaving Queen Street S 20°04'32" E 100.50' to a 1/2" rebar located in the northern margin of North Main Street, thence with the northern margin of North Main Street on a non-tangent curve to the left with a radius of 291.69' and an arc length of 98.42' (chord - S 39°38'46" W, 97.95') to a point, thence S 29°58'49" W 429.16' to a point, said point being the easternmost point of "Possible Overlap Area" as described below, thence leaving the margin of North Main Street, N 13°10'06" W 18.25' to a point, thence N 28°49'16" W 126.13' to a point, thence N 60°17'30" W 232.38' to a point, thence N 33°05'56" W 596.69' to a point, thence N 55°47'26" passing a 1/2" rebar at a distance of 25.19' for a total distance of 175.08' to a 1" iron pipe, thence N 57°55'43" 277.19' to the point and place of beginning. Containing 12.21 Acres Total and depicted as Tract 1 on survey by Associated Land Surveyors & Planners, PC, bearing job number S-22-699.

Possible Overlap Area

Beginning on a point in the northern margin of North Main Street, said point being the southeastern corner of Tract 1 as described above, and proceeding from said beginning point thus established, S 29°58'49" W 61.59' to a point, thence N 38°29'37" W 379.20' to a point, thence S 60°17'30" E 232.38' to a point, thence S 28°49'16" E 126.13' to a point, thence S 13°10'06" E 18.25' to the point and place of beginning. Containing 0.47 Acres and depicted

as Possible Overlap Area on survey by Associated Land Surveyors & Planners, PC, bearing job number S-22-699.

Tract 2

Beginning on a point located in the southern margin of North Main Street, said point being located S 47°18'15" 61.51' from the southeastern corner of the "Possible Overlap Area" as described above, and proceeding from beginning point thus established with the southern margin of North Main Street, N 29°58'49" E 363.42' to a point in the centerline of Ochlawaha Drive, thence with the centerline of Ochlawaha Drive, S 17°13'56" E 67.56' to a mag nail, thence S 18°39'06" E 157.80' to a point, thence on a curve to the right with a radius of 125.00' and an arc length of 97.34' (chord S 03°39'25" W 94.90') to a point in the western margin of Ochlawaha Drive, thence S 25°58'04" W 47.05' to a point, thence N 60°14'45" W 82.23' to a point, thence N 53°13'35" W 58.00' to a point, thence N 64°07'55" W 90.81' to a point, thence N 56°54'56" W 68.43' to the point and place of beginning. Containing 1.52 Acres and depicted as Tract 2 on survey by Associated Land Surveyors & Planners, PC, bearing job number S-22-699.

- 2: Upon and after the seventh day of September 2023, the above-described territory, and its citizens and property shall be subject to all debts, laws, ordinances and regulations in force in the City of Hendersonville and shall be entitled to the same privileges and benefits as other parts of the City of Hendersonville. Said territory shall be subject to municipal taxes according to NCGS 160A-58.10, as amended.

- 3. The Mayor of the City of Hendersonville shall cause to be recorded in the office of the Register of Deeds of Henderson County and at the Office of the Secretary of State in Raleigh, North Carolina, an accurate map of the annexed territory, described in Section 1, above, together with a duly certified copy of this ordinance. Such a map shall also be delivered to the Henderson County Board of Elections, as required by G. S. 163-288.1.

Adopted by the City Council of the City of Hendersonville, North Carolina on this _____ day of _____, 20____.

Attest:

Barbara G. Volk, Mayor, City of Hendersonville

Jill Murray, City Clerk

Approved as to form:

Angela S. Becker, City Attorney

STATE OF NORTH CAROLINA, COUNTY OF HENDERSON

I, _____, a Notary Public in Henderson County, State of North Carolina, do hereby certify that Barbara G. Volk in her capacity of Mayor of the City of Hendersonville; Jill Murray, in her capacity of City Clerk personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and notarial seal, this _____ day of _____, 20____.

My commission expires:

CERTIFICATE OF SUFFICIENCY

Re: Petition for Satellite Annexation
 Petitioners: Townes at Martha Kate LLC (Rick Moore, Manager)
 File No. C23-62-ANX

To the Honorable Mayor and members of the City Council of Hendersonville, North Carolina:
 I, Jill Murray, City Clerk, being first duly sworn, hereby certify that:

1. A petition has been received for satellite annexation of properties consisting of +/- 14.20 acres located on Queen Street in Hendersonville, NC, being tax parcel PIN 9569-75-0342, and being more particularly described on Exhibit A, attached hereto and incorporated by reference, hereinafter "Petition."
2. An investigation has been completed as required by N.C.G.S. § 160A-58.2 of the Petition for compliance with the requirements of N.C.G.S. § 160A-58.1.

Based upon this investigation, I find that

1. The Petition includes a metes and bounds description of the area proposed for annexation and has attached a map showing the proposed satellite area.
2. The nearest point on the proposed satellite corporate limit is approximately 6.5' from the primary corporate limits of the City of Hendersonville, which is less than 3 miles.
3. The Petition includes the names and addresses and signatures of all owners of real property lying in the area described therein, except those not required to sign by G.S.160A-58.1 (a).
4. No point on the proposed satellite corporate limits is closer to the primary corporate limits of another city than to the primary corporate limits of Hendersonville.
5. The area is situated so the City will be able to provide the same services within the proposed corporate limits that is provided within the primary corporate limits.
6. The area proposed for annexation is subject to subdivision regulation as described in N.C.G.S. § 160D-802 and all of the subdivision is included in the petition.
7. The total area within the proposed satellite corporate limits, when added to the area within all the other satellite corporate limits of the City, does not exceed ten (10%) of the area within the primary corporate limits of the City.
8. The petition and the area for annexation meets all other requirements defined in NC 160A-58.1.

Having made the findings stated above, I hereby certify the Petition appears to be valid.

In witness hereof, I have set my hand and the City Seal on this the 1st day of August, 2023.

(City Seal)





 Jill Murray, City Clerk

EXHIBIT A

LEGAL DESCRIPTION

Being all of that real property consisting of PIN 9569-75-0342 described in the plat recorded in Book 2023- _____ [to be inserted at recording of the plat] of the Henderson County Registry, said PIN 9569-75-0342 being described by metes and bounds as follows:

Tract 1

Beginning on a 1/2" rebar, said rebar bearing NC Grid Coordinates of Northing – 596039.0349 and Easting – 966861.2601, and proceeding thence from beginning point thus established, S 21°59'23" E 26.02' to a 1/2" rebar, thence S 28°05'48" E 69.57' to a point in Queen Street, thence along with Queen Street the following five calls, S 46°01'56" E 13.80' to a point, S 57°10'21" E 210.36' to a point, S 46°42'31" E 113.30' to a point, S 38°33'02" E 135.50' to a point, S 38°10'56" E 267.63' to a point, thence leaving Queen Street S 20°04'32" E 100.50' to a 1/2" rebar located in the northern margin of North Main Street, thence with the northern margin of North Main Street on a non-tangent curve to the left with a radius of 291.69' and an arc length of 98.42' (chord - S 39°38'46" W, 97.95') to a point, thence S 29°58'49" W 429.16' to a point, said point being the easternmost point of "Possible Overlap Area" as described below, thence leaving the margin of North Main Street, N 13°10'06" W 18.25' to a point, thence N 28°49'16" W 126.13' to a point, thence N 60°17'30" W 232.38' to a point, thence N 33°05'56" W 596.69' to a point, thence N 55°47'26" passing a 1/2" rebar at a distance of 25.19' for a total distance of 175.08' to a 1" iron pipe, thence N 57°55'43" 277.19' to the point and place of beginning. Containing 12.21 Acres Total and depicted as Tract 1 on survey by Associated Land Surveyors & Planners, PC, bearing job number S-22-699.

Possible Overlap Area

Beginning on a point in the northern margin of North Main Street, said point being the southeastern corner of Tract 1 as described above, and proceeding from said beginning point thus established, S 29°58'49" W 61.59' to a point, thence N 38°29'37" W 379.20' to a point, thence S 60°17'30" E 232.38' to a point, thence S 28°49'16" E 126.13' to a point, thence S 13°10'06" E 18.25' to the point and place of beginning. Containing 0.47 Acres and depicted as Possible Overlap Area on survey by Associated Land Surveyors & Planners, PC, bearing job number S-22-699.

Tract 2

Beginning on a point located in the southern margin of North Main Street, said point being located S 47°18'15" 61.51' from the southeastern corner of the "Possible Overlap Area" as described above, and proceeding from beginning point thus established with the southern margin of North Main Street, N 29°58'49" E 363.42' to a point in the centerline of Ochlawaha Drive, thence with the centerline of Ochlawaha Drive, S 17°13'56" E 67.56' to a mag nail, thence S 18°39'06" E 157.80' to a point, thence on a curve to the right with a radius of 125.00' and an arc length of 97.34' (chord S 03°39'25" W 94.90') to a point in the western margin of Ochlawaha Drive, thence S 25°58'04" W 47.05' to a point, thence N 60°14'45" W 82.23' to a point, thence

N 53°13'35" W 58.00' to a point, thence N 64°07'55" W 90.81' to a point, thence N 56°54'56" W 68.43' to the point and place of beginning. Containing 1.52 Acres and depicted as Tract 2 on survey by Associated Land Surveyors & Planners, PC, bearing job number S-22-699.

Resolution #R-23-85

**RESOLUTION BY THE CITY OF HENDERSONVILLE CITY COUNCIL FIXING DATE OF
PUBLIC HEARING ON QUESTION OF ANNEXATION PURSUANT TO G.S. 160A-58.2**

WHEREAS, a petition requesting annexation of the satellite area described herein has been received;
and

WHEREAS, certification by the City Clerk as to the sufficiency of the petition has been made;

NOW, THEREFORE BE IT RESOLVED, by the City Council of the City of Hendersonville, North Carolina that:

Section 1. A public hearing on the question of annexation of the satellite area described herein will be held at City Operations Center located at 305 William St. Hendersonville NC, 28792 at 5:45 p.m. September 7th, 2023, or as soon thereafter as it may be heard.

Section 2. The area proposed for annexation is described as follows:

Being all of that real property consisting of PIN 9569-75-0342 described in the plat recorded in Book 2023- ____ [to be inserted at recording of the plat] of the Henderson County Registry, said PIN 9569-75-0342 being described by metes and bounds as follows:

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Tract 2

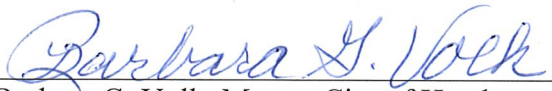
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Re: Petition for Satellite Annexation
 Petitioners: Townes at Martha Kate LLC (Rick Moore, Manager)
 File No. C23-62-ANX

Section 3. Notice of the public hearing shall be published once in The Hendersonville Times-News, a newspaper having general circulation in the City of Hendersonville, at least 10 days prior to the date of the public hearing.


Adopted by the City Council of the City of Hendersonville, North Carolina on this 9th day of August, 2023.

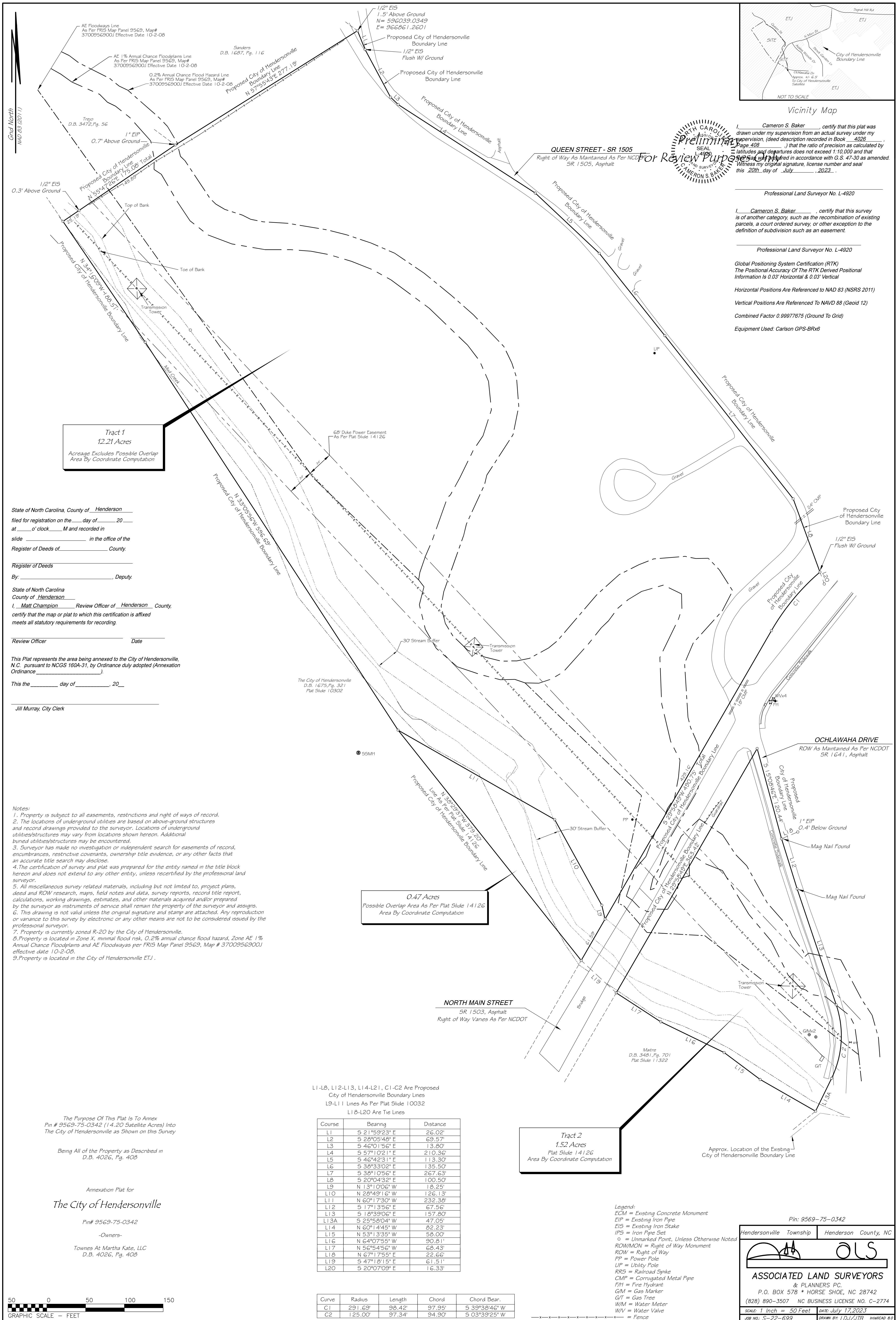
Attest:


 Barbara G. Volk, Mayor, City of Hendersonville


 Jill Murray, City Clerk

Approved as to form:


 Angela S. Beeker, City Attorney



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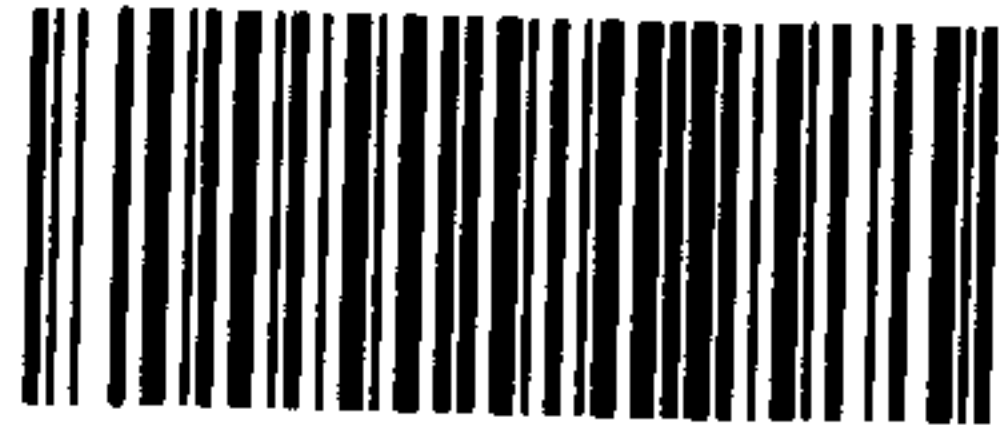


Townes at Martha Kate
C23-62-ANX
PIN: 9569-75-0342
Acreage: 14.20
Satellite Annexation Map
Community Development Department

-  Subject Property
-  Hendersonville City Limits

+/- 6.5' Between Existing
City Limits and Proposed
Satellite Annexation Limits

1000995419



This document presented and filed:
03/28/2023 03:16:19 PM

[Handwritten signature]

WILLIAM LEE KING, Henderson COUNTY, NC
Transfer Tax: \$0.00

→PMA
Doc Stamps \$ - 0 -

Prepared by: B.B. Massagee III
Deed Prep'n Only

This instrument is prepared by B. B. Massagee, III, a licensed North Carolina attorney. Delinquent taxes, if any are to be paid by the closing attorney to the County Tax Collector upon disbursement of closing proceeds.

STATE OF NORTH CAROLINA

DEED

COUNTY OF HENDERSON

THIS DEED is made and entered into this 27 day of March, 2023, by and between Rick Moore and wife, Amy Moore, and Mitch Gaither (also known as Mitchell W. Gauther) and wife, Wendy L. Gaither (the grantors herein collectively referred to as the "party of the first part" and having a mailing address of 103 McDowell Road, Mills River, N.C. 28759) and Townes at Martha Kate, LLC., a North Carolina limited liability company (the "party of the second part" and having a mailing address of 103 McDowell Road, Mills River, N.C. 28759);

WITNESSETH:

The said party of the first part, for and in consideration of the sum of Ten Dollars (\$10.00) and Other Valuable Consideration to them in hand paid by the said party of the second part, the receipt of which is hereby acknowledged, has bargained and sold, and by these presents does bargain, sell, and convey in fee simple unto said party of the second part, its successors and assigns, certain tracts or parcels of land lying and being in Henderson County, North Carolina, more particularly described as follows:

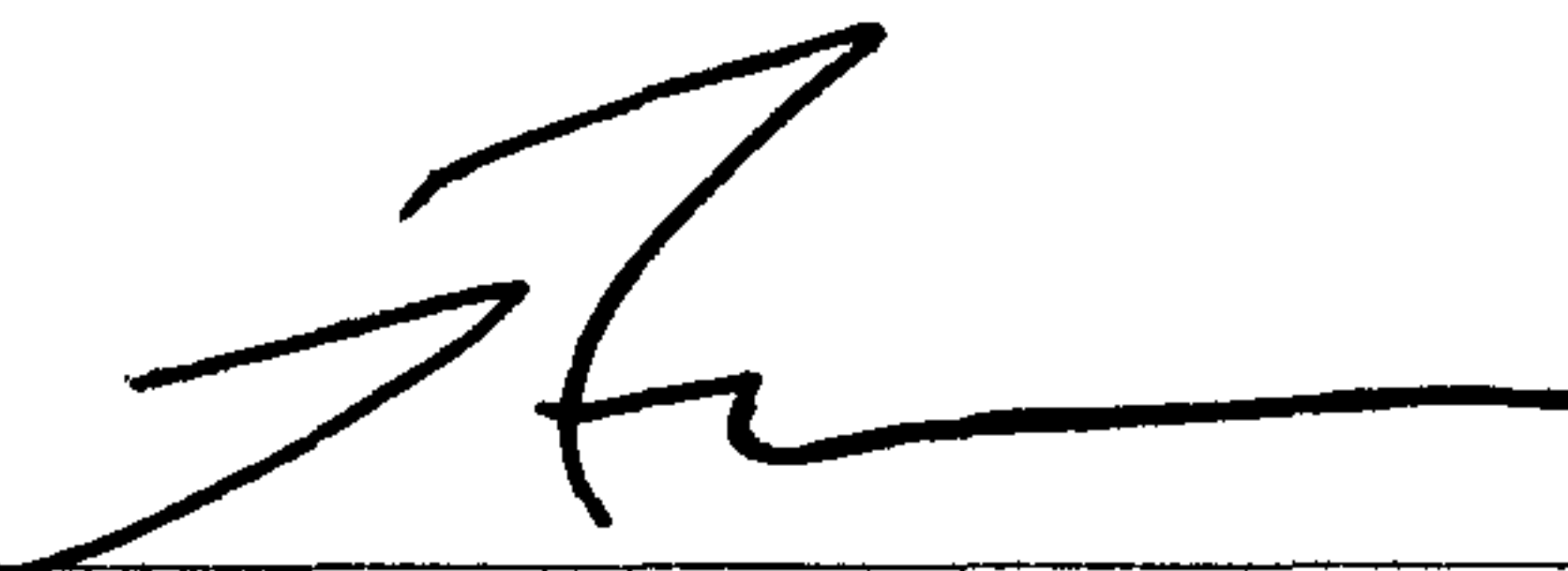
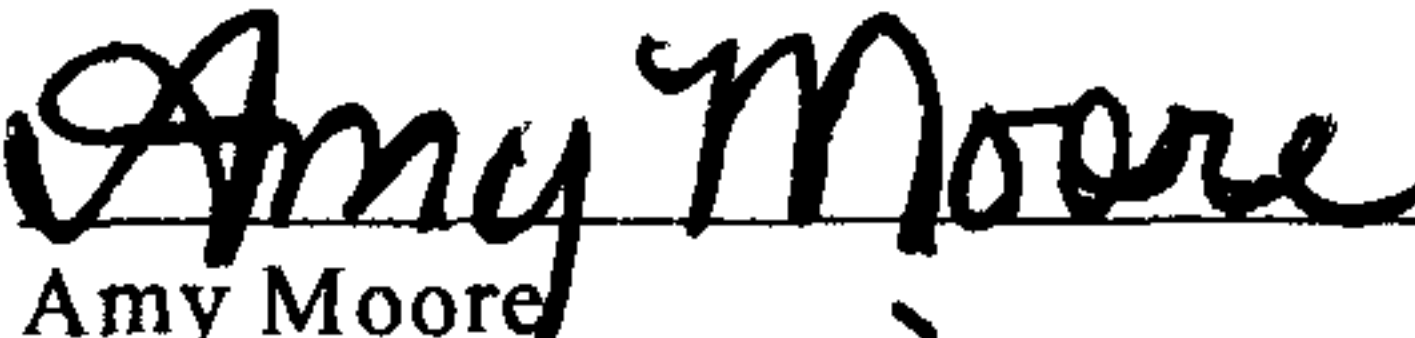
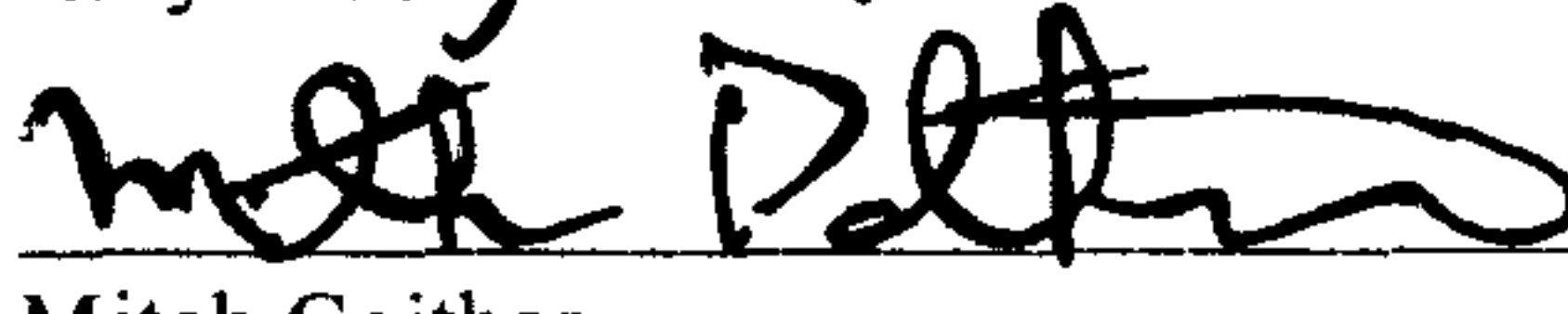
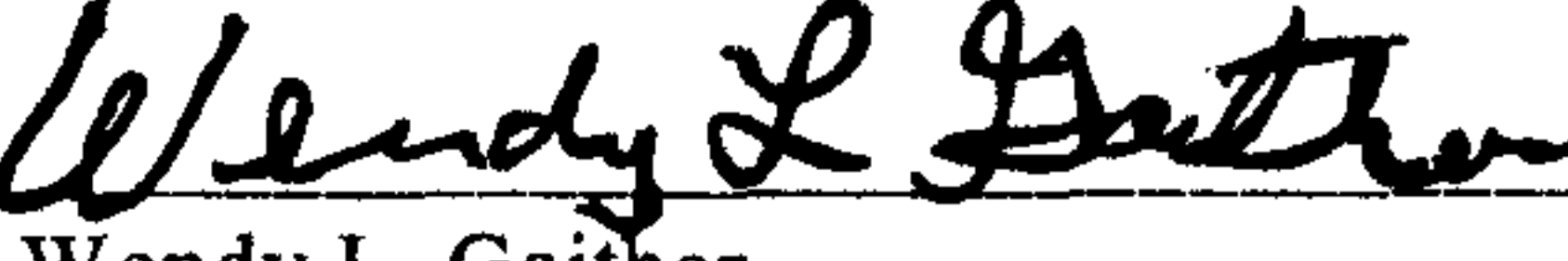
Being all of the 12.68 acres identified as Tract 1 and all of the 1.52 acres identified as Tract 2 on the "Boundary Survey for: Moore & Son Site Contractors, Inc." dated March 30, 2022, and recorded in Plat Slide 14126 of the Henderson County Registry. Also being and including all of that real property conveyed to Jack Lancaster and wife, Martha Kate M. Lancaster, by Eula M. Lyda (widow) by deed recorded in Deed Book 458, Page 641, Henderson County Registry.

Also being all of that real property conveyed to Rick Moore and Mitch Gaither by deed recorded in Book 3902, Page 292, Henderson County Registry.

TO HAVE AND TO HOLD the aforesaid tracts or parcels of land, together with all privileges and appurtenances thereunto belonging, to the said party of the second part, its successors and assigns in fee simple forever. The real property conveyed herein does not include the primary residence of the party of the first part.

IN TESTIMONY WHEREOF, said party of the first part has hereunto set their respective hands and seals the

day and year first above written.

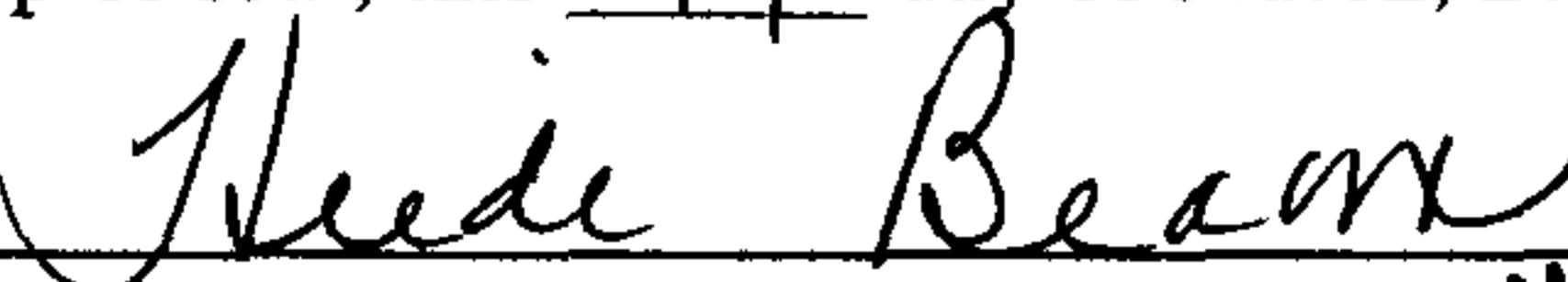

_____(Seal)
Rick Moore

_____(Seal)
Amy Moore

_____(Seal)
Mitch Gaither

_____(Seal)
Wendy L. Gaither

STATE OF NORTH CAROLINA

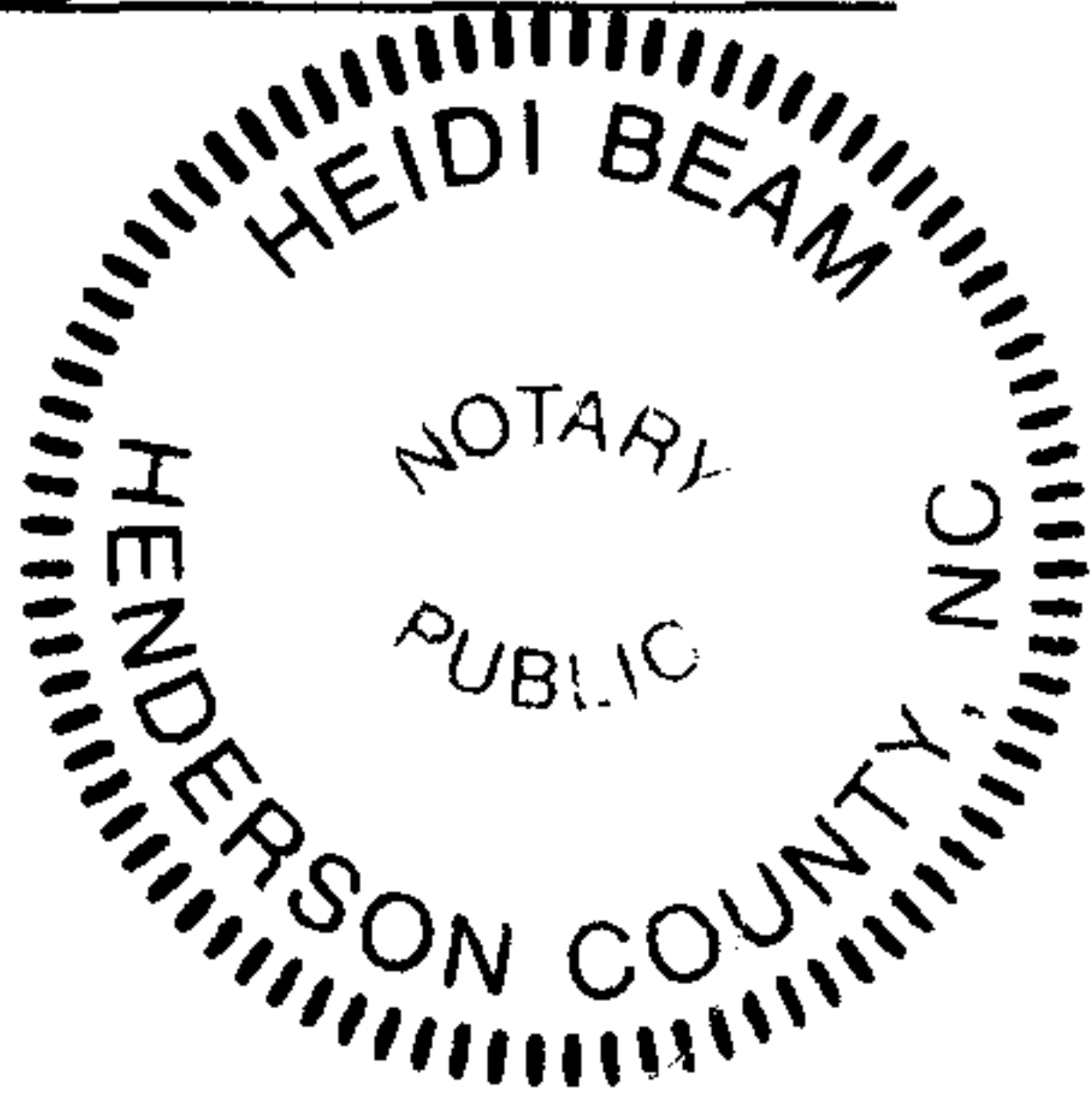
COUNTY OF HENDERSON

I, a Notary Public of the County and State aforesaid, certify that Rick Moore and Amy Moore personally appeared before me this day and acknowledged their voluntary execution of the foregoing instrument for the purpose stated therein. Witness my hand and official stamp or seal, this 27 day of March, 2023.

My Commission Expires:
11-24-2027



Notary Public

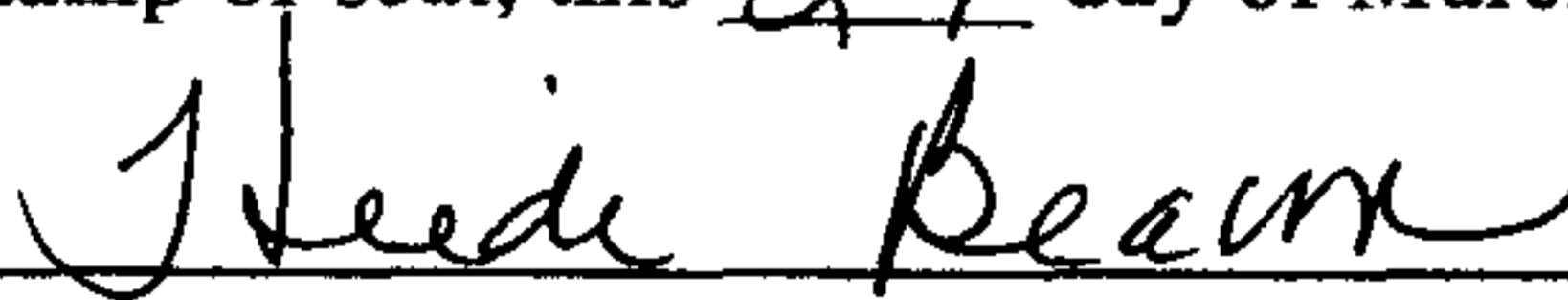


STATE OF NORTH CAROLINA

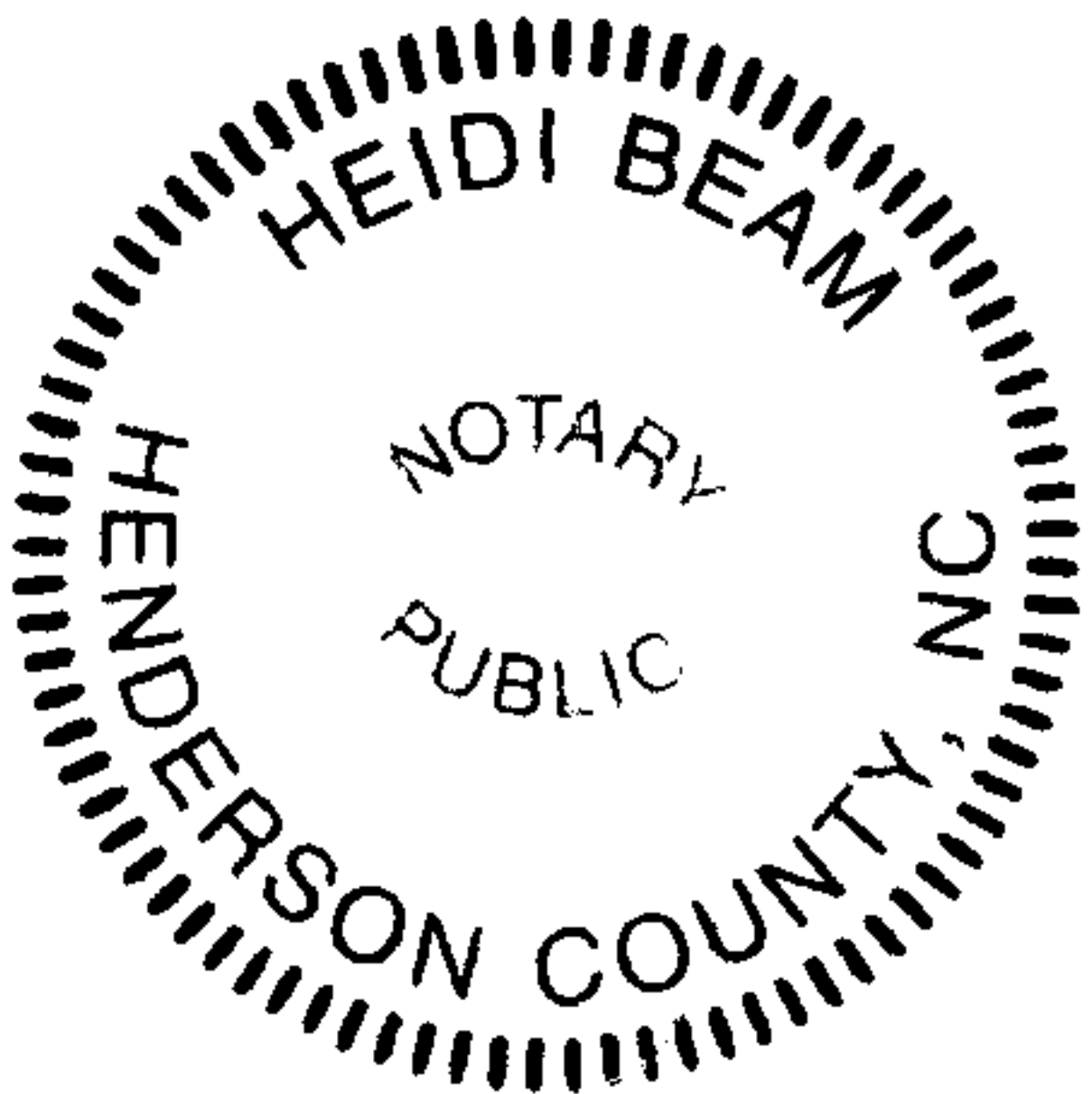
COUNTY OF HENDERSON

I, a Notary Public of the County and State aforesaid, certify that Mitch Gaither and Wendy L. Gaither personally appeared before me this day and acknowledged their voluntary execution of the foregoing instrument for the purpose stated therein. Witness my hand and official stamp or seal, this 27 day of March, 2023.

My Commission Expires:
11-24-2027



Notary Public





**CITY OF HENDERSONVILLE
COMMUNITY DEVELOPMENT DEPARTMENT**

100 N. King Street, Hendersonville, NC 28792

Phone (828) 697-3010/Fax (828) 698-6185

www.hendersonvillenc.gov

Petition Requesting Annexation

The following are the **required** submittals for a complete application for a Voluntary Annexation. Staff will not review applications until each item has been submitted and determined complete. By placing a check mark by each of the following items, you are certifying that you have performed that task.

- ☒ 1. Completed Application Form
- ☒ 2. A copy of the deed indicating ownership of the property.
- ☒ 3. A Survey Plat of the property prepared by a registered surveyor licensed to practice in the state of North Carolina.
- ☒ 4. A typed boundary description of the property.

A. Property Information

PIN(s): 9569750342

Address(es) / Location of Property: 153 Queen Street

Does this property adjoin the present City Limits? Yes X No

Is the property within the ETJ? X Yes No

Reason for Annexation:

To access City water and sewer

Office Use:

Date Received: _____ By: _____ Fee Received? Y/N

B. Property Owner Contact InformationRick Moore

* Printed Applicant Name

06/05/2023

Date

Townes at Martha Kate, LLC

Printed Company Name (if applicable)

☐ Corporation ☒ Limited Liability Company ☐ Trust ☐ Partnership☐ Other: _____

Property Owner SignatureMEMBER - MSA.

Property Owner Title (if applicable)103 Myrdwell Rd

Address of Property OwnerMiss River, N.C. 28759

City, State, and Zip Code888-891-8900

Telephonerick@mooreandson.net

Email

C. Additional Property Owner Contact Information

RICK MOORE 6-6-23
* Printed Applicant Name Date

TOWNES at MARTHA KATE LLC
Printed Company Name (if applicable)

☐ Corporation ☒ Limited Liability Company ☐ Trust ☐ Partnership

☐ Other: _____

[Signature]
Property Owner Signature

Member Mgr.
Property Owner Title (if applicable)

103 McDOWELL Rd
Address of Property Owner

Mills River, N.C. 28759
City, State, and Zip Code

828-243-4018
Telephone

rick@mooreandson.net
Email

Ad Preview

Section 7, Item B.

PUBLIC HEARING NOTICE

Notice is hereby given that the City of Hendersonville City Council will hold three public hearings on Thursday, September 7, 2023, at 5:45 p.m., or as soon thereafter as possible in the City Operations Assembly Room located at 305 Williams Street, Hendersonville NC to consider the following:

Annexation Petition - Townes at Martha Kate (C23-62-ANX) - Application from Rick Moore, Manager of Townes at Martha Kate, LLC for the satellite annexation of a parcel identified as tax parcel 9569-75-0342 located on Queen Street.

Digital/written public hearing comments must be received twenty-four hours prior to the meeting (by 5:45 p.m. on Wednesday September 6th 2023) to be considered by the City Council and must comply with security criteria in the Council's Public Comment Policy, available on the City's website.

Public hearing comments will also be accepted during the meeting from those attending in person and from those participating live via ZOOM at the designated time at this meeting. For security reasons screen sharing will not be allowed. Anyone wishing to submit written/digital public hearing comments for these public hearings prior to the meeting may visit <https://www.hendersonvillenc.gov/comment> to submit their comment. It is not necessary to submit digital comments if you are planning to address City Council during the meeting.

The meeting instructions to join by Zoom will be available on the City's website calendar by visiting <https://www.hendersonvillenc.gov/events-calendar> and as follows:

Zoom information for the meeting is:
<https://zoom.us/join>
Dial-in by phone: (646) 558-8656
Meeting ID: 822 0104 2528
Passcode: 1847

The City of Hendersonville is committed to providing accessible facilities, programs, and services for all people in compliance with the Americans with Disabilities Act (ADA). Should you need assistance or a particular accommodation for this meeting please contact the City Clerk no later than 24 hours in advance of the meeting (828) 697-3005.
9181060 8/20/23



CITY OF HENDERSONVILLE

AGENDA ITEM SUMMARY

PLANNING DIVISION

SUBMITTER:	Matthew Manley	MEETING DATE:	September 7, 2023
AGENDA SECTION:	Public Hearings	DEPARTMENT:	Community Development
TITLE OF ITEM:	Zoning Text Amendment: Small-Scale Multi-Family in the MIC (P23-49-ZTA) – <i>Matthew Manley, AICP – Strategic Projects Manager</i>		

SUGGESTED MOTION(S):

For Recommending Approval:

I move City Council **adopt** an ordinance amending the official City of Hendersonville Zoning Ordinance, Article V. – Zoning District Classifications, Section 5-10. ‘Medical, Institutional and Cultural Zoning District Classification (MIC)’ and Article XII. – ‘Definition of Terms’ and Article XVI. – ‘Supplementary Standards for Certain Uses’, based on the following:

1. The petition is found to be consistent with the City of Hendersonville 2030 Comprehensive Plan based on the information from the staff analysis and the public hearing, and because:

The 2030 Comprehensive Plan Land Use and Development Chapter calls for minimal front setbacks and recommends multi-family as a secondary use for properties within the Urban Institutional Future Land Use Designation. Goal PH-3 of the Population & Housing Chapter further supports the proposed Supplementary Standards for Small-Scale Multi-Family.

2. We [find] this petition to be reasonable and in the public interest based on the information from the staff analysis and the public hearing, and because:

1. The addition of multi-family residential as a permitted use will allow for greater infill development in a zoning district with a mix of intense land uses.
2. The addition of multi-family residential as a permitted use will place more residents within close proximity to goods and services.

For Recommending Denial:

I move City Council **deny** an ordinance amending the official City of Hendersonville Zoning Ordinance, Article V. – Zoning District Classifications, Section 5-10. Medical, Institutional and Cultural Zoning District Classification (MIC) and Article XII. – ‘Definition of Terms’ and Article XVI. – ‘Supplementary Standards for Certain Uses’, based on the following:

1. The petition is found to be consistent with the City of Hendersonville 2030 Comprehensive Plan based on the information from the staff analysis and the public hearing, and because:

The 2030 Comprehensive Plan Land Use and Development Chapter calls for minimal front setbacks and recommends multi-family as a secondary use for properties within the Urban Institutional Future Land Use Designation. Goal PH-3 of the Population & Housing Chapter further supports the proposed Supplementary Standards for Small-Scale Multi-Family.

2. We [do not find] this petition to be reasonable and in the public interest based on the information from the staff analysis and the public hearing, and because:

1. The allowance of additional density would be incompatible with single-family uses in the MIC zoning district.
2. The reduction of front setbacks would permit a more distinctly urban form

3. The addition of multi-family residential as a permitted use will allow for a mixture of housing types at different price points.	[DISCUSS & VOTE]
[DISCUSS & VOTE]	

***SUMMARY:** The City of Hendersonville is in receipt of an application to amend the list of Permitted Uses in the MIC (Medical, Institutional, & Cultural) Zoning District to include “Residential, Multi-family” as a permitted use.*

To facilitate the inclusion of “Small-Scale” multi-family in the MIC district, staff has developed additional dimensional and design standards that aim to achieve compatibility with the existing neighborhood as part of this proposed text amendment. These proposed standards include a reduction in minimum setbacks, architectural design standards, site design standards, screening of parking, and pedestrian connectivity requirements, to name a few. While there is no proposed maximum density, the maximum height, maximum footprint, minimum setbacks, minimum common space, parking requirements, and landscaping standards will all work in combination to limit the overall scale of any development.

A definition for Small-Scale Multi-Family will also be added to Article 12 - Definitions.

The Planning Board voted 8-1 in favor of the proposed text amendment.

PROJECT/PETITIONER NUMBER:	P23-49-ZTA
PETITIONER NAME:	Dee Gambrell
ATTACHMENTS:	<ol style="list-style-type: none"> 1. Staff Report 2. Planning Board Summary 3. Conceptual Diagram 4. Additional Visuals 5. Supplementary Map 6. Draft Ordinance

ZONING TEXT AMENDMENT: SMALL-SCALE MULTI-FAMILY IN THE MIC (P23-49-ZTA)
CITY OF HENDERSONVILLE - COMMUNITY DEVELOPMENT STAFF REPORT

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SITE IMAGES 7

SITE IMAGES 8

LEGISLATIVE COMMITTEE RECOMMENDATION 9

PROPOSED TEXT REVISIONS..... 9

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DRAFT COMPREHENSIVE PLAN CONSISTENCY AND REZONING REASONABLENESS STATEMENT 15



PROJECT SUMMARY



- Project Name & Case #:
 - Small-Scale Multi-Family in the MIC
 - P23-49-ZTA
- Applicant:
 - Dee Gambrell
- Articles Amended:
 - Section 5-10 (MIC)
 - 5-10-1
 - 5-10-3
- Applicable Zoning District(s):
 - MIC, Medical, Institutional, & Cultural Zoning District

Summary of Amendment Petition:

The City of Hendersonville is in receipt of an application to amend the list of Permitted Uses in the MIC (Medical, Institutional, & Cultural) Zoning District to include “Residential, Multi-family” as a permitted use.

To facilitate the inclusion of multi-family in the MIC district, staff has developed additional dimensional and design standards that aim to achieve compatibility with the existing neighborhood as part of this proposed text amendment. These proposed standards include a reduction in minimum setbacks, architectural design standards, site design standards, screening of parking, and pedestrian and vehicular connectivity requirements, to name a few. While there is no proposed maximum density, the maximum height, maximum footprint, minimum setbacks, minimum common space, parking requirements, and landscaping standards will all work in combination to limit the overall scale of any development.

Section 15-4-7 would also be amended to strike Minor PRD in the MIC as this use would be made obsolete with the inclusion of Multi-family residential as a permitted use in the MIC.

AMENDMENT OVERVIEW - AMMENDMENT ANALYSIS –

Development Pattern in the MIC: The MIC District has many characteristics of Traditional Neighborhood Design. Traditional Neighborhoods feature an interconnected street system laid out on small blocks typically containing sidewalks. Within these blocks you would typically find a mix of single-family and multi-family residential uses with civic uses and neighborhood-scale commercial uses at the edges. These uses would be located on a parcel or group of parcels typically defined by approximately 50' x 150' lots. These parcels would typically feature single-family residential structures set back 10-20' from the back of sidewalks. The homes predominantly feature(d) front porches and parking in the rear of the lots that are/were accessed either by alleys or long, narrow driveways running along the side of the lot. Of the 235 parcels zoned MIC or MIC SU/CZD, there are 46 parcels located in the West Side National Register Historic District

Multi-Family in the MIC: The MIC allowed for Multi-Family residential when it was initially adopted in 1965. It was later removed as a permitted use. In 1988, Nursing Homes, Rest Homes, Congregate Care Facilities and Progressive Care Facilities were added to the MIC because it was believed that “higher density housing is a compatible use in the MIC District”. In 1995, Planned Unit Developments including Multi-Family Residential uses were permitted in the MIC. Staff was able to determine that as early as 1997, Multi-family was no longer a permitted use within the MIC. The exact date and rationale for the removal of the use has not been determined.

According to Current Land Use data from the 2009 Comprehensive Plan, there are 5 parcels in the MIC currently used for Multi-Family - the largest of which is the Holly Crest Condominiums (20 units/acre). There are also a number of multi-family uses adjacent to and in the vicinity of the MIC District.

Current Character: This is a highly urbanized area that complements downtown and features, in addition to Pardee Hospital and a variety of schools and a small portion of the West Side National Register Historic District. Redevelopment in this area has resulted in a number of parcels developed in an automobile-oriented conventional suburban pattern as opposed to the original, early-suburb, Traditional Neighborhood Design that remains in part today.

The MIC Zoning District currently contains a wide range of land uses which include medical; institutional; recreational; commercial office and retail; single-family, two-family and multi-family residential; and a small amount of vacant land. In particular, the medical facilities generate a significant amount of traffic, light, noise and other indicators of an intense use within this district. At the heart of this medical area is the Pardee Hospital. Though the hospital campus is zoned Planned Commercial Development (PCD), it serves as the epicenter for the MIC District. Additionally, despite being zoned Planned Institutional Development (PID), the educational uses of Hendersonville Elementary, Hendersonville Middle and Hendersonville High School and Immaculata Catholic School (zoned CMU), contribute to the character of the MIC Zoning district due to their proximity.

Transportation: The MIC District contains a segment of a Major Thoroughfare, US 64, as it approaches Downtown Hendersonville. The MIC also contains two minor thoroughfares, 5th Ave and N. Justice St. Downtown Hendersonville is located just 1/3rd Mile (which is less than a 10-minute walk) from the center of the MIC District.

Staff Recommendations: In order to accomplish the stated goals of the 2030 Comprehensive Plan and address affordability through the provision of a mix of housing types, it is necessary to re-introduce Small-Scale Multi-Family uses, as proposed by the applicant. Furthermore, to permit the type of urban form that has defined this area since it was initially developed and to promote a pedestrian-friendly atmosphere, staff is also recommending a reduction in front setbacks, and minimum lot width with flexibility in side setbacks. These proposed revisions would apply district wide.

Design Standards in the MIC: To further ensure walkability and compatibility in this historic area of town, Design Standards have been proposed in the form of Supplementary Standards. These design standards are applicable to small-scale multi-family (including mixed-use). The supplementary standards address issues such as architectural details/features, building materials, building placement/orientation, and parking. The standards are based on the design requirements found in the City’s other mixed use zoning districts with some key differences such as the distinction of “small-scale” multi-family (8 units or fewer) from larger forms of multi-family developments.

Another key difference between this proposal and some of the City’s other zoning districts, is that the proposed text amendment does not include a cap on density. This is similar to the CMU, GHMU and Urban Residential zoning districts (no density cap), but differs from the PRD, HMU and CHMU districts (density caps). The proposal is designed to control density by addressing the scale of development through a range of supplementary standards that must be achieved. Restrictions on height (42’) and requirements for parking (1 per unit); setbacks (front 10’, side 20’ total, rear 20’); common space (10%); and landscaping will work in tandem to dictate the density that is achievable on a site without utilizing a specific density cap requirement.

It has also been considered that this area is already highly developed and there is very little vacant land within this district. Redevelopment efforts are certainly likely, however the consolidation of smaller lots to create enough contiguous land for a large scale-development would prove very challenging and potentially cost-prohibitive. A more readily achievable / near-term outcome is the provision of “[Missing Middle Housing](#)” consisting of duplexes, triplexes, quadplexes, townhomes and other forms of medium-density residential housing types.

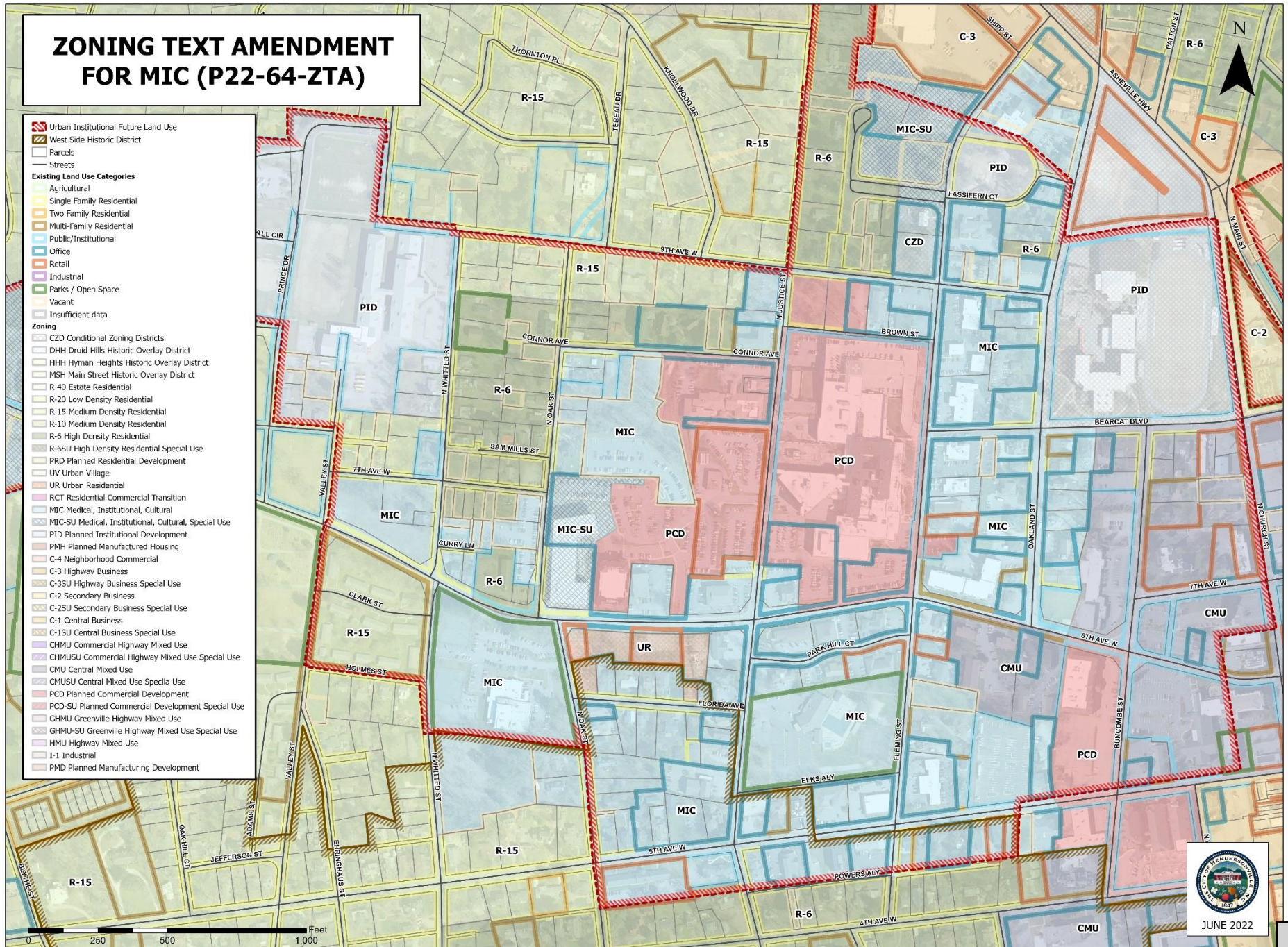
The proposal to allow for additional housing within close proximity to employment and educational opportunities, shopping, worship and entertainment will better utilize existing infrastructure; and allow residents the opportunity to increase the number of trips they take by foot or by bike (reducing vehicular traffic congestion and parking demands).

Tools for Review: To review the proposed language in comparison to the current language, please use the mark-up found in this staff report below. A diagram has also been provided which illustrates a conceptual 4-unit residential use on a small parcel that could be achieved using the proposed language. The diagram highlights the current standards as well as the proposed standards. Additional photo examples are provided.

Map: The following map illustrates the Future Land Use designation of Urban Institutional in relationship to existing Zoning and Land Use along with the West Side Historic District. A full version of this map is attached to your packet. The zoning is displayed by the color of the parcel and labeling. The land use is displayed by an outline of parcels. The Future Land Use Designations and West Side Historic District are displayed with outlines.

ZONING TEXT AMENDMENT FOR MIC (P22-64-ZTA)

- Urban Institutional Future Land Use
- West Side Historic District
- Parcels
- Streets
- Existing Land Use Categories**
 - Agricultural
 - Single Family Residential
 - Two Family Residential
 - Multi-Family Residential
 - Public/Institutional
 - Office
 - Retail
 - Industrial
 - Parks / Open Space
 - Vacant
 - Insufficient data
- Zoning**
 - CZD Conditional Zoning Districts
 - DHH Druid Hills Historic Overlay District
 - HHH Hyman Heights Historic Overlay District
 - MSH Main Street Historic Overlay District
 - R-40 Estate Residential
 - R-20 Low Density Residential
 - R-15 Medium Density Residential
 - R-10 Medium Density Residential
 - R-6 High Density Residential
 - R-6SU High Density Residential Special Use
 - PRD Planned Residential Development
 - UV Urban Village
 - UR Urban Residential
 - RCT Residential Commercial Transition
 - MIC Medical, Institutional, Cultural
 - MIC-SU Medical, Institutional, Cultural, Special Use
 - PID Planned Institutional Development
 - PMH Planned Manufactured Housing
 - C-4 Neighborhood Commercial
 - C-3 Highway Business
 - C-3SU Highway Business Special Use
 - C-2 Secondary Business
 - C-2SU Secondary Business Special Use
 - C-1 Central Business
 - C-1SU Central Business Special Use
 - CHMU Commercial Highway Mixed Use
 - CHMUSU Commercial Highway Mixed Use Special Use
 - CMU Central Mixed Use
 - CMUSU Central Mixed Use Special Use
 - PCD Planned Commercial Development
 - PCD-SU Planned Commercial Development Special Use
 - GHMU Greenville Highway Mixed Use
 - GHMU-SU Greenville Highway Mixed Use Special Use
 - HMU Highway Mixed Use
 - I-1 Industrial
 - PMD Planned Manufacturing Development



SUBJECT IMAGES



Multi-family on US 64 in the MIC



Multi-family on US 64 adjacent to MIC

SUBJECT IMAGES



Multi-family in the MIC



Conventional Suburban Development in MIC with parking in front and 50+' setback at Fleming St and 30' setback on 5th Ave

SUBJECT IMAGES



Traditional multi-family with 15' setback in the MIC



Contrast of setbacks: Mixed-use with multi-family apartments on upper floors and 0' setback (far) adjacent to medical office with parking in front and 65' front setback (near)

LEGISLATIVE COMMITTEE RECOMMENDATION

The Legislative Committee of the Planning Board met to discuss this petition at their recurring meeting on Tuesday, July 18, 2023. The members of the committee that were present were Jim Robertson, Peter Hanley and Neil Brown. In general, the Committee members were supportive of the proposed text changes along with suggestions from staff found in the supplementary standards. The Committee recommended to strengthen language around the provision of parking to the side/rear and the discouragement of front-facing garages while also proposing to reduce some of the costly architectural requirements such as requiring architectural features on non-street facing facades and requiring at least 15% of a façade to be made of stone, brick or decorative block.

PROPOSED TEXT REVISIONS

With consideration of the applicant's request and after additional review by the Legislative Committee, the following revisions to the zoning code are presented for your consideration. Staff has further revised the recommendations below from those reviewed by the Legislative Committee.

ARTICLE V. - ZONING DISTRICT CLASSIFICATIONS

Section 5-10. - Medical, Institutional and Cultural Zoning District Classification (MIC).

5-10-1. Permitted uses.

The following uses are permitted by right in the MIC Medical Institutional Cultural Zoning District Classification, provided they meet all requirements of this section and all other requirements established in this appendix:

Accessory dwelling units subject to supplementary standards contained in section 16-4 below

Accessory uses and structures

Adult care centers registered with the NC Department of Health and Human Services (DHSS)

Adult care homes so long as the use is clearly incidental to the residential use of the dwelling and does not change the essential residential character of the dwelling

Banks and other financial institutions

Child care centers subject to supplementary standards contained in section 16-4, below

Child care homes so long as the use is clearly incidental to the residential use of the dwelling and does not change the essential residential character of the dwelling

Congregate care facilities subject to supplementary standards contained in section 16-4, below

Home occupations

Hospitals

Laundries, coin-operated

Music and art studios

Neighborhood community centers

- Nursing homes subject to supplementary standards contained in section 16-4, below
- Offices, business, professional and public
- Parking lots and parking garages
- Parks
- Personal services consistent with the purposes of this classification, such as barber and beauty shops, medical and dental labs and clinics, opticians and optical services and prosthetics & orthopedics
- Planned residential developments (minor)
- Progressive care facilities subject to supplementary standards contained in section 16-4, below
- Public and semi-public buildings
- Religious institutions
- Residential care facilities subject to supplementary standards contained in section 16-4, below
- Residential dwellings, single-family
- Residential dwellings, two-family
- Residential dwellings, small-scale multi-family subject to supplementary standards contained in section 16-4, below
- Rest homes subject to supplementary standards contained in section 16-4, below
- Retail stores consistent within the purposes of this classification, such as gift shops, florist shops and pharmacies
- Schools, post-secondary, business, technical and vocational
- Signs, subject to the provisions of article XIII
- Telecommunications antennas, subject to supplementary standards contained in section 16-4, below

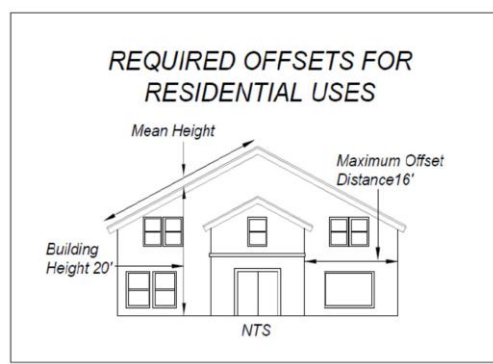
5-10-3. Dimensional requirements.

Minimum lot area in square feet:	8,000
Lot area per dwelling unit in square feet:	10,000 for the first; 5,000 square feet for each additional dwelling unit in one building.
Minimum lot width at building line in feet:	75 0
Minimum yard requirements in feet:	Front: 30 10
	Side: <u>20 total for lot; with minimum of 5; on any side</u>
	Rear: 20
<u>Accessory Structure Minimum Setbacks</u>	<u>Front: Shall be located to the side or rear of principal structure</u>
	<u>Side & Rear: 5</u>
Maximum height in feet:	50

ARTICLE XVI. - SUPPLEMENTARY STANDARDS FOR CERTAIN USES

16-4-31 – Residential Dwellings, Small-scale multi-family

- a) For the purposes of these standards, small-scale multi-family shall include all developments not subject to the N.C. Residential Code for One- and Two-Family Dwellings including triplexes, quadplexes, and other small apartment buildings. The standards below may be implemented voluntarily for single-family attached (townhomes) constructed subject to N.C. Residential Code for One- and Two-Family Dwellings.
- b) Maximum Height for any structure shall be 42'.
- c) Maximum footprint for any principal structure shall be 4,000 square feet.
- d) All street-facing sides of a corner lot are considered fronts
- e) Building Placement
 - a. Buildings shall be situated as close to the minimum front setback as practicable.
 - b. Buildings shall be situated to provide off-street parking to the rear and/or side of the building(s).
 - c. Buildings shall be situated to protect and accentuate important mountain vistas and views of significant historic sites.
 - d. Buildings shall be situated to provide well-defined, street-facing entrance(s) with a connecting walkway with a direct, safe, pedestrian connection to the street.
 - i. For buildings on corner lots, an entrance may be placed at the corner, thereby eliminating the need for side entrances.
 - e. Buildings shall offset front-loading garages and carports, if provided, behind the front façade by a minimum of 10'.
 - i. Front-loading garages and carports shall be visually designed to form a secondary building volume.
 - ii. The width of an attached garage shall not exceed 50 percent of the total building façade.
 - f. Canopies, awnings, cornices, balconies, front-facing covered porches and stoops and similar architectural accents are permitted to extend from the building up to five feet (5') into a required minimum setback and/or required Common Open Space.
- f) Architectural Design Standards
 - a. The following standards apply to all facades (front, rear and side) of buildings:
 - i. No wall shall exceed 16 feet in length without an offset. A building façade which is less than 16 feet in length shall not require an offset.
 - ii. Offsets shall have a minimum depth or projection of one and one half feet (1.5').



- iii. Each façade shall use fenestration and do so in a manner which is proportional to the overall scale of the building.

- iv. All building facades shall contain at least two building materials which shall contrast in color and texture.
 - v. When multiple wall materials are combined on one façade, the designer is encouraged to place the heavier material(s) below
 - vi. Building materials shall be used consistently on the exterior of the building. The following building materials are prohibited for exterior façade application:
 - 1) Plain concrete block (with or without paint);
 - 2) Reflective glass;
 - 3) More than 50 percent glass on any façade;
 - 4) Vinyl siding; and
 - 5) Any other materials not customarily used in conventional construction.
 - vii. Exposed foundations shall consist of stone, stucco, brick or decorative block. If crawlspaces of porches are enclosed, they shall be enclosed with similar materials or lattice or any combination thereof.
 - viii. Windows. Windows shall either be (1) recessed a minimum of three inches (3") from the façade or (2) trimmed. If trim is used, it shall be a minimum of four inches (nominal) in width and shall project beyond the façade.
- b. The following standards apply to all street-facing facades (fronts) of buildings:
- i. Detailed design shall be provided by using at least two (2) of the following architectural features on all elevations.
 - 1. Dormers
 - 2. Gables
 - 3. Recessed entries
 - 4. Cupolas or towers
 - 5. Pillars, columns or posts
 - 6. Corbels
 - 7. Bay windows
 - 8. Balconies
 - 9. Decorative patterns on exterior finish (e.g. scales/shingles, wainscoting, ornamentation)
 - 10. Parapets / Decorative cornices and roof lines (required for buildings with flat roofs)
 - 11. Wood siding with two and a half inch to four and a half inch reveal (2.5"-4.5")
 - c. Pitched roofs on residential buildings shall have a pitch between 5:12 and 12:12. Eaves (with a minimum twelve-inch (12") projection) shall be provided with a pitched roof.
 - d. Useable porches and/or stoops, at least eight feet (8') in width and six feet (6') in depth, shall be located on the front and/or side of the home. Porches and stoops may encroach into front setback up to five feet (5').
 - e. Accessory buildings with a floor area greater than 150 square feet shall be clad in materials similar in appearance to the principal structure and with similar roof pitch.
 - f. Walls and fences located in the front yard shall be no more than four feet (4') above grade. The use of chain link fencing is prohibited in front yards. For corner lots, both street-facing sides shall be considered fronts. Rear yard and side yard fences are not subject to these standards.

- g) **On-street parking.** On-street parking is encouraged for all local streets and thoroughfares.
- a. On-street parking abutting the development parcel shall count toward meeting the off-street parking requirements for the district.
 - b. On-street parking may take the form of parallel or angle parking and shall be built according to city or state standards as applicable in order to count towards minimum parking requirements.
- h) **Off-street parking.**
- a. All off-street parking lots shall be provided at the side or rear of buildings or the interior of a block of buildings and not closer to the street than the edge profile of the structures.
 - b. Off-street parking shall not be adjacent to street intersections.

ARTICLE XII. - DEFINITION OF TERMS

Sec. 12-2. - Definition of commonly used terms and words.

Dwelling, small-scale multi-family: A building with eight (8) or fewer dwelling units

AMENDMENT ANALYSIS – COMPREHENSIVE PLAN CONSISTENCY (ARTICLE 11-4)

GENERAL REZONING STANDARDS: COMPREHENSIVE PLAN CONSISTENCY	
Land Use & Development	Goal LU-12. Urban Institutional: Create a cohesive, well-defined urban campus for medical and educational institutions, with supportive office, service and residential uses, that is integrated with Downtown.
	Strategy LU-12.1. Locations: Area surrounding Pardee Memorial Hospital [CONSISTENT]
	Strategy LU-12.3. Secondary recommended land uses: <ul style="list-style-type: none"> • Single-family attached residential [CONSISTENT] • Multi-family residential [CONSISTENT] • Live-work units [CONSISTENT] • Limited retail and services [CONSISTENT]
	Strategy LU-12.4. Development guidelines: <ul style="list-style-type: none"> • Similar development standards to <u>Downtown Support</u> • Encouragement of neighborhood master-planning that links hospital with offices, services and Downtown
	Strategy LU-11.4. (Downtown Support) Development guidelines: <ul style="list-style-type: none"> • Minimal front setback [CONSISTENT] • Rear or limited side parking only [CONSISTENT] • Façade articulation [CONSISTENT]
	Strategy LU-1.1. Encourage infill development and redevelopment in areas planned for high-intensity development. Action LU-1.1.1. Review zoning standards and revise as necessary to enable compatible infill projects.
	Strategy LU-3.5 Minimize negative impacts from growth and land use changes on existing land uses. Some zoning map changes and other development applications may create short-term incompatibilities with existing neighborhoods, even if they are consistent with the Future Land Use Plan. It is critical that City officials consider the full range of impacts of all development applications, in addition to conformance with the Future Land Use Plan. Action LU-3.5.1 Consider a full range of short- and long-term impacts when reviewing zone change applications and other proposals that introduce land use changes. When reviewing zone change applications, the City should consider whether applications demonstrate a clear public purpose as well as the criteria listed in Figure 8.3a.
	Strategy LU-3.6. - Update the Zoning Code to ensure conformance with the Comprehensive Plan. The Zoning Code is the City's primary regulatory tool in implementing the Comprehensive Plan. Amendments to the Zoning Code and Map will be necessary to reflect Comprehensive Plan recommendations and ensure orderly growth and development.
Population & Housing	Strategy PH-1.1 – Promote compatible infill development
	Strategy PH-1.4. Allow redevelopment and/or reuse of single-family homes that directly front on arterials into office or high-density residential uses in coordination with the Future Land Use Map.

	<p>Goal PH-2. Encourage a wide range of housing types and price points in order to meet the diverse and evolving needs of current and future residents, match the housing supply with the local workforce, and promote diverse neighborhoods.</p> <p>Goal PH-3. Promote safe and walkable neighborhoods. <i>Action PH-3.1.1. Encourage pedestrian-friendly design features in residential developments, such as recessed or rear garages and front porches in single-family development, and rear parking lots and front entrances in multi-family developments.</i></p> <p><i>Strategy PH-3.2 - Encourage mixed land use patterns that place residents within walking distance of services.</i></p>
Natural & Environmental Resources	There are no Goals, Strategies, or Actions that are directly applicable to this petition.
Cultural & Historic Resources	<p>Portions of the MIC Zoning District are located within the West Side National Register Historic District</p> <p>Goal CR-1. Preserve the viability and individuality of Hendersonville's historic neighborhoods in order to maintain their role in supporting community pride, livability and identity.</p> <p><i>Strategy CR-1.3. Promote investment in and adjacent to Historic Districts through compatible infill development, particularly on currently underutilized, non-historic properties.</i></p>
Community Facilities	There are no Goals, Strategies, or Actions that are directly applicable to this petition.
Water Resources	There are no Goals, Strategies, or Actions that are directly applicable to this petition.
Transportation & Circulation	<i>Strategy TC-1.1. Encourage mixed-use, pedestrian-friendly development that reduces the need to drive between land uses.</i>

GENERAL REZONING STANDARDS

Compatibility	Whether and the extent to which the proposed amendment is compatible with existing and proposed uses surrounding the subject property -
	<i>Multi-family: The MIC Zoning District contains land uses which include a wide range of medical; institutional; commercial office and retail; recreational; single-family, two-family and multi-family residential uses; and vacant land. In particular, the medical facilities in the area, including Pardee Hospital, are a primary land use which generates a significant amount of traffic, light and other indicators of an intense use.</i>
	<i>Dimensional Standards: The proposal aims to eliminate the incompatibility of a 30' front setback and to provide other standards which align with the traditional character of the district. A more walkable urban form may be achieved by shifting parking to the rear of a lot and allowing for buildings to be brought closer to the road. Reduction in setbacks allows for greater flexibility and more efficient utilization of land.</i> <i>Supplementary Standards: the intent of the design standards is to provide compatibility with the existing historic character of the district.</i>
Changed Conditions	Whether and the extent to which there are changed conditions, trends or facts that require an amendment -
	<i>Residential Development / Redevelopment have risen steadily over the 2.5 years. High demand and undersupply of housing in our region is well-documented. Permitting multi-family uses addresses this need while the standards proposed aim to protect the character of the district. Given the proximity to downtown and Pardee hospital, reinvestment and redevelopment is likely to occur in this area.</i>
Public Interest	Whether and the extent to which the proposed amendment would result in a logical and orderly development pattern that benefits the surrounding neighborhood, is in the public interest and promotes public health, safety and general welfare -
	<i>Multi-family: As is well-documented in the City's Comprehensive Plan, there is a need for compatible infill development in areas of the City where utilization of existing infrastructure can be realized and in areas that place residents in close walking distance to goods and services. The addition of multi-family residential would help to address this need while providing a variety of housing types.</i>
	<i>Dimensional Standards: Reducing front setbacks and shifting parking to the rear of lots supports a built environment that is more friendly to pedestrians by creating a greater sense of enclosure and higher quality walking experience while still accommodating automobiles.</i> <i>Supplementary Standards: requiring particular outcomes with new development will help to ensure that new development compliments existing development.</i>
Public Facilities	Whether and the extent to which adequate public facilities and services such as water supply, wastewater treatment, fire and police protection and transportation are available to support the proposed amendment
	<i>The MIC Zoning District is in an urban location that is well served by public facilities.</i>
Effect on Natural Environment	Whether and the extent to which the proposed amendment would result in significantly adverse impacts on the natural environment including but not limited to water, air, noise, storm water management, streams, vegetation, wetlands and wildlife -
	<i>There are no known negative environmental impacts associated with the petition.</i>

DRAFT COMPREHENSIVE PLAN CONSISTENCY AND REZONING REASONABLENESS STATEMENT

The petition is found to be [consistent] with the City of Hendersonville 2030 Comprehensive Plan based on the information from the staff analysis and the public hearing, and because:

The 2030 Comprehensive Plan Land Use and Development Chapter calls for minimal front setbacks and recommends multi-family as a secondary use for properties within the Urban Institutional Future Land Use Designation. Goal PH-3 of the Population & Housing Chapter further supports the proposed Supplementary Standards for Small-Scale Multi-Family.

We [find] this petition to be reasonable and in the public interest based on the information from the staff analysis and the public hearing, and because:

DRAFT [Rationale for Approval]

- 1) The addition of multi-family residential as a permitted use will allow for greater infill development in a zoning district with a mix of intense land uses.*
- 2) The addition of multi-family residential as a permitted use will place more residents within close proximity to goods and services.*
- 3) The addition of multi-family residential as a permitted use will provide for a variety of housing types at different price points.*

DRAFT [Rational for Denial]

- 1) The allowance of additional density would be incompatible with single-family uses in the MIC zoning district.*
- 2) The reduction of front setbacks would permit a more distinctly urban form.*

PLANNING BOARD RECOMMENDATIONProject #: P23-49-ZTAMeeting Date: August 10, 2023

PETITION REQUEST: Zoning Text Amendment – Small-Scale Multi-Family in MIC

APPLICANT/PETITIONER: Dee Gambrell

PLANNING BOARD ACTION SUMMARY:

Staff gave a presentation on the request providing an analysis of existing conditions and staff's recommended text revisions. Additionally, staff presented the feedback from the Legislative Committee level and reviewed the guidance from the Comprehensive Plan and the criteria for considering a Zoning Text Amendment. Planning Board considered this item for approximately 1 Hour + 30 Minutes.

The applicant, Dee Gambrell, was not present.

One member of the public spoke and asked questions related to the development:

1. Ken Fitch, 1046 Patton St – Mr. Fitch spoke for 5 mins and 30 seconds. He expressed concerns related to the incremental changes as presented in the proposal and the potential impact it may have on existing character. He expressed concern related to the need for additional parking and the potential loss of tree canopy.

Staff responded to some of the comments to explain that street trees were originally part of the staff recommendation, but those provisions were removed in an effort to defer to the Tree Ordinance which is currently being drafted by committee. Further, staff presented information related to Parking Minimums and the impact they have historically had on development patterns, not only in Hendersonville, but across the county.

The Planning Board discussed and showed support for the provisions presented by staff. Ms. Peacock provided comments that, due to Building Code constraints combined with the footprint limitations, it may be unlikely that multi-family units would be developed in the MIC under these provisions. It was further expressed by Ms. Waters that if development/redevelopment does occur in the area, there is some likelihood that the units would be either Short Term Rentals or offered as a high-end, market-rate housing type. Ms. Peacock offered that she saw Townhomes as a viable option and that it was her opinion that this housing type was more likely to be developed under these provisions. Ultimately a majority of Planning Board members agreed that Small-Scale Multi-Family was an appropriate use in this area regardless of how the market may respond.

MOTION:

Ms. Peacock made a motion to approve the petition. The motion passed 8-1 with the following language:

COMPREHENSIVE PLAN CONSISTENCY AND REASONABLENESS STATEMENT:

The petition is found to be consistent with the City of Hendersonville 2030 Comprehensive Plan based on the information from the staff analysis and the public hearing, and because:

The 2030 Comprehensive Plan Land Use and Development Chapter calls for minimal front setbacks and recommends multi-family as a secondary use for properties within the Urban Institutional Future Land Use Designation. Goal PH-3 of the Population & Housing Chapter further supports the proposed Supplementary Standards for Small-Scale Multi-Family.

REASONABLENESS STATEMENT

We find this petition to be reasonable and in the public interest based on the information from the staff analysis and the public hearing, and because:

[Rationale for Approval]

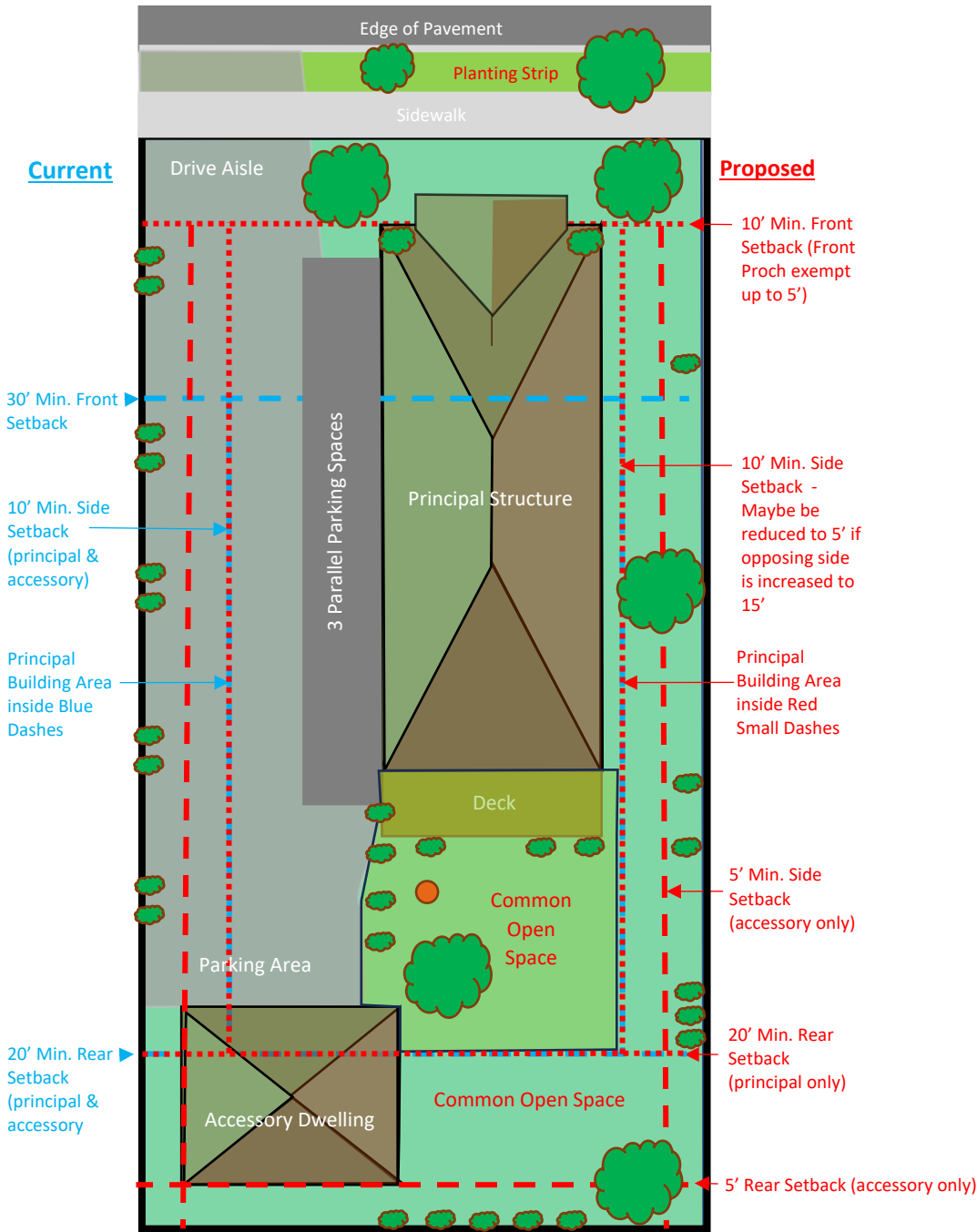
- 1. The addition of multi-family residential as a permitted use will allow for greater infill development in a zoning district with a mix of intense land uses.*
- 2. The addition of multi-family residential as a permitted use will place more residents within close proximity to goods and services*
- 3. The addition of multi-family residential as a permitted use will allow for a mixture of housing types at different price points.*

BOARD ACTION

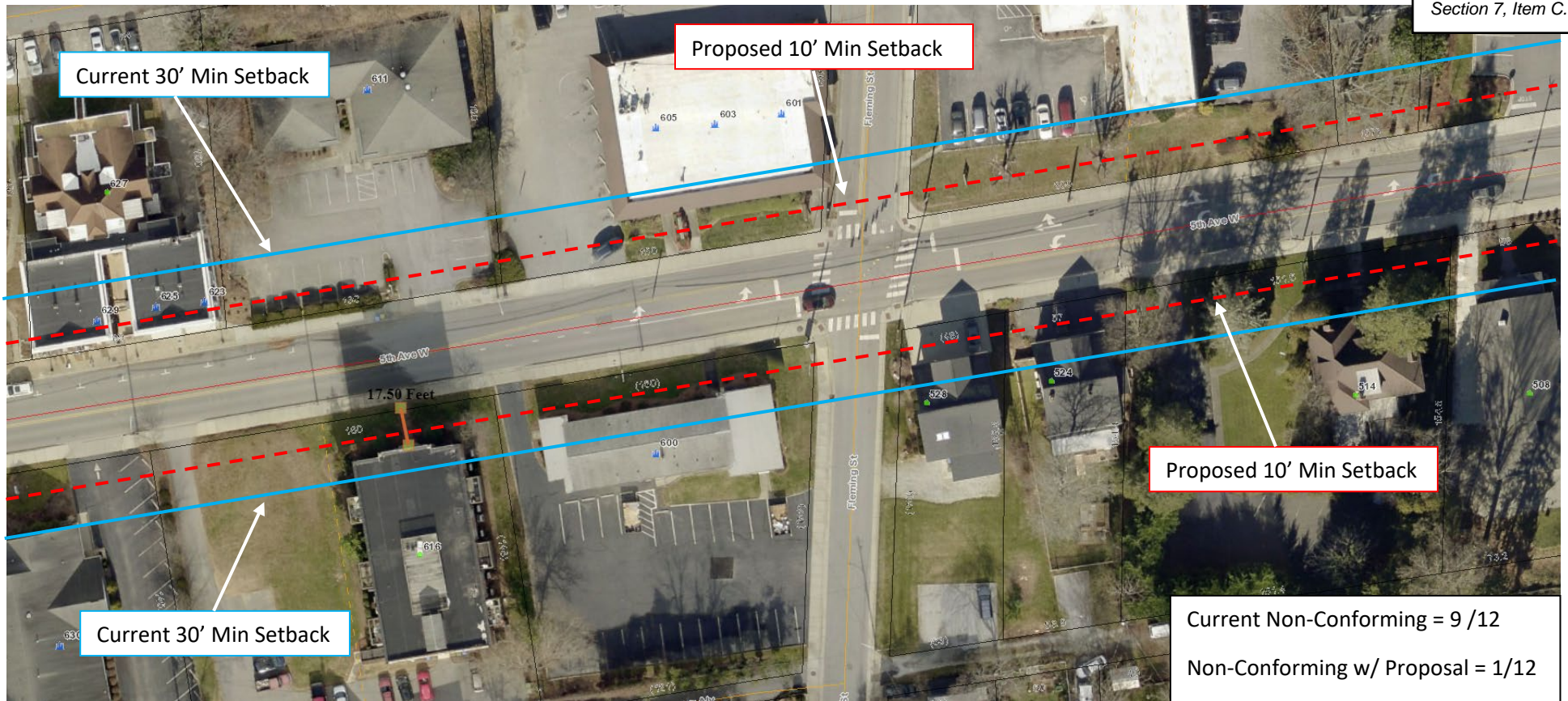
- **Motion/Second:** Peacock / Hanley
- **Yeas:** Hanley, Brown, Martin, Robinson, B. Robertson, Waters, J. Robertson,
- **Nays:** Cromar
- **Absent:** N/A
- **Recused:** N/A

Conceptual Diagram of 4-Unit Quadplex with ADU using Proposed MIC Setbacks

Current setbacks shown in blue
Proposed setbacks shown in red

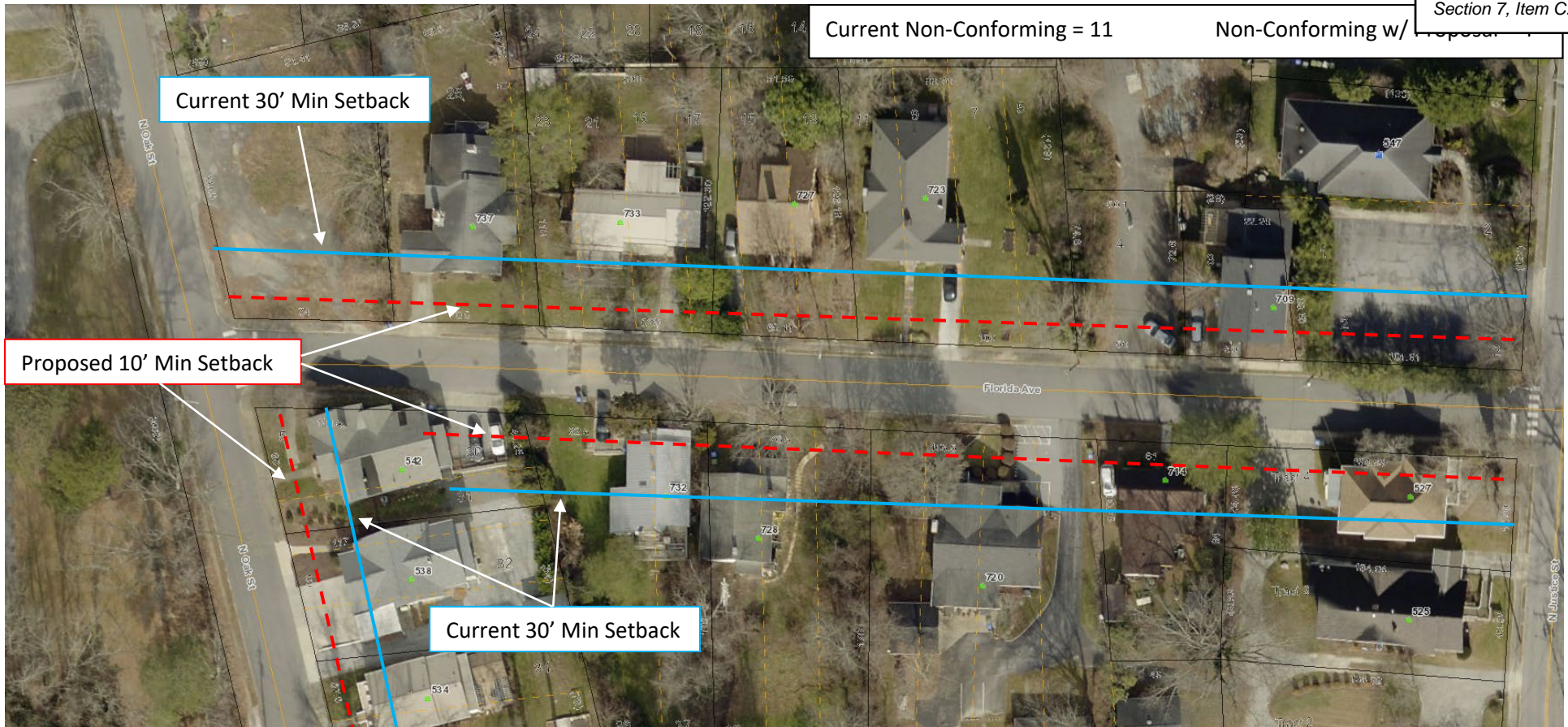


Lot Size = 65' x 125' or 8,125 Sq Ft | Min: 8,000 Sq Ft
Principal Building Footprint = 25' x 62.5' (1,562.5 Sq Ft) | Max: 4,000 Sq Ft
Height = 35' | Max: 42'
Accessory Dwelling Footprint = 20' x 25' (500 Sq Ft) | 5' Setbacks
Driveway Width = 18' (Fire access satisfied w/o 26' drive due to building depth less than 150' from street)
Parking = 3 Parallel Spaces + 2 spaces under or in front of ADU
Sidewalk = 5' **Planting Strip** = 5'
Common Open Space (Sq Ft) = Provided: 2,808 (35%) | Required: 500 Sq Ft/5 Units = 1,500 Sq Ft



Current Non-Conforming = 11

Non-Conforming w/ Proposal





Above: Example of development pattern permitted under current setbacks

Below: Examples of form that would be permissible under proposal that would not be allowed under current requirements



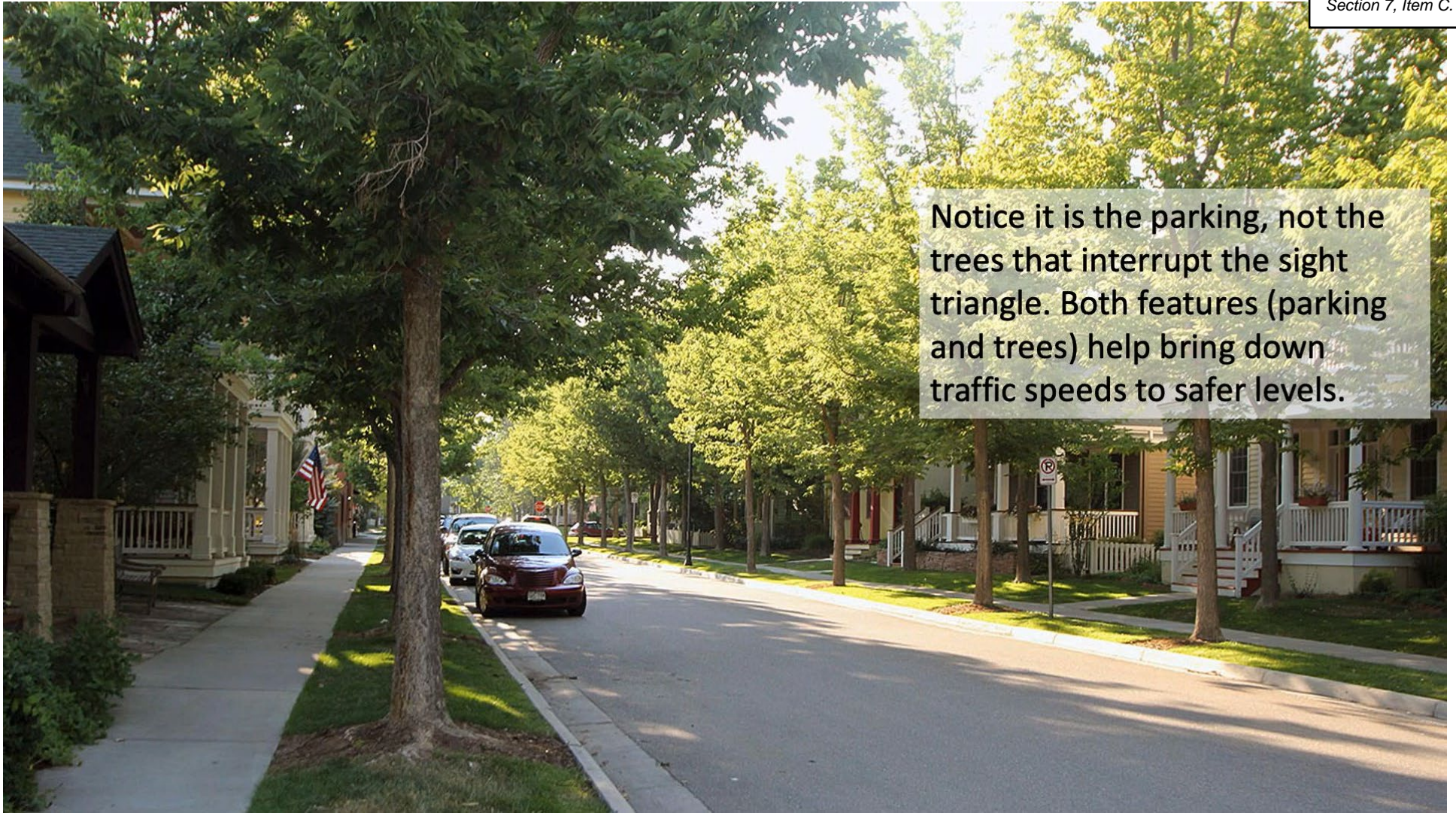
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ST. ALBANS, DAVIDSON, NC



























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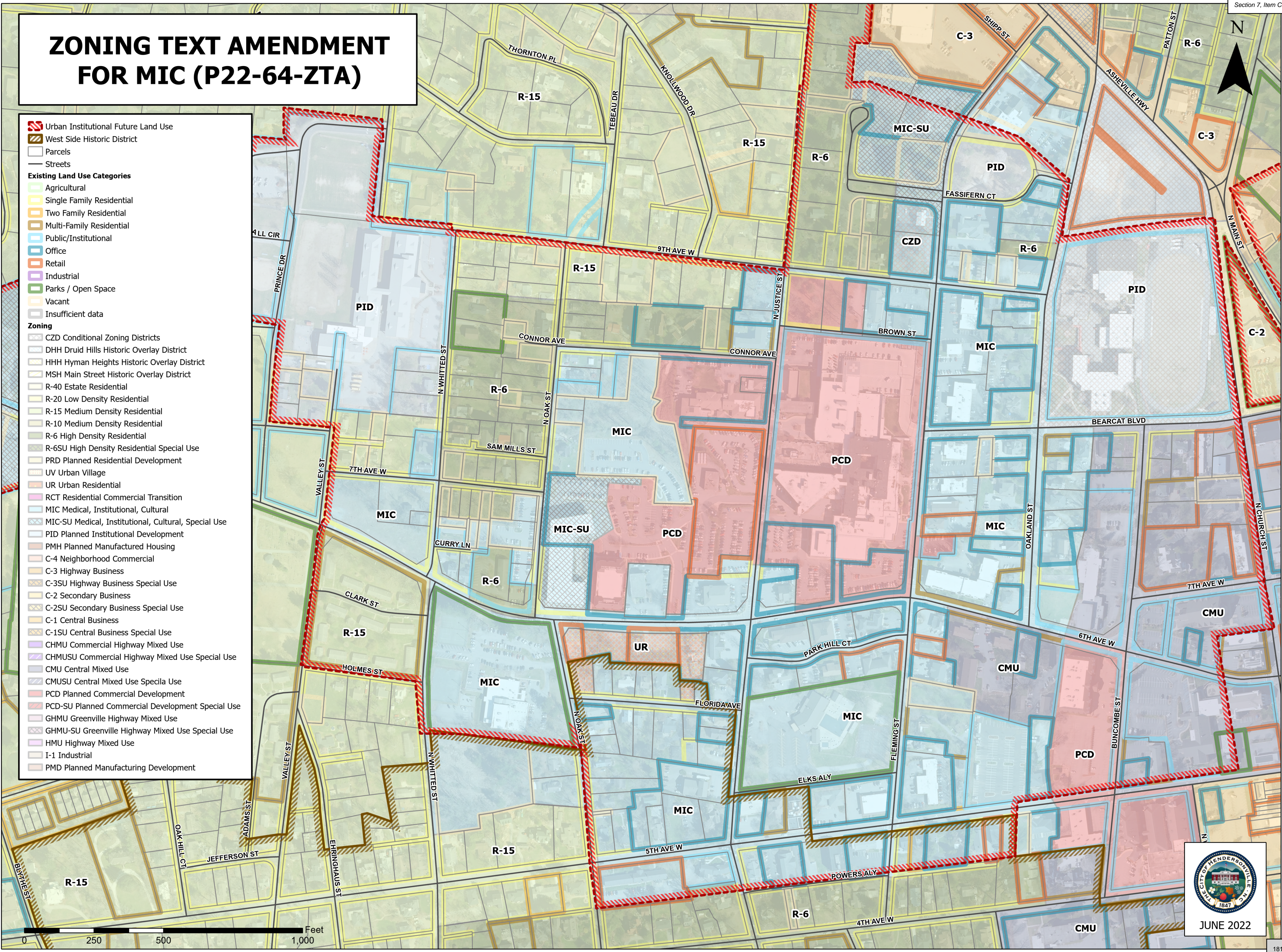




Notice it is the parking, not the trees that interrupt the sight triangle. Both features (parking and trees) help bring down traffic speeds to safer levels.

ZONING TEXT AMENDMENT FOR MIC (P22-64-ZTA)

-  Urban Institutional Future Land Use
-  West Side Historic District
-  Parcels
-  Streets
- Existing Land Use Categories**
-  Agricultural
-  Single Family Residential
-  Two Family Residential
-  Multi-Family Residential
-  Public/Institutional
-  Office
-  Retail
-  Industrial
-  Parks / Open Space
-  Vacant
-  Insufficient data
- Zoning**
-  CZD Conditional Zoning Districts
-  DHH Druid Hills Historic Overlay District
-  HHH Hyman Heights Historic Overlay District
-  MSH Main Street Historic Overlay District
-  R-40 Estate Residential
-  R-20 Low Density Residential
-  R-15 Medium Density Residential
-  R-10 Medium Density Residential
-  R-6 High Density Residential
-  R-6SU High Density Residential Special Use
-  PRD Planned Residential Development
-  UV Urban Village
-  UR Urban Residential
-  RCT Residential Commercial Transition
-  MIC Medical, Institutional, Cultural
-  MIC-SU Medical, Institutional, Cultural, Special Use
-  PID Planned Institutional Development
-  PMH Planned Manufactured Housing
-  C-4 Neighborhood Commercial
-  C-3 Highway Business
-  C-3SU Highway Business Special Use
-  C-2 Secondary Business
-  C-2SU Secondary Business Special Use
-  C-1 Central Business
-  C-1SU Central Business Special Use
-  CHMU Commercial Highway Mixed Use
-  CHMUSU Commercial Highway Mixed Use Special Use
-  CMU Central Mixed Use
-  CMUSU Central Mixed Use Specila Use
-  PCD Planned Commercial Development
-  PCD-SU Planned Commercial Development Special Use
-  GHMU Greenville Highway Mixed Use
-  GHMU-SU Greenville Highway Mixed Use Special Use
-  HMU Highway Mixed Use
-  I-1 Industrial
-  PMD Planned Manufacturing Development



**AN ORDINANCE OF THE CITY OF HENDERSONVILLE CITY COUNCIL TO AMEND
ARTICLE V. – ‘ZONING DISTRICT CLASSIFICATIONS’, SECTION 5-10 ‘MEDICAL,
INSTITUTIONAL AND CULTURAL ZONING DISTRICT CLASSIFICATION (MIC)’ AND
ARTICLE XII. – ‘DEFINITION OF TERMS’ AND ARTICLE XVI. – ‘SUPPLEMENTARY
STANDARDS FOR CERTAIN USES’ TO INCLUDE SMALL-SCALE MULTI-FAMILY
RESIDENTIAL USES WITH SUPPLEMENTARY STANDARDS IN THE MIC ZONING
DISTRICT**

WHEREAS, the Planning Board reviewed this petition for a zoning text amendment at its regular meeting on August 10, 2023; voting 8-1 to recommend City Council adopt an ordinance amending the City of Hendersonville Zoning Ordinance, and

WHEREAS, City Council took up this application at its regular meeting on September 7, 2023, and

WHEREAS, City Council has found that this zoning text amendment is consistent with the City’s Comprehensive Plan, and that it is reasonable and in the public interest for the reasons stated, and

WHEREAS, City Council has conducted a public hearing as required by the North Carolina General Statutes on September 7, 2023,

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Hendersonville to amend Article V. – ‘Zoning District Classifications’, Section 5-10 ‘Medical, Institutional and Cultural Zoning District Classification (MIC)’ and Article XII. – ‘Definition Of Terms’ and Article XVI. – ‘Supplementary Standards for Certain Uses’ to include small-scale multi-family residential uses with supplementary standards in the MIC Zoning District.

ARTICLE V. - ZONING DISTRICT CLASSIFICATIONS

Section 5-10. - Medical, Institutional and Cultural Zoning District Classification (MIC).

5-10-1. Permitted uses.

The following uses are permitted by right in the MIC Medical Institutional Cultural Zoning District Classification, provided they meet all requirements of this section and all other requirements established in this appendix:

Accessory dwelling units subject to supplementary standards contained in section 16-4 below

Accessory uses and structures

Adult care centers registered with the NC Department of Health and Human Services (DHSS)

Adult care homes so long as the use is clearly incidental to the residential use of the dwelling and does not change the essential residential character of the dwelling

Banks and other financial institutions

Child care centers subject to supplementary standards contained in section 16-4, below

Child care homes so long as the use is clearly incidental to the residential use of the dwelling and does not change the essential residential character of the dwelling

Congregate care facilities subject to supplementary standards contained in section 16-4, below

Home occupations

Hospitals

Laundries, coin-operated

Music and art studios

Neighborhood community centers

Nursing homes subject to supplementary standards contained in section 16-4, below

Offices, business, professional and public

Parking lots and parking garages

Parks

Personal services consistent with the purposes of this classification, such as barber and beauty shops, medical and dental labs and clinics, opticians and optical services and prosthetics & orthopedics

Planned residential developments (minor)

Progressive care facilities subject to supplementary standards contained in section 16-4, below

Public and semi-public buildings

Religious institutions

Residential care facilities subject to supplementary standards contained in section 16-4, below

Residential dwellings, single-family

Residential dwellings, two-family

Residential dwellings, small-scale multi-family subject to supplementary standards contained in section 16-4, below

Rest homes subject to supplementary standards contained in section 16-4, below

Retail stores consistent within the purposes of this classification, such as gift shops, florist shops and pharmacies

Schools, post-secondary, business, technical and vocational

Signs, subject to the provisions of article XIII

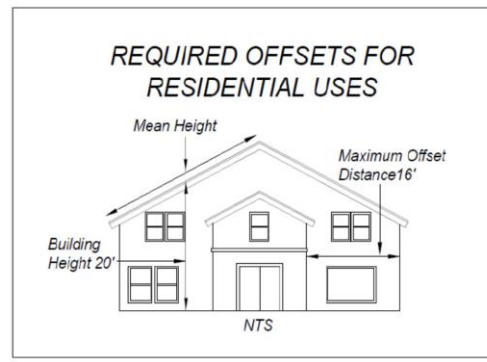
Telecommunications antennas, subject to supplementary standards contained in section 16-4, below

5-10-3. Dimensional requirements.

Minimum lot area in square feet:	8,000
Lot area per dwelling unit in square feet:	10,000 for the first; 5,000 square feet for each additional dwelling unit in one building.
Minimum lot width at building line in feet:	7 50
Minimum yard requirements in feet:	Front: 30 10
	Side: <u>20 total for lot; with minimum of 5; on any side</u>
	Rear: 20
<u>Accessory Structure Minimum Setbacks</u>	<u>Front: Shall be located to the side or rear of principal structure</u>
	<u>Side & Rear: 5</u>
Maximum height in feet:	50

16-4-31 – Residential Dwellings, Small-scale multi-family

- a) For the purposes of these standards, small-scale multi-family shall include all developments not subject to the N.C. Residential Code for One- and Two-Family Dwellings including triplexes, quadplexes, and other small apartment buildings. The standards below may be implemented voluntarily for single-family attached (townhomes) constructed subject to N.C. Residential Code for One- and Two-Family Dwellings.
- b) Maximum Height for any structure shall be 42'.
- c) Maximum footprint for any principal structure shall be 4,000 square feet.
- d) All street-facing sides of a corner lot are considered fronts
- e) Building Placement
 - a. Buildings shall be situated as close to the minimum front setback as practicable.
 - b. Buildings shall be situated to provide off-street parking to the rear and/or side of the building(s).
 - c. Buildings shall be situated to protect and accentuate important mountain vistas and views of significant historic sites.
 - d. Buildings shall be situated to provide well-defined, street-facing entrance(s) with a connecting walkway with a direct, safe, pedestrian connection to the street.
 - i. For buildings on corner lots, an entrance may be placed at the corner, thereby eliminating the need for side entrances.
 - e. Buildings shall offset front-loading garages and carports, if provided, behind the front façade by a minimum of 10'.
 - i. Front-loading garages and carports shall be visually designed to form a secondary building volume.
 - ii. The width of an attached garage shall not exceed 50 percent of the total building façade.
 - f. Canopies, awnings, cornices, balconies, front-facing covered porches and stoops and similar architectural accents are permitted to extend from the building up to five feet (5') into a required minimum setback and/or required Common Open Space.
- f) Architectural Design Standards
 - a. The following standards apply to all facades (front, rear and side) of buildings:
 - i. No wall shall exceed 16 feet in length without an offset. A building façade which is less than 16 feet in length shall not require an offset.
 - ii. Offsets shall have a minimum depth or projection of one and one half feet (1.5').



- iii. Each façade shall use fenestration and do so in a manner which is proportional to the overall scale of the building.

- iv. All building facades shall contain at least two building materials which in color and texture.
 - v. When multiple wall materials are combined on one façade, the designer is encouraged to place the heavier material(s) below
 - vi. Building materials shall be used consistently on the exterior of the building. The following building materials are prohibited for exterior façade application:
 - 1) Plain concrete block (with or without paint);
 - 2) Reflective glass;
 - 3) More than 50 percent glass on any façade;
 - 4) Vinyl siding; and
 - 5) Any other materials not customarily used in conventional construction.
 - vii. Exposed foundations shall consist of stone, stucco, brick or decorative block. If crawlspaces of porches are enclosed, they shall be enclosed with similar materials or lattice or any combination thereof.
 - viii. Windows. Windows shall either be (1) recessed a minimum of three inches (3”) from the façade or (2) trimmed. If trim is used, it shall be a minimum of four inches (nominal) in width and shall project beyond the façade.
- b. The following standards apply to all street-facing facades (fronts) of buildings:
- i. Detailed design shall be provided by using at least two (2) of the following architectural features on all elevations.
 - i. Dormers
 - ii. Gables
 - iii. Recessed entries
 - iv. Cupolas or towers
 - v. Pillars, columns or posts
 - vi. Corbels
 - vii. Bay windows
 - viii. Balconies
 - ix. Decorative patterns on exterior finish (e.g. scales/shingles, wainscoting, ornamentation)
 - x. Parapets / Decorative cornices and roof lines (required for buildings with flat roofs)
 - xi. Wood siding with two and a half inch to four and a half inch reveal (2.5”-4.5”)
- c. Pitched roofs on residential buildings shall have a pitch between 5:12 and 12:12. Eaves (with a minimum twelve-inch (12”) projection) shall be provided with a pitched roof.
- d. Useable porches and/or stoops, at least eight feet (8’) in width and six feet (6’) in depth, shall be located on the front and/or side of the home. Porches and stoops may encroach into front setback up to five feet (5’).
- e. Accessory buildings with a floor area greater than 150 square feet shall be clad in materials similar in appearance to the principal structure and with similar roof pitch.
- f. Walls and fences located in the front yard shall be no more than four feet (4’) above grade. The use of chain link fencing is prohibited in front yards. For corner lots, both street-facing sides shall be considered fronts . Rear yard and side yard fences are not subject to these standards.

- g) On-street parking. On-street parking is encouraged for all local streets and thoroughfa
 - a. On-street parking abutting the development parcel shall count toward meeting the off-street parking requirements for the district.
 - b. On-street parking may take the form of parallel or angle parking and shall be built according to city or state standards as applicable in order to count towards minimum parking requirements.
- h) Off-street parking.
 - a. All off-street parking lots shall be provided at the side or rear of buildings or the interior of a block of buildings and not closer to the street than the edge profile of the structures.
 - b. Off-street parking shall not be adjacent to street intersections.

ARTICLE XII. - DEFINITION OF TERMS

Sec. 12-2. - Definition of commonly used terms and words.

Dwelling, small-scale multi-family: A building with eight (8) or fewer dwelling units

Adopted by the City Council of the City of Hendersonville, North Carolina on this 7th day of September, 2023.

Barbara G. Volk, Mayor, City of Hendersonville

Attest:

Jill Murray, City Clerk

Approved as to form:

Angela S. Beeker, City Attorney



CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

SUBMITTER: John Connet **MEETING DATE:** 9/7/2023
AGENDA SECTION: UNFINISHED BUSINESS **DEPARTMENT:** Administration
TITLE OF ITEM: Consideration of City Council Primary Election – *Angie Beeker, City Attorney*
and *John Connet, City Manager*

SUGGESTED MOTION(S):

I move that the City Council _____.

SUMMARY:

Board of Elections Director Summer Heatherly requested that the City Council move their primary election from October to March. City Council requested that City Attorney Beeker research the matter and provide additional information.

BUDGET IMPACT: \$ TBD

Is this expenditure approved in the current fiscal year budget? NA

If no, describe how it will be funded. NA

ATTACHMENTS:

None



CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

SUBMITTER: John Connet, City Manager **MEETING DATE:** 9/7/2023

AGENDA SECTION: NEW BUSINESS **DEPARTMENT:** Administration

TITLE OF ITEM: Consideration of Allowing Golf Carts on Public Streets – *Council Member Hensley and John Connet, City Manager*

SUGGESTED MOTION(S):

I move that City Council direct staff to develop a policy/ordinance allowing the use of golf carts on public streets inside the City of Hendersonville.

SUMMARY:

Council Member Hensley has requested that staff investigate the development of an policy or ordinance to allow golf carts to be driven on public streets. Prior to asking staff to work on this project, I would like to ensure there is support from the majority of City Council to develop this policy or ordinance.

BUDGET IMPACT: \$

Is this expenditure approved in the current fiscal year budget? NA

If no, describe how it will be funded. NA

ATTACHMENTS:

Various General Statutes

N.C. Gen. Stat. § 160A-300.6

Current through Session Laws 2023-105 of the 2023 Regular Session of the General Assembly, but does not reflect possible future codification directives from the Revisor of Statutes pursuant to G.S. 164-10.

General Statutes of North Carolina > Chapter 160A. Cities and Towns. (Arts. 1 — 32) > Article 15. Streets, Traffic and Parking. (§§ 160A-296 — 160A-310)

§ 160A-300.6. Regulation of golf carts on streets, roads, and highways.

(a) Notwithstanding the provisions of G.S. 20-50 and G.S. 20-54, a city may, by ordinance, regulate the operation of golf carts, as defined in G.S. 20-4.01(12b), on any public street, road, or highway where the speed limit is 35 miles per hour or less within its municipal limits or on any property owned or leased by the city.

(b) By ordinance, a city may require the registration of golf carts, charge a fee for the registration, specify who is authorized to operate golf carts, and specify the required equipment, load limits, and the hours and methods of operation of golf carts. No person less than 16 years of age may operate a golf cart on a public street, road, or highway.

History

2009-459, s. 3.

Annotations

Notes

Editor's Note.

Session Laws 2009-459, s. 11, made this section effective October 1, 2009. Section 11 further provides: "A county may adopt an ordinance under G.S. 153A-245, and a city may adopt an ordinance under G.S. 160A-300.6 when this act becomes law, but the ordinances may not become effective prior to October 1, 2009. The repeal herein of any act does not affect the rights or liabilities of a local government that arose during the time the act was in effect, or under an ordinance adopted under such an act. If any county or city had adopted an ordinance under any act repealed by this act, and the ordinance would be permitted under G.S. 153A-245 or G.S. 160A-300.6 as enacted by this act, that ordinance shall remain in effect until amended or repealed by that county or city."


General Statutes of North Carolina
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N.C. Gen. Stat. § 20-4.01

Current through Session Laws 2023-105 of the 2023 Regular Session of the General Assembly, but does not reflect possible future codification directives from the Revisor of Statutes pursuant to G.S. 164-10.

General Statutes of North Carolina > Chapter 20. Motor Vehicles. (Arts. 1 — 18) > Article 1. Division of Motor Vehicles. (§§ 20-1 — 20-4.04)

Notice

 This section has more than one version with varying effective dates.

§ 20-4.01. Definitions.

Unless the context requires otherwise, the following definitions apply throughout this Chapter to the defined words and phrases and their cognates:

(1) Airbag. — A motor vehicle inflatable occupant restraint system device that is part of a supplemental restraint system.

(1a) Alcohol. — Any substance containing any form of alcohol, including ethanol, methanol, propanol, and isopropanol.

(1b) Alcohol Concentration. — The concentration of alcohol in a person, expressed either as:

- a. Grams of alcohol per 100 milliliters of blood; or
- b. Grams of alcohol per 210 liters of breath.

The results of a defendant's alcohol concentration determined by a chemical analysis of the defendant's breath or blood shall be reported to the hundredths. Any result between hundredths shall be reported to the next lower hundredth.

(1c) All-Terrain Vehicle or ATV. — A motorized vehicle 50 inches or less in width that is designed to travel on three or more low-pressure tires and manufactured for off-highway use. The terms "all-terrain vehicle" or "ATV" do not include a golf cart or a utility vehicle, as defined in this section, or a riding lawn mower.

(1d) Business District. — The territory prescribed as such by ordinance of the Board of Transportation.

(2) Canceled. — As applied to drivers' licenses and permits, a declaration that a license or permit which was issued through error or fraud, or to which G.S. 20-15(a) applies, is void and terminated.

(2a) Class A Motor Vehicle. — A combination of motor vehicles that meets either of the following descriptions:

- a. Has a combined GVWR of at least 26,001 pounds and includes as part of the combination a towed unit that has a GVWR of at least 10,001 pounds.
- b. Has a combined GVWR of less than 26,001 pounds and includes as part of the combination a towed unit that has a GVWR of at least 10,001 pounds.

(2b) Class B Motor Vehicle. — Any of the following:

- a. A single motor vehicle that has a GVWR of at least 26,001 pounds.
- b. A combination of motor vehicles that includes as part of the combination a towing unit that has a GVWR of at least 26,001 pounds and a towed unit that has a GVWR of less than 10,001 pounds.

(2c) Class C Motor Vehicle. — Any of the following:

- a. A single motor vehicle not included in Class B.
- b. A combination of motor vehicles not included in Class A or Class B.

(3) Repealed by Session Laws 1979, c. 667, s. 1.

(3a) Chemical Analysis. — A test or tests of the breath, blood, or other bodily fluid or substance of a person to determine the person's alcohol concentration or presence of an impairing substance, performed in accordance with G.S. 20-139.1, including duplicate or sequential analyses.

(3b) Chemical Analyst. — A person granted a permit by the Department of Health and Human Services under G.S. 20-139.1 to perform chemical analyses.

(3c) Commercial Drivers License (CDL). — A license issued by a state to an individual who resides in the state that authorizes the individual to drive a class of commercial motor vehicle. A "nonresident commercial drivers license (NRCDL)" is issued by a state to an individual who resides in a foreign jurisdiction.

(3d) Commercial Motor Vehicle. — Any of the following motor vehicles that are designed or used to transport passengers or property:

- a. A Class A motor vehicle that has a combined GVWR of at least 26,001 pounds and includes as part of the combination a towed unit that has a GVWR of at least 10,001 pounds.
- b. A Class B motor vehicle.
- c. A Class C motor vehicle that meets either of the following descriptions:
 - 1. Is designed to transport 16 or more passengers, including the driver.
 - 2. Is transporting hazardous materials and is required to be placarded in accordance with 49 C.F.R. Part 172, Subpart F.
- d. Repealed by Session Laws 1999, c. 330, s. 9, effective December 1, 1999.

(4) Commissioner. — The Commissioner of Motor Vehicles.

(4a) Conviction. — A conviction for an offense committed in North Carolina or another state:

- a. In-State. When referring to an offense committed in North Carolina, the term means any of the following:
 - 1. A final conviction of a criminal offense, including a no contest plea.
 - 2. A determination that a person is responsible for an infraction, including a no contest plea.
 - 3. An unvacated forfeiture of cash in the full amount of a bond required by Article 26 of Chapter 15A of the General Statutes.
 - 4. A third or subsequent prayer for judgment continued within any five-year period.
 - 5. Any prayer for judgment continued if the offender holds a commercial drivers license or if the offense occurs in a commercial motor vehicle.
- b. Out-of-State. When referring to an offense committed outside North Carolina, the term means any of the following:
 - 1. An unvacated adjudication of guilt.

2. A determination that a person has violated or failed to comply with the law in a court of original jurisdiction or an authorized administrative tribunal.
3. An unvacated forfeiture of bail or collateral deposited to secure the person's appearance in court.
4. A violation of a condition of release without bail, regardless of whether or not the penalty is rebated, suspended, or probated.
5. A final conviction of a criminal offense, including a no contest plea.
6. Any prayer for judgment continued, including any payment of a fine or court costs, if the offender holds a commercial drivers license or if the offense occurs in a commercial motor vehicle.

(4b) Counterfeit supplemental restraint system component. — A replacement supplemental restraint system component, including an airbag, that displays a mark identical to, or substantially similar to, the genuine mark of a motor vehicle manufacturer or a supplier of parts to the manufacturer of a motor vehicle, without authorization from the manufacturer or supplier.

(4c) Crash. — Any event that results in injury or property damage attributable directly to the motion of a motor vehicle or its load. The terms collision, accident, and crash and their cognates are synonymous.

(5) Dealer. — Every person engaged in the business of buying, selling, distributing, or exchanging motor vehicles, trailers, or semitrailers in this State, and having an established place of business in this State.

The terms "motor vehicle dealer," "new motor vehicle dealer," and "used motor vehicle dealer" as used in Article 12 of this Chapter have the meaning set forth in G.S. 20-286.

(5a) Dedicated natural gas vehicle. — A four-wheeled motor vehicle that meets each of the following requirements:

- a. Is made by a manufacturer primarily for use on public streets, roads, and highways and meets National Highway Traffic Safety Administration standards included in 49 C.F.R. § 571.
- b. Has not been modified from original manufacturer specifications with regard to power train or any manner of powering the vehicle.
- c. Is powered solely by natural gas.
- d. Is rated at not more than 8,500 pounds unloaded gross vehicle weight.
- e. Has a maximum speed capability of at least 65 miles per hour.

(5b) Disqualification. — A withdrawal of the privilege to drive a commercial motor vehicle.

(6) Division. — The Division of Motor Vehicles acting directly or through its duly authorized officers and agents.

(7) Driver. — The operator of a vehicle, as defined in subdivision (25). The terms "driver" and "operator" and their cognates are synonymous.

(7a) Electric Assisted Bicycle. — A bicycle with two or three wheels that is equipped with a seat or saddle for use by the rider, fully operable pedals for human propulsion, and an electric motor of no more than 750 watts, whose maximum speed on a level surface when powered solely by such a motor is no greater than 20 miles per hour.

(7b) Electric Personal Assistive Mobility Device. — A self-balancing nontandem two-wheeled device, designed to transport one person, with a propulsion system that limits the maximum speed of the device to 15 miles per hour or less.

(7c) Employer. — Any person who owns or leases a commercial motor vehicle or assigns a person to drive a commercial motor vehicle and would be subject to the alcohol and controlled substance testing provisions of 49 C.F.R. § 382 and also includes any consortium or third-party administrator administering the alcohol and controlled substance testing program on behalf of owner-operators subject to the provisions of 49 C.F.R. § 382.

(8) Essential Parts. — All integral and body parts of a vehicle of any type required to be registered hereunder, the removal, alteration, or substitution of which would tend to conceal the identity of the vehicle or substantially alter its appearance, model, type, or mode of operation.

(9) Established Place of Business. — Except as provided in G.S. 20-286, the place actually occupied by a dealer or manufacturer at which a permanent business of bargaining, trading, and selling motor vehicles is or will be carried on and at which the books, records, and files necessary and incident to the conduct of the business of automobile dealers or manufacturers shall be kept and maintained.

(10) Explosives. — Any chemical compound or mechanical mixture that is commonly used or intended for the purpose of producing an explosion and which contains any oxidizing and combustible units or other ingredients in such proportions, quantities, or packing that an ignition by fire, by friction, by concussion, by percussion, or by detonator of any part of the compound or mixture may cause such a sudden generation of highly heated gases that the resultant gaseous pressures are capable of producing destructible effects on contiguous objects or of destroying life or limb.

(11) Farm Tractor. — Every motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines, and other implements of husbandry.

(11a) For-Hire Motor Carrier. — A person who transports passengers or property by motor vehicle for compensation.

(12) Foreign Vehicle. — Every vehicle of a type required to be registered hereunder brought into this State from another state, territory, or country, other than in the ordinary course of business, by or through a manufacturer or dealer and not registered in this State.

(12a) Fuel cell electric vehicle. — A four-wheeled motor vehicle that does not have the ability to be propelled by a gasoline engine and that meets each of the following requirements:

- a. Is made by a manufacturer primarily for use on public streets, roads, and highways and meets National Highway Traffic Safety Administration standards included in 49 C.F.R. § 571.
- b. Has not been modified from original manufacturer specifications with regard to power train or any manner of powering the vehicle.
- c. Uses hydrogen and a fuel cell to produce electricity on board to power an electric motor to propel the vehicle.
- d. Is rated at not more than 8,500 pounds unloaded gross vehicle weight.
- e. Has a maximum speed capability of at least 65 miles per hour.

(12b) Golf Cart. — A vehicle designed and manufactured for operation on a golf course for sporting or recreational purposes and that is not capable of exceeding speeds of 20 miles per hour.

(12c) Gross Combination Weight Rating (GCWR). — Defined in 49 C.F.R. § 390.5.

(12d) Gross Combined Weight (GCW). — The total weight of a combination (articulated) motor vehicle, including passengers, fuel, cargo, and attachments.

(12e) Gross Vehicle Weight (GVW). — The total weight of a vehicle, including passengers, fuel, cargo, and attachments.

(12f) Gross Vehicle Weight Rating (GVWR). — The value specified by the manufacturer as the maximum loaded weight a vehicle is capable of safely hauling. The GVWR of a combination vehicle is the GVWR of the power unit plus the GVWR of the towed unit or units. When a vehicle is determined by

an enforcement officer to be structurally altered in any way from the manufacturer's original design in an attempt to increase the hauling capacity of the vehicle, the GVWR of that vehicle shall be deemed to be the greater of the license weight or the total weight of the vehicle or combination of vehicles for the purpose of enforcing this Chapter. For the purpose of classification of commercial drivers license and skills testing, the manufacturer's GVWR shall be used.

(12g) Hazardous Materials. — Any material that has been designated as hazardous under 49 U.S.C. § 5103 and is required to be placarded under Subpart F of Part 172 of Title 49 of the Code of Federal Regulations, or any quantity of a material listed as a select agent or toxin under Part 73 of Title 42 of the Code of Federal Regulations.

(12h) High-Mobility Multipurpose Wheeled Vehicle (HMMWV). — A four-wheel drive vehicle produced for military or government use and commonly referred to as a "HMMWV" or "Humvee".

(13) Highway. — The entire width between property or right-of-way lines of every way or place of whatever nature, when any part thereof is open to the use of the public as a matter of right for the purposes of vehicular traffic. The terms "highway" and "street" and their cognates are synonymous.

(14) House Trailer. — Any trailer or semitrailer designed and equipped to provide living or sleeping facilities and drawn by a motor vehicle. This term shall not include a manufactured home as defined in subdivision (18a) of this section.

(14a) Impairing Substance. — Alcohol, controlled substance under Chapter 90 of the General Statutes, any other drug or psychoactive substance capable of impairing a person's physical or mental faculties, or any combination of these substances.

(15) Implement of Husbandry. — Every vehicle which is designed for agricultural purposes and used exclusively in the conduct of agricultural operations.

(15a) Inoperable Vehicle. — A motor vehicle that is substantially disassembled and for this reason is mechanically unfit or unsafe to be operated or moved upon a public street, highway, or public vehicular area.

(16) Intersection. — The area embraced within the prolongation of the lateral curblines or, if none, then the lateral edge of roadway lines of two or more highways which join one another at any angle whether or not one such highway crosses the other.

Where a highway includes two roadways 30 feet or more apart, then every crossing of each roadway of such divided highway by an intersecting highway shall be regarded as a separate intersection. In the event that such intersecting highway also includes two roadways 30 feet or more apart, then every crossing of two roadways of such highways shall be regarded as a separate intersection.

(17) License. — Any driver's license or any other license or permit to operate a motor vehicle issued under or granted by the laws of this State including:

- a. Any temporary license or learner's permit;
- b. The privilege of any person to drive a motor vehicle whether or not such person holds a valid license; and
- c. Any nonresident's operating privilege.

(18) Local Authorities. — Every county, municipality, or other territorial district with a local board or body having authority to adopt local police regulations under the Constitution and laws of this State.

(18a) Manufactured Home. — Defined in G.S. 143-143.9(6).

(19) Manufacturer. — Every person, resident, or nonresident of this State, who manufactures or assembles motor vehicles.

(20) Manufacturer's Certificate. — A certification on a form approved by the Division, signed by the manufacturer, indicating the name of the person or dealer to whom the therein-described vehicle is

transferred, the date of transfer and that such vehicle is the first transfer of such vehicle in ordinary trade and commerce. The description of the vehicle shall include the make, model, year, type of body, identification number or numbers, and such other information as the Division may require.

(21) Metal Tire. — Every tire the surface of which in contact with the highway is wholly or partly of metal or other hard, nonresilient material.

(21a) Repealed by Session Laws 2016-90, s. 13(a), effective December 1, 2016, and applicable to offenses committed on or after that date.

(21b) Motor Carrier. — A for-hire motor carrier or a private motor carrier.

(22) Motorcycle. — A type of passenger vehicle as defined in G.S. 20-4.01(27).

(23) Motor Vehicle. — Every vehicle which is self-propelled and every vehicle designed to run upon the highways which is pulled by a self-propelled vehicle. Except as specifically provided otherwise, this term shall not include mopeds or electric assisted bicycles.

(23a) Neighborhood occupantless vehicle. — A low-speed vehicle that is also a fully autonomous vehicle, designed to be operated without an occupant and used to transport cargo. A fully autonomous vehicle is defined in G.S. 20-400.

(23b) Nonfunctional airbag. — A replacement airbag that meets any of the following criteria:

- a. The airbag was previously deployed or damaged.
- b. The airbag has an electric fault that is detected by the vehicle's airbag diagnostic systems when the installation procedure is completed and the vehicle is returned to the customer who requested the work to be performed or when ownership is intended to be transferred.
- c. The airbag includes a part or object, including a supplemental restraint system component that is installed in a motor vehicle to mislead the owner or operator of the motor vehicle into believing that a functional airbag has been installed.
- d. The airbag is subject to the prohibitions of 49 U.S.C. § 30120(j).

(24) Nonresident. — Any person whose legal residence is in some state, territory, or jurisdiction other than North Carolina or in a foreign country.

(24a) Offense Involving Impaired Driving. — Any of the following offenses:

- a. Impaired driving under G.S. 20-138.1.
- b. Any offense set forth under G.S. 20-141.4 when conviction is based upon impaired driving or a substantially similar offense under previous law.
- c. First or second degree murder under G.S. 14-17 or involuntary manslaughter under G.S. 14-18 when conviction is based upon impaired driving or a substantially similar offense under previous law.
- d. An offense committed in another jurisdiction which prohibits substantially similar conduct prohibited by the offenses in this subsection.
- e. A repealed or superseded offense substantially similar to impaired driving, including offenses under former G.S. 20-138 or G.S. 20-139.
- f. Impaired driving in a commercial motor vehicle under G.S. 20-138.2, except that convictions of impaired driving under G.S. 20-138.1 and G.S. 20-138.2 arising out of the same transaction shall be considered a single conviction of an offense involving impaired driving for any purpose under this Chapter.
- g. Habitual impaired driving under G.S. 20-138.5.

A conviction under former G.S. 20-140(c) is not an offense involving impaired driving.

(24b) On-track equipment. — Any railcar, rolling stock, equipment, vehicle, or other device that is operated on stationary rails.

(25) Operator. — A person in actual physical control of a vehicle which is in motion or which has the engine running. The terms “operator” and “driver” and their cognates are synonymous.

(25a) Out of Service Order. — A declaration that a driver, a commercial motor vehicle, or a motor carrier operation is out-of-service.

(26) Owner. — A person holding the legal title to a vehicle, or in the event a vehicle is the subject of a chattel mortgage or an agreement for the conditional sale or lease thereof or other like agreement, with the right of purchase upon performance of the conditions stated in the agreement, and with the immediate right of possession vested in the mortgagor, conditional vendee or lessee, said mortgagor, conditional vendee or lessee shall be deemed the owner for the purpose of this Chapter. For the purposes of this Chapter, the lessee of a vehicle owned by the government of the United States shall be considered the owner of said vehicle.

(27) Passenger Vehicles. —

- a. Ambulances. — Vehicles equipped for transporting wounded, injured, or sick persons.
- b. Autocycle. — A three-wheeled motorcycle that has a steering wheel, pedals, seat safety belts for each occupant, antilock brakes, completely or partially enclosed seating that does not require the operator to straddle or sit astride, and is otherwise manufactured to comply with federal safety requirements for motorcycles.
- c. Child care vehicles. — Vehicles under the direction and control of a child care facility, as defined in G.S. 110-86(3), and driven by an owner, employee, or agent of the child care facility for the primary purpose of transporting children to and from the child care facility, or to and from a place for participation in an event or activity in connection with the child care facility.
- d. Common carriers of passengers. — Vehicles operated under a certificate of authority issued by the Utilities Commission for operation on the highways of this State between fixed termini or over a regular route for the transportation of persons for compensation.
- e. Excursion passenger vehicles. — Vehicles transporting persons on sight-seeing or travel tours.
- f. For-hire passenger vehicles. — Vehicles transporting persons for compensation. This classification shall not include the following:
 - 1. Vehicles operated as ambulances.
 - 2. Vehicles operated by the owner where the costs of operation are shared by the passengers.
 - 3. Vehicles operated pursuant to a ridesharing arrangement as defined in G.S. 136-44.21.
 - 4. Vehicles transporting students for the public school system under contract with the State Board of Education.
 - 5. Vehicles leased to the United States of America or any of its agencies on a nonprofit basis.
 - 6. Vehicles used for human service.
 - 7. Vehicles used for volunteer transportation.
 - 8. Vehicles operated in a TNC service, excluding vehicles operated in connection with a brokering transportation network company, regulated under Article 10A of Chapter 20 of the General Statutes.
- g. Low-speed vehicle. — A four-wheeled electric vehicle whose top speed is greater than 20 miles per hour but less than 25 miles per hour.

g1. Mini-truck. — A motor vehicle designed, used, or maintained primarily for the transportation of property and having four wheels, an engine displacement of 660cc or less, an overall length of 130 inches or less, an overall height of 78 inches or less, and an overall width of 60 inches or less.

g2. Modified utility vehicle. — A motor vehicle that (i) is manufactured or upfitted by a licensed manufacturer, dealer, or person or business otherwise engaged in vehicle manufacturing or modification for off-road use with equipment required by G.S. 20-121.1(2a), except a vehicle identification number, and (ii) has four wheels, an overall length of 110 inches or greater, an overall width of 58 inches or greater, an overall height of 60 inches or greater, a maximum speed capability of 40 miles per hour or greater, and does not require an operator or passenger to straddle a seat. “Modified utility vehicle” does not include an all-terrain vehicle, golf cart, or utility vehicle, as defined in this section, or a riding lawn mower.

h. Motorcycles. — Vehicles having a saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, including autocycles, motor scooters, and motor-driven bicycles, but excluding tractors and utility vehicles equipped with an additional form of device designed to transport property, three-wheeled vehicles while being used by law-enforcement agencies, electric assisted bicycles, and mopeds as defined in sub-subdivision d1. of this subdivision.

i. Motor-driven bicycle. — A vehicle with two or three wheels, a steering handle, one or two saddle seats, pedals, and a motor that cannot propel the vehicle at a speed greater than 20 miles per hour on a level surface. This term shall not include an electric assisted bicycle as defined in subdivision (7a) of this section.

j. Moped. — A vehicle, other than a motor-driven bicycle or electric assisted bicycle, that has two or three wheels, no external shifting device, a motor that does not exceed 50 cubic centimeters piston displacement and cannot propel the vehicle at a speed greater than 30 miles per hour on a level surface. The motor may be powered by electricity, alternative fuel, motor fuel, or a combination of each.

k. Motor home or house car. — A vehicular unit, designed to provide temporary living quarters, built into as an integral part, or permanently attached to, a self-propelled motor vehicle chassis or van. The vehicle must provide at least four of the following facilities: cooking, refrigeration or icebox, self-contained toilet, heating or air conditioning, a portable water supply system including a faucet and sink, separate 110-125 volt electrical power supply, or an LP gas supply.

l. Private passenger vehicles. — All other passenger vehicles not included in the above definitions.

m. School activity bus. — A vehicle, generally painted a different color from a school bus, whose primary purpose is to transport school students and others to or from a place for participation in an event other than regular classroom work. The term includes a public, private, or parochial vehicle that meets this description.

n. School bus. — A vehicle whose primary purpose is to transport school students over an established route to and from school for the regularly scheduled school day, that is equipped with alternately flashing red lights on the front and rear and a mechanical stop signal, that is painted primarily yellow below the roofline, and that bears the plainly visible words “School Bus” on the front and rear. The term includes a public, private, or parochial vehicle that meets this description.

o. U-drive-it passenger vehicles. — Passenger vehicles included in the definition of U-drive-it vehicles set forth in this section.

(28) Person. — Every individual, firm, partnership, association, corporation, governmental agency, or combination thereof of whatsoever form or character.

(28a) Personal delivery device. — An electrically powered device intended for transporting cargo that is equipped with automated driving technology that enables device operation with or without the remote

support and supervision of a human and that does not exceed (i) a weight of 500 pounds, excluding cargo, (ii) a length of 40 inches, and (iii) a width of 30 inches.

(28b) Plug-in electric vehicle. — A four-wheeled motor vehicle that does not have the ability to be propelled by a gasoline engine and that meets each of the following requirements:

- a. Is made by a manufacturer primarily for use on public streets, roads, and highways and meets National Highway Traffic Safety Administration standards included in 49 C.F.R. § 571.
- b. Has not been modified from original manufacturer specifications with regard to power train or any manner of powering the vehicle.
- c. Is rated at not more than 8,500 pounds unloaded gross vehicle weight.
- d. Has a maximum speed capability of at least 65 miles per hour.
- e. Draws electricity from a battery that has all of the following characteristics:
 1. A capacity of not less than four kilowatt hours.
 2. Capable of being recharged from an external source of electricity.

(29) Pneumatic Tire. — Every tire in which compressed air is designed to support the load.

(29a) Private Motor Carrier. — A person who transports passengers or property by motor vehicle in interstate commerce and is not a for-hire motor carrier.

(30) Private Road or Driveway. — Every road or driveway not open to the use of the public as a matter of right for the purpose of vehicular traffic.

(31) Property-Hauling Vehicles. —

- a. Vehicles used for the transportation of property.
- b., c. Repealed by Session Laws 1995 (Regular Session, 1996), c. 756, s. 4.
- d. Semitrailers. — Vehicles without motive power designed for carrying property or persons and for being drawn by a motor vehicle, and so constructed that part of their weight or their load rests upon or is carried by the pulling vehicle.
- e. Trailers. — Vehicles without motive power designed for carrying property or persons wholly on their own structure and to be drawn by a motor vehicle, including “pole trailers” or a pair of wheels used primarily to balance a load rather than for purposes of transportation.
- f. Repealed by Session Laws 1995 (Regular Session, 1996), c. 756, s. 4.
- g. A fifth-wheel trailer, recreational vehicle, semitrailer, or trailer used exclusively or primarily to transport vehicles in connection with motorsports competition events is not a property-hauling vehicle.

(31a) Provisional Licensee. — A person under the age of 18 years.

(32) Public Vehicular Area. — Any area within the State of North Carolina that meets one or more of the following requirements:

- a. The area is used by the public for vehicular traffic at any time, including by way of illustration and not limitation any drive, driveway, road, roadway, street, alley, or parking lot upon the grounds and premises of any of the following:
 1. Any public or private hospital, college, university, school, orphanage, church, or any of the institutions, parks or other facilities maintained and supported by the State of North Carolina or any of its subdivisions.

2. Any service station, drive-in theater, supermarket, store, restaurant, or office building, or any other business, residential, or municipal establishment providing parking space whether the business or establishment is open or closed.

3. Any property owned by the United States and subject to the jurisdiction of the State of North Carolina. (The inclusion of property owned by the United States in this definition shall not limit assimilation of North Carolina law when applicable under the provisions of Title 18, United States Code, section 13).

b. The area is a beach area used by the public for vehicular traffic.

c. The area is a road used by vehicular traffic within or leading to a gated or non-gated subdivision or community, whether or not the subdivision or community roads have been offered for dedication to the public.

d. The area is a portion of private property used by vehicular traffic and designated by the private property owner as a public vehicular area in accordance with G.S. 20-219.4.

(32a) Ramp Meter. — A traffic control device that consists of a circular red and circular green display placed at a point along an interchange entrance ramp.

(32b) Recreational Vehicle. — A vehicular type unit primarily designed as temporary living quarters for recreational, camping, or travel use that either has its own motive power or is mounted on, or towed by, another vehicle. The basic entities are camping trailer, fifth-wheel travel trailer, motor home, travel trailer, and truck camper. This term shall not include a manufactured home as defined in G.S. 143-143.9(6). The basic entities are defined as follows:

a. Camping trailer. — A vehicular portable unit mounted on wheels and constructed with collapsible partial side walls that fold for towing by another vehicle and unfold at the campsite to provide temporary living quarters for recreational, camping, or travel use.

b. Fifth-wheel trailer. — A vehicular unit mounted on wheels designed to provide temporary living quarters for recreational, camping, or travel use, of a size and weight that does not require a special highway movement permit and designed to be towed by a motorized vehicle that contains a towing mechanism that is mounted above or forward of the tow vehicle's rear axle.

c. Motor home. — As defined in G.S. 20-4.01(27)k.

d. Travel trailer. — A vehicular unit mounted on wheels, designed to provide temporary living quarters for recreational, camping, or travel use, and of a size or weight that does not require a special highway movement permit when towed by a motorized vehicle.

e. Truck camper. — A portable unit that is constructed to provide temporary living quarters for recreational, camping, or travel use, consisting of a roof, floor, and sides and is designed to be loaded onto and unloaded from the bed of a pickup truck.

(32c) Regular Drivers License. — A license to drive a commercial motor vehicle that is exempt from the commercial drivers license requirements or a noncommercial motor vehicle.

(33)

a. Flood Vehicle. — A motor vehicle that has been submerged or partially submerged in water to the extent that damage to the body, engine, transmission, or differential has occurred.

b. Non-U.S.A. Vehicle. — A motor vehicle manufactured outside of the United States and not intended by the manufacturer for sale in the United States.

c. Reconstructed Vehicle. — A motor vehicle of a type required to be registered hereunder that has been materially altered from original construction due to removal, addition or substitution of new or used essential parts; and includes glider kits and custom assembled vehicles.

d. Salvage Motor Vehicle. — Any motor vehicle damaged by collision or other occurrence to the extent that the cost of repairs to the vehicle and rendering the vehicle safe for use on the public streets and highways would exceed seventy-five percent (75%) of its fair retail market value, whether or not the motor vehicle has been declared a total loss by an insurer. Repairs shall include the cost of parts and labor. Fair market retail values shall be as found in the NADA Pricing Guide Book or other publications approved by the Commissioner.

e. Salvage Rebuilt Vehicle. — A salvage vehicle that has been rebuilt for title and registration.

f. Junk Vehicle. — A motor vehicle which is incapable of operation or use upon the highways and has no resale value except as a source of parts or scrap, and shall not be titled or registered.

(33a) Relevant Time after the Driving. — Any time after the driving in which the driver still has in his body alcohol consumed before or during the driving.

(33b) Reportable Crash. — A crash involving a motor vehicle that results in one or more of the following:

a. Death or injury of a human being.

b. Total property damage of one thousand dollars (\$1,000) or more, or property damage of any amount to a vehicle seized pursuant to G. S. 20-28.3.

(33c) Reserve components of the Armed Forces of the United States. — The organizations listed in Title 10 United States Code, section 10101, which specifically includes the Army and Air National Guard.

(34) Resident. — Any person who resides within this State for other than a temporary or transitory purpose for more than six months shall be presumed to be a resident of this State; but absence from the State for more than six months shall raise no presumption that the person is not a resident of this State.

(35) Residential District. — The territory prescribed as such by ordinance of the Department of Transportation.

(36) Revocation or Suspension. — Termination of a licensee's or permittee's privilege to drive or termination of the registration of a vehicle for a period of time stated in an order of revocation or suspension. The terms "revocation" or "suspension" or a combination of both terms shall be used synonymously.

(37) Road Tractors. — Vehicles designed and used for drawing other vehicles upon the highway and not so constructed as to carry any part of the load, either independently or as a part of the weight of the vehicle so drawn.

(38) Roadway. — That portion of a highway improved, designed, or ordinarily used for vehicular travel, exclusive of the shoulder. In the event a highway includes two or more separate roadways the term "roadway" as used herein shall refer to any such roadway separately but not to all such roadways collectively.

(39) Safety Zone. — Traffic island or other space officially set aside within a highway for the exclusive use of pedestrians and which is so plainly marked or indicated by proper signs as to be plainly visible at all times while set apart as a safety zone.

(40) Security Agreement. — Written agreement which reserves or creates a security interest.

(41) Security Interest. — An interest in a vehicle reserved or created by agreement and which secures payments or performance of an obligation. The term includes but is not limited to the interest of a chattel mortgagee, the interest of a vendor under a conditional sales contract, the interest of a trustee under a chattel deed of trust, and the interest of a lessor under a lease intended as security. A security interest is "perfected" when it is valid against third parties generally.

(41a) Serious Traffic Violation. — A conviction of one of the following offenses when operating a commercial or other motor vehicle:

- a. Excessive speeding, involving a single charge of any speed 15 miles per hour or more above the posted speed limit.
- b. Careless and reckless driving.
- c. A violation of any State or local law relating to motor vehicle traffic control, other than a parking violation, arising in connection with a fatal accident.
- d. Improper or erratic lane changes.
- e. Following the vehicle ahead too closely.
- f. Driving a commercial motor vehicle without obtaining a commercial drivers license.
- g. Driving a commercial motor vehicle without a commercial drivers license in the driver's possession.
- h. Driving a commercial motor vehicle without the proper class of commercial drivers license or endorsements for the specific vehicle group being operated or for the passenger or type of cargo being transported.
- i. Unlawful use of a mobile telephone under G.S. 20-137.4A or Part 390 or Part 392 of Title 49 of the Code of Federal Regulations while operating a commercial motor vehicle.

(42) Solid Tire. — Every tire of rubber or other resilient material which does not depend upon compressed air for the support of the load.

(43) Specially Constructed Vehicles. — Motor vehicles required to be registered under this Chapter and that fit within one of the following categories:

- a. Replica vehicle. — A vehicle, excluding motorcycles, that when assembled replicates an earlier year, make, and model vehicle.
- b. Street rod vehicle. — A vehicle, excluding motorcycles, manufactured prior to 1949 that has been materially altered or has a body constructed from nonoriginal materials.
- c. Custom-built vehicle. — A vehicle, including motorcycles, reconstructed or assembled by a nonmanufacturer from new or used parts that has an exterior that does not replicate or resemble any other manufactured vehicle. This category also includes any motorcycle that was originally sold unassembled and manufactured from a kit or that has been materially altered or that has a body constructed from nonoriginal materials.

(44) Special Mobile Equipment. — Defined in G.S. 105-164.3.

(44a) Specialty Vehicles. — Vehicles of a type required to be registered under this Chapter that are modified from their original construction for an educational, emergency services, or public safety use.

(45) State. — A state, territory, or possession of the United States, District of Columbia, Commonwealth of Puerto Rico, a province of Canada, or the Sovereign Nation of the Eastern Band of the Cherokee Indians with tribal lands, as defined in 18 U.S.C. § 1151, located within the boundaries of the State of North Carolina. For provisions in this Chapter that apply to commercial drivers licenses, "state" means a state of the United States and the District of Columbia.

(46) Street. — A highway, as defined in subdivision (13). The terms "highway" and "street" and their cognates are synonymous.

(46a) Supplemental restraint system. — A passive inflatable motor vehicle occupant crash protection system designed for use in conjunction with a seat belt assembly as defined in 49 C.F.R. § 571.209, and includes one or more airbags and all components required to ensure that an airbag works as designed by the vehicle manufacturer, including both of the following:

- a. The airbag operates as designed in the event of a crash.
- b. The airbag is designed in accordance with federal motor vehicle safety standards for the specific make, model, and year of the motor vehicle in which it is or will be installed.

(47) Suspension. — Termination of a licensee's or permittee's privilege to drive or termination of the registration of a vehicle for a period of time stated in an order of revocation or suspension. The terms "revocation" or "suspension" or a combination of both terms shall be used synonymously.

(48) Truck Tractors. — Vehicles designed and used primarily for drawing other vehicles and not so constructed as to carry any load independent of the vehicle so drawn.

(48a) (Effective until December 31, 2024) U-drive-it vehicles. — The following vehicles that are either rented to a person, to be operated by that person, or loaned by a franchised motor vehicle dealer, with or without charge, to a customer of that dealer who is having a vehicle serviced or repaired by the dealer:

- a. A private passenger vehicle other than the following:
 - 1. A private passenger vehicle of nine-passenger capacity or less that is rented for a term of one year or more.
 - 2. A private passenger vehicle that is rented to public school authorities for driver-training instruction.
- b. A property-hauling vehicle under 7,000 pounds that does not haul products for hire and that is rented for a term of less than one year.
- c. Motorcycles.

(48a) (Effective December 31, 2024) U-drive-it vehicles. — The following vehicles that are rented to a person, to be operated by that person:

- a. A private passenger vehicle other than the following:
 - 1. A private passenger vehicle of nine-passenger capacity or less that is rented for a term of one year or more.
 - 2. A private passenger vehicle that is rented to public school authorities for driver-training instruction.
- b. A property-hauling vehicle under 7,000 pounds that does not haul products for hire and that is rented for a term of less than one year.
- c. Motorcycles.

(48b) Under the Influence of an Impairing Substance. — The state of a person having his physical or mental faculties, or both, appreciably impaired by an impairing substance.

(48c) Utility Vehicle. — A motor vehicle that is (i) designed for off-road use and (ii) used for general maintenance, security, agricultural, or horticultural purposes. "Utility vehicle" does not include an all-terrain vehicle or golf cart, as defined in this section, or a riding lawn mower.

(49) Vehicle. — Every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, excepting devices moved by human power or used exclusively upon fixed rails or tracks; provided, that for the purposes of this Chapter bicycles and electric assisted bicycles shall be deemed vehicles and every rider of a bicycle or an electric assisted bicycle upon a highway shall be subject to the provisions of this Chapter applicable to the driver of a vehicle except those which by their nature can have no application. This term shall not include a device which is designed for and intended to be used as a means of transportation for a person with a mobility impairment, or who uses the device for mobility enhancement, is suitable for use both inside and outside a building, including on sidewalks, and is limited by design to 15 miles per hour when the device is being operated by a person with a mobility impairment, or who uses the device for mobility enhancement. This term shall not

include (i) an electric personal assistive mobility device as defined in subdivision (7b) of this section or (ii) a personal delivery device as defined by this section. Unless the context requires otherwise, and except as provided under G.S. 20-109.2, 47-20.6, or 47-20.7, a manufactured home shall be deemed a vehicle.

(50) Wreckers. — Vehicles with permanently attached cranes used to move other vehicles; provided, that said wreckers shall be equipped with adequate brakes for units being towed.

History

1973, c. 1330, s. 1; 1975, cc. 94, 208; c. 716, s. 5; c. 743; c. 859, s. 1; 1977, c. 313; c. 464, s. 34; 1979, c. 39; c. 423, s. 1; c. 574, ss. 1-4; c. 667, s. 1; c. 680; 1981, c. 606, s. 3; c. 792, s. 2; 1983, c. 435, s. 8; 1983 (Reg. Sess., 1984), c. 1101, ss. 1-3; 1985, c. 509, s. 6; 1987, c. 607, s. 2; c. 658, s. 1; 1987 (Reg. Sess., 1988), c. 1069; c. 1105, s. 1; c. 1112, ss. 1-3; 1989, c. 455, ss. 1, 2; c. 727, s. 219(1); c. 771, ss. 1, 18; 1991, c. 449, s. 2; c. 726, ss. 1-4; 1991 (Reg. Sess., 1992), c. 1015, s. 1; 1993 (Reg. Sess., 1994), c. 761, s. 22; 1995, c. 191, s. 1; 1995 (Reg. Sess., 1996), c. 756, ss. 2-4; 1997-379, s. 5.1; 1997-443, s. 11A.8; 1997-456, s. 27; 1998-149, s. 1; 1998-182, ss. 1, 1.1, 26; 1998-217, s. 62(e); 1999-330, s. 9; 1999-337, s. 28(c)-(e); 1999-406, s. 14; 1999-452, ss. 1-5; 2000-155, s. 9; 2000-173, s. 10(c); 2001-212, s. 2; 2001-341, ss. 1, 2; 2001-356, ss. 1, 2; 2001-441, s. 1; 2001-487, ss. 50(a), 51; 2002-72, s. 19(b); 2002-98, ss. 1-3; 2003-397, s. 1; 2005-282, s. 1; 2005-349, ss. 1-3; 2006-253, s. 8; 2007-56, s. 4; 2007-382, ss. 2, 3; 2007-455, s. 1; 2007-493, s. 1; 2008-156, s. 1; 2009-274, s. 1; 2009-405, ss. 1, 4; 2009-416, ss. 1, 2; 2010-129, s. 1; 2011-95, s. 1; 2011-206, s. 1; 2013-410, s. 47.5; 2014-58, s. 10(a), (c), (d); 2014-115, s. 28.3; 2015-125, s. 1; 2015-163, s. 1; 2015-232, s. 1.1(a); 2015-237, s. 2; 2016-59, s. 1; 2016-90, ss. 12.5(a), 13(a); 2016-94, s. 35.20(a); 2017-69, s. 2.1(a); 2017-102, s. 5.2(a), (b); 2018-27, s. 4.5(b); 2018-42, s. 3(b); 2019-34, s. 1; 2019-36, s. 1; 2019-155, s. 1; 2019-227, s. 1(a), (b); 2020-40, s. 1; 2020-51, s. 1(b); 2020-73, s. 1; 2021-33, s. 1; 2021-179, s. 1; 2023-63, s. 3.

Annotations

Notes

Subdivision (48a) Set Out Twice.

The first version of subdivision (48a) set out above is effective until December 31, 2024. The second version of subdivision (48a) set out above is effective December 31, 2024.

Editor's Note.

Subdivisions (0.1), (0.2) and (1) were redesignated as subdivisions (1a), (1b) and (1c) and the subunits of subdivision (33) were renumbered pursuant to Session Laws 1997-456, s. 27 which authorized the Revisor of Statutes to renumber or reletter sections and parts of sections having a number or letter designation that is incompatible with the General Assembly's computer database.

Subdivisions (48a) and (48b) were designated as such under the direction of the Revisor of Statutes.

Sections 20-138, 20-139, and 20-140(c), referred to in this section, were repealed by Session Laws 1983, c. 435, s. 23.

Session Laws 1999-406, s. 18, states that this act does not obligate the General Assembly to appropriate additional funds, and that this act shall be implemented with funds available or appropriated to the Department of Transportation and the Administrative Office of the Courts.

Subdivisions (5a), defining “Dedicated natural gas vehicle” and (12a), defining “Fuel cell electric vehicle” were originally enacted by Session Laws 2011-206, s. 1, as subdivisions (28b) and (28c), respectively. At the direction of the Revisor of Statutes, they were redesignated to maintain alphabetical order, and former subdivisions (5a) and (12)(a) through (12)(f) were redesignated accordingly.

Session Laws 2015-232, s. 1.1(b), as amended by Session Laws 2018-27, s. 4.5(b) and 2018-42, s. 3(b), and by Session Laws 2020-51, s. 1(b), made the amendments to subdivision (48a) by Session Laws 2015-232, s. 1.1(a), effective August 25, 2015, and expire December 31, 2024.

The bracketed words “[The basic entities are defined as follows:]” were added at the end of the first paragraph of subdivision (32b) at the direction of the Revisor of Statutes. The omission was subsequently corrected in amendment by Session Laws 2017-102, s. 5.2(a).

Session Laws 2017-102, s. 5.2(b) provides: “The Revisor of Statutes is authorized to reletter the definitions in G.S. 20-4.01(27) and G.S. 20-4.01(32b) to place them in alphabetical order. The Revisor of Statutes may conform any citations that change as a result of the relettering.” Pursuant to that authority, sub-subdivisions (27)a. through h. and (32b)a. through e. were reordered to maintain alphabetical order. The reference in subdivision (32b)c. was conformed.

Session Laws 2018-27, s. 5, is a severability clause.

Session Laws 2019-36, s. 6, made subdivision (24b), as added by Session Laws 2019-36, s. 1, effective December 1, 2019, and applicable to offenses committed on or after that date.

Session Laws 2019-155, s. 4, makes the amendments to this section by Session Laws 2019-155, s. 1, effective October 1, 2019, and applicable to offenses committed on or after that date.

Session Laws 2020-73, s. 7, made the enactment of subdivision (28a), the renumbering of former subdivision (28a) as subdivision (28b), and the amendment of subdivision (49) by Session Laws 2020-73, s. 1, effective December 1, 2020, and applicable to offenses committed on or after that date.

Session Laws 2023-86, s. 2(b), made subdivision (49a) of this section, as added by Session Laws 2023-86, s. 2(a), effective July 10, and applicable to wood residual (i) transported, (ii) stored, or (iii) otherwise interacted with on or after that date.

Session Laws 2023-63, s. 18(a), is a severability clause.

Effect of Amendments.

Session Laws 2003-397, s. 1, effective January 1, 2005, added subdivisions (41a)f. through h.

Session Laws 2006-253, s. 8, effective December 1, 2006, and applicable to offenses committed on or after December 1, 2006, rewrote subdivisions (32) and (45).

Session Laws 2007-56, s. 4, effective May 23, 2007, and applicable to drivers licenses issued or renewed on or after that date, substituted “fraud, or to which G.S. 20-15(a)(3) applies,” for “fraud” in subdivision (2).

Session Laws 2007-382, s. 2, in the first sentence of subdivision (27)d4, inserted “plainly visible” before “words” and deleted “in letters at least 8 inches in height” following “front and rear” at the end of the sentence. For effective date and applicability, see Editor’s note.

Session Laws 2007-382, s. 3, in the first sentence of subdivision (27)d4, inserted “that is painted primarily yellow below the roofline.” For effective date and applicability, see Editor’s note.

Session Laws 2007-455, s. 1, effective December 1, 2007, inserted “gated or non-gated” and inserted “or community” twice in subdivision (32)c.

Session Laws 2007-493, s. 1, effective August 30, 2007, substituted “Any offense set forth” for “Death by vehicle” in subdivision (24a)b. For applicability provisions, see Editor’s note.

Session Laws 2008-156, s. 1, effective August 3, 2008, rewrote subdivision (12c); and added the last sentence in subdivision (45).

Session Laws 2009-274, s. 1, effective July 10, 2009, and applicable to all licenses expiring on or after that date, added subdivision (33c).

Session Laws 2009-405, ss. 1 and 4, effective October 1, 2009, added subdivision (15a) and rewrote subdivision (43).

Session Laws 2009-416, ss. 1, 2, effective March 31, 2010 and applicable to offenses committed on or after that date, added subdivision (4a)b 6 and added the language following “commercial motor vehicle” in subsection (7b).

Session Laws 2010-129, s. 1, effective July 21, 2010, added subdivisions (12c) through (12e); and redesignated former subdivision (12c) as subdivision (12f), therein twice deleting “(1 October 2007 Edition)” following “Code of Federal Regulations.”

Session Laws 2011-95, s. 1, effective May 26, 2011, added subdivision (28a).

Session Laws 2011-206, s. 1, effective June 23, 2011, added subdivisions (28b) and (28c).

Session Laws 2013-410, s. 47.5, effective August 23, 2013, rewrote subdivisions (1c) and (48c), which formerly read “All-Terrain Vehicle or ATV. — A motorized off-highway vehicle designed to travel on three or four low-pressure tires, having a seat designed to be straddled by the operator and handlebars for steering control” and “Utility Vehicle. — Vehicle designed and manufactured for general maintenance, security, recreational, and landscaping purposes, but does not include vehicles designed and used primarily for the transportation of persons or property on a street or highway” respectively.

Session Laws 2014-58, s. 10(a), (c), and (d), effective December 1, 2014, inserted subdivision (32a), and redesignated former subdivisions (32a) and (32b) as present subdivisions (32b) and (32c). See Editor’s note for applicability.

Session Laws 2014-115, s. 28.3, effective August 11, 2014, added subdivision (41a)i.

Session Laws 2015-125, s. 1, effective July 1, 2016, substituted “Except as specifically provided otherwise, this term” for “This” in the second sentence of subdivision (23). For applicability, see editor’s note.

Session Laws 2015-163, s. 1, effective October 1, 2015, added subdivision (27)a; renumbered former subdivision (27)a as subdivision (27)a1; and inserted “autocycles” in subdivision (27)d. For applicability, see editor’s note.

Session Laws 2015-232, s. 1.1(a), as amended by Session Laws 2018-27, s. 4.5(b), Session Laws 2018-42, s. 3(b), and Session Laws 2020-51, s. 1(b), inserted “or loaned by a franchised motor vehicle dealer, with or without charge, to a customer of that dealer who is having a vehicle serviced or repaired by the dealer” at the end of the first paragraph of subdivision (48a). For effective date and expiration, see editor’s note.

Session Laws 2015-237, s. 2, effective October 1, 2015, in subdivision (27)b, added the subdivision (27)b.1 through 7 designations, added subdivision (27)b.8, and made minor stylistic changes.

Session Laws 2016-59, s. 1, effective July 1, 2017, added the second sentence in subdivision (14); added subdivision (18a); added the third sentence in subdivision (32b); and added the last sentence in subdivision (49).

Session Laws 2016-90, s. 12.5(a), effective July 11, 2016, in subdivision (27)a., substituted “antilock brakes, completely or partially enclosed seating” for “antilock brakes, air bag protection, completely enclosed seating.”

Session Laws 2016-90, s. 13(a), effective December 1, 2016, added subdivision (7a) and renumbered former subdivisions (7a) and (7b) as subdivisions (7b) and (7c) accordingly; deleted former subdivision (21a) pertaining to mopeds; in subdivision (23), substituted “mopeds or electric assisted bicycles” for “mopeds as defined in G.S. 20-4.01(27)d1”; added subdivision (27)c2.; in subdivision (27)d., substituted “agencies, electric assisted bicycles” for “agencies,” “sub-subdivision d1” for “subdivision d1,” and “subdivision” for “subsection”; rewrote subdivision (27)d1, and, in subdivision (49), substituted “bicycles and electric assisted bicycles shall be deemed vehicles and every rider of a bicycle or an electric assisted bicycle” for “bicycles shall be deemed vehicles and every rider of a bicycle” in the first sentence proviso, and substituted “subdivision (7b) of this section” for “G.S. 20-4.01(7a)” at the end of the last sentence. See editor’s note for applicability.

Session Laws 2016-94, s. 35.20(a), effective July 1, 2016, substituted “G.S. 20-15(a)” for “G.S. 20-15(a)(3)” near the end of subdivision (2). See editor’s note for applicability.

Session Laws 2017-69, s. 2.1(a), effective June 28, 2017, added subdivision (12h).

Session Laws 2017-102, s. 5.2(a), effective July 12, 2017, added “The basic entities are defined as follows” at the end of the introductory paragraph in subdivision (32b).

Session Laws 2019-34, s. 1, effective June 21, 2019, added subsection (27)g1.

Session Laws 2019-36, s. 1, added subdivision (24b). For effective date and applicability, see editor’s note.

Session Laws 2019-155, s. 1, effective October 1, 2019, added subdivisions (1), (4b), (23a) and (46a); and designated former subdivision (4b) as (4c). For effective date and applicability, see editor’s note.

Session Laws 2019-34, s. 1(a) and (b), effective September 27, 2019, inserted ‘does not have the ability to be propelled by a gasoline engine and that’ in the introductory paragraph of subdivisions (12a) and (28a).

Session Laws 2020-40, s. 1, effective October 1, 2020, added sub-subdivision (27)g2.

Session Laws 2020-73, s. 1, added subdivision (28a); renumbered former subdivision (28a) as subdivision (28b); and, in subdivision (49), added clause (ii) and made related stylistic changes. For effective date and applicability, see editor’s note.

Session Laws 2021-33, s. 1, effective October 1, 2021, in subdivision (27)g2, inserted “or upfitted by a licensed manufacturer, dealer, or person or business otherwise engaged in vehicle manufacturing or modification”, substituted “G.S. 20-121.1(2a)” for “G.S. 20-121.1(2)”, deleted “an engine displacement greater than 2,400 cubic centimeters,” following “has four wheels”, substituted “110” for “142” and “60” for “70”.

Session Laws 2021-179, s. 1, effective December 1, 2021, added subsection (23a) and redesignated former subsection (23a) as (23b).

Session Laws 2023-86, s. 2(a), added subdivision (49a). For effective date and applicability, see editor’s note.

Session Laws 2023-63, s. 3, effective June 27, 2023, added sub-subdivision (31)g.

CASE NOTES

I. In General

II. Types of Vehicles

III. Highways

IV. Involving Alcohol

I. In General

Constitutionality. —

For case reaffirming the constitutionality of G.S. 20-138.1(a)(2) and subdivision (33a) of this section, see *State v. Denning*, 316 N.C. 523, 342 S.E.2d 855, 1986 N.C. LEXIS 2153 (1986).

In construing a homeowners association's declaration of covenants, conditions and restrictions (CC&Rs), property owners' reliance on G.S. 20-4.01(32a) and (27)d2, and G.S. 20-354.2

(defining travel trailer, camping trailer, motor vehicle, and motor home or house car) was misplaced; the statutes were enacted between six and sixteen years after the association's CC&Rs (referring to campers and all similar property) were drafted and recorded. The statutory provisions were not material to the issue of the drafters' intent in 1985 when the CC&Rs were drafted and recorded. *Schwartz v. Banbury Woods Homeowners Ass'n*, 196 N.C. App. 584, 675 S.E.2d 382, 2009 N.C. App. LEXIS 528 (2009).

Business District. —

As to what constituted a business district within the meaning of subdivision (1) of former G.S. 20-38, see *Mitchell v. Melts*, 220 N.C. 793, 18 S.E.2d 406, 1942 N.C. LEXIS 549 (1942); *Hinson v. Dawson*, 241 N.C. 714, 86 S.E.2d 585, 1955 N.C. LEXIS 453 (1955); *Black v. Penland*, 255 N.C. 691, 122 S.E.2d 504, 1961 N.C. LEXIS 659 (1961).

Driver. —

Although distinctions may have been made between driving and operating in prior case law and prior statutes regulating motor vehicles, such a distinction is not supportable under G.S. 20-138.1. Since "driver" is defined in this section simply as an "operator" of a vehicle, the legislature intended the two words to be synonymous. *State v. Coker*, 312 N.C. 432, 323 S.E.2d 343, 1984 N.C. LEXIS 1818 (1984).

Although a distinction may have been made between driving and operating in prior case law and statutes regulating vehicles, no such distinction is supportable under this section since a "driver" is defined as an "operator." It is clear that the legislature intended the two words to be synonymous. *State v. Dellinger*, 73 N.C. App. 685, 327 S.E.2d 609, 1985 N.C. App. LEXIS 3396 (1985).

Impairing Substance. —

State of North Carolina presented sufficient evidence to prove the elements of driving while under the influence of an impairing substance as defendant collided with the rear end of another vehicle in a restaurant drive-thru, officers noted signs of impairment, defendant admitted to having earlier consumed alprazolam, an officer testified that defendant indicated impairment in a HGN test, and another officer who performed a drug recognition evaluation testified that defendant was impaired by a central nervous system depressant. *State v. Fincher*, 259 N.C. App. 159, 814 S.E.2d 606, 2018 N.C. App. LEXIS 349 (2018).

Operator

includes a person in the driver's seat of a motor vehicle when the engine is running. *State v. Carter*, 15 N.C. App. 391, 190 S.E.2d 241, 1972 N.C. App. LEXIS 1924 (1972).

In a prosecution for driving under the influence and driving while license was revoked, evidence that defendant was seated behind the wheel of a car which had the motor running was sufficient to prove that defendant was the operator of the car under subdivision (25). *State v. Turner*, 29 N.C. App. 163, 223 S.E.2d 530, 1976 N.C. App. LEXIS 2402 (1976).

Although distinctions may have been made between driving and operating in prior case law and prior statutes regulating motor vehicles, such a distinction is not supportable under G.S. 20-138.1. Since “driver” is defined in this section simply as an “operator” of a vehicle, the legislature intended the two words to be synonymous. *State v. Coker*, 312 N.C. 432, 323 S.E.2d 343, 1984 N.C. LEXIS 1818 (1984).

A horseback rider is an “operator” who is in “control of a vehicle which is in motion” where the horse is ridden upon a street, highway or public vehicular area. *State v. Dellinger*, 73 N.C. App. 685, 327 S.E.2d 609, 1985 N.C. App. LEXIS 3396 (1985).

Evidence held sufficient for a reasonable jury to infer that defendant, who was found asleep in driver's seat in car which had run off the road and into a fence, was under the influence of an impairing substance when he drove the vehicle. *State v. Mack*, 81 N.C. App. 578, 345 S.E.2d 223, 1986 N.C. App. LEXIS 2332 (1986).

Owner. —

This section defines “owner” and former G.S. 20-279.1 defined “owner” in essentially the same way. *Nationwide Mut. Ins. Co. v. Hayes*, 276 N.C. 620, 174 S.E.2d 511, 1970 N.C. LEXIS 734 (1970).

A defendant who advanced money for the purchase of a used car as security took a title-retaining contract on the vehicle and permitted its delivery to the purchasers, one of whom was operating it when an accident occurred, could not be liable to the persons injured, since a conditional vendee, lessee, or mortgagor of a motor vehicle is deemed to be the owner, and liability on the part of the defendant could arise only by application of the doctrine of respondeat superior. Such facts do not show the necessary relationship. *High Point Sav. & Trust Co. v. King*, 253 N.C. 571, 117 S.E.2d 421, 1960 N.C. LEXIS 684 (1960).

Where the owner of trucks leased them to another corporation under an agreement requiring lessor to carry insurance and maintain the vehicles and giving lessee control over the operation of the trucks with right to use same exclusively for the transportation and delivery of lessee's goods, the lessor was not a contract carrier within the meaning of the statutes as they stood in 1949, since the lessor merely leased its vehicles and was not a carrier of any kind, and lessee was solely a private carrier, and therefore lessor was not liable for additional assessment at the “for-hire” rates under the statute. *Equipment Fin. Corp. v. Scheidt*, 249 N.C. 334, 106 S.E.2d 555, 1959 N.C. LEXIS 354 (1959).

Where the vendee paid the entire purchase price, had exclusive possession and use of the vehicle, obtained the insurance coverage for it, and paid the premium therefor, this sufficed to give him a clear equitable interest in the vehicle, and that equitable interest sufficed, under the particular facts and circumstances, to make him the “owner” of the vehicle within the coverage intent of the policy, interpreted in light of the purpose and intent of Article 9A, the Motor Vehicle Safety and Financial Responsibility Act of 1953. *Ohio Cas. Ins. Co. v. Anderson*, 59 N.C. App. 621, 298 S.E.2d 56, 1982 N.C. App. LEXIS 3206 (1982), cert. denied, 307 N.C. 698, 301 S.E.2d 101, 1983 N.C. LEXIS 1233 (1983).

Except under special circumstances not present in this case, the statute limits the definition of the word “owner” to the person holding legal title. *Jenkins v. Aetna Cas. & Sur. Co.*, 324 N.C. 394, 378 S.E.2d 773, 1989 N.C. LEXIS 254 (1989).

Where evidence established that buyer paid four hundred dollars (\$400.00) cash as the total price for a car and took immediate possession of the vehicle, but never received the certificate of title, buyer was not the “owner” of the car as that term is defined in G.S. 20-4.01(26); therefore, provision in insurance policy excluding coverage for liability arising from the use of a vehicle “owned” by buyer did not apply. *Jenkins v. Aetna Cas. & Sur. Co.*, 324 N.C. 394, 378 S.E.2d 773, 1989 N.C. LEXIS 254 (1989).

Although a vehicle's owner gave the vehicle to her son, she never transferred title, and thus at the time of a later accident the owner remained the legal owner of the vehicle; a trial court erred in holding that the owner's insurance policy terminated when the son's policy was issued on the same car because the automatic termination clause in the owner's policy's only applied if the owner obtained other insurance, and since the owner's policy and the son's

policy were procured by different persons, the owner's policy did not automatically terminate. *Progressive Am. Ins. Co. v. State Farm Mut. Auto. Ins. Co.*, 184 N.C. App. 688, 647 S.E.2d 111, 2007 N.C. App. LEXIS 1625 (2007).

Under G.S. 25-2-509(3), a buyer bore the risk of loss of a mobile home that was destroyed by fire for G.S. 20-4.01(26) purposes as: (1) *Nationwide Mutual Insurance Co. v. Hayes*, 174 S.E.2d 511 (N.C. 1970), did not apply to the breach of contract case; (2) the risk of loss passed to the buyer on the buyer's receipt of the mobile home; and (3) when the sales agreement was executed, the buyer accepted the mobile home and the seller made tender of delivery due to an as is, where is clause in the agreement. *Singletary v. P & A Invs., Inc.*, 212 N.C. App. 469, 712 S.E.2d 681, 2011 N.C. App. LEXIS 1055 (2011).

In a case in which defendant was convicted of felony conversion, the trial court erred by denying defendant's motion to dismiss as the State did not produce sufficient evidence that the alleged victim owned the vehicle because the alleged victim never received title to the vehicle; without title to the vehicle, the alleged victim did not meet the definition of owner; a lien encumbered the vehicle that the alleged victim could not remove; and ownership was essential to establishing the elements of felony conversion. *State v. Falana*, 254 N.C. App. 329, 802 S.E.2d 582, 2017 N.C. App. LEXIS 492 (2017).

For purposes of tort law and liability insurance coverage, no ownership passes

to the purchaser of a motor vehicle which requires registration until: (1) The owner executes, in the presence of a person authorized to administer oaths, an assignment and warranty of title on the reverse of the certificate of title, including the name and address of the transferee; (2) there is an actual or constructive delivery of the motor vehicle; and (3) the duly assigned certificate of title is delivered to the transferee (or lienholder in secured transactions). *Jenkins v. Aetna Cas. & Sur. Co.*, 324 N.C. 394, 378 S.E.2d 773, 1989 N.C. LEXIS 254 (1989).

Since actual title had not passed, an insurer had to provide coverage to its insured while driving a non-owned vehicle, even though the insured was in the process of buying the vehicle, as North Carolina required actual title to pass for ownership under G.S. 20-4.01(26); the insurer was responsible to a passenger who was injured in a collision with a non-owned vehicle being driven by the insured. *Hernandez v. Nationwide Mut. Ins. Co.*, 171 N.C. App. 510, 615 S.E.2d 425, 2005 N.C. App. LEXIS 1360 (2005).

Definition of "Owner" Applies to Article 9A. —

The definition of "owner" in subdivision (26) of this section applies throughout this Chapter, and thus to Article 9A, the Motor Vehicle Safety and Financial Responsibility Act of 1953, unless the context otherwise requires. It thus must be read into every liability insurance policy within the purview of Article 9A, unless the context otherwise requires. *Ohio Cas. Ins. Co. v. Anderson*, 59 N.C. App. 621, 298 S.E.2d 56, 1982 N.C. App. LEXIS 3206 (1982), cert. denied, 307 N.C. 698, 301 S.E.2d 101, 1983 N.C. LEXIS 1233 (1983).

Deletion of "Owner" from G.S. 20-279.1 Was Merely to Avoid Repetition. —

Prior to 1973 the definition of "owner" appeared in G.S. 20-279.1(9) (repealed in 1973), which was applicable solely to Article 9A, the Motor Vehicle Safety and Financial Responsibility Act of 1953. The General Assembly placed this definition in this section. The apparent purpose was to eliminate unnecessary repetition of this definition in separate articles of this Chapter, not to make the definition inapplicable to Article 9A. *Ohio Cas. Ins. Co. v. Anderson*, 59 N.C. App. 621, 298 S.E.2d 56, 1982 N.C. App. LEXIS 3206 (1982), cert. denied, 307 N.C. 698, 301 S.E.2d 101, 1983 N.C. LEXIS 1233 (1983).

One who does not hold legal title to a vehicle cannot obtain owner's liability insurance thereon.

Nationwide Mut. Ins. Co. v. Edwards, 67 N.C. App. 1, 312 S.E.2d 656, 1984 N.C. App. LEXIS 3004 (1984).

Public Vehicular Area. —

Evidence held to permit a finding that at the time in question portion of park grounds legally in use as a parking lot was a “public vehicular area” within the meaning and intent of that phrase as used in subdivision (32), so as to permit a conviction under G.S. 20-138.1(a) for impaired driving thereon. *State v. Carawan*, 80 N.C. App. 151, 341 S.E.2d 96, 1986 N.C. App. LEXIS 2145 (1986).

Evidence held sufficient to permit a finding that handicapped or wheelchair ramp in motel parking lot in front of motel door upon which most of defendant’s car had been stopped was part of a “public vehicular area” within the meaning and intent of that phrase as used in subdivision (32). *State v. Mabe*, 85 N.C. App. 500, 355 S.E.2d 186, 1987 N.C. App. LEXIS 2609 (1987).

Area where an accident between plaintiff and defendant’s truck occurred was a public vehicular area and not a roadway. The accident occurred in the traffic lane of a parking lot generally open to and used by the public for vehicular traffic upon the premises of a business establishment which provided parking space for its customers. Although the lot was held open for use by the public, there was no evidence that the general public had a legally enforceable right to use the lot. *Corns v. Hall*, 112 N.C. App. 232, 435 S.E.2d 88, 1993 N.C. App. LEXIS 1061 (1993).

Street in mobile home park, owned by one individual who had divided the property into lots for lease, that was not marked as private, and was available for use by residents, their guests and other visitors, was a public vehicular area within the meaning of subsection (32). *State v. Turner*, 117 N.C. App. 457, 451 S.E.2d 19, 1994 N.C. App. LEXIS 1261 (1994).

Where the evidence established that a private club was licensed by the State to serve alcohol to guests of members as well as to members themselves, the club’s parking lot could be used as a thoroughfare by members of the general public, there were no signs posted in the club’s parking lot prohibiting the public from parking there and no signs posted stating that the parking lot was private property, nor was there any security or membership cards allowing members exclusive access to the parking lot, the evidence was sufficient to support a peremptory instruction that the club’s parking lot was a “public vehicular area” as a matter of law. *State v. Snyder*, 343 N.C. 61, 468 S.E.2d 221, 1996 N.C. LEXIS 152 (1996).

A sign prohibiting loitering in a parking lot did not change the nature of the property; thus, a car wash was still a business providing parking for its customers, and as such, the premises was a “public vehicular area” under this section. *State v. Robinette*, 124 N.C. App. 212, 476 S.E.2d 387, 1996 N.C. App. LEXIS 995 (1996).

Defendant’s possession of an open container of alcohol in his car in a gas station parking lot was not illegal since a parking lot of a service station was a public vehicular area and the open container law only prohibited open containers on highways and highway right-of-ways. *State v. Coleman*, 228 N.C. App. 76, 743 S.E.2d 62, 2013 N.C. App. LEXIS 672 (2013).

Officer’s belief that possession of an open container of alcohol in a car in a public vehicular area was illegal could not support a Terry stop since the belief was unreasonable given that the open container law was neither novel nor complex and clearly prohibited the possession of an open container only on highways and highway right-of-ways, and the distinction between a highway and a public vehicular area was familiar to law enforcement officers. *State v. Coleman*, 228 N.C. App. 76, 743 S.E.2d 62, 2013 N.C. App. LEXIS 672 (2013).

Trial court erred in denying defendant’s motion to dismiss the charge of habitual impaired driving because there was no evidence concerning the ownership of the vacant lot where defendant operated a moped or that the lot had been designated as a public vehicular area by the owner; in order to show an area meets the definition of public vehicular area there must be some evidence demonstrating the property is similar in nature to those examples provided by the General Assembly in the statute. *State v. Ricks*, 237 N.C. App. 359, 764 S.E.2d 692, 2014 N.C. App. LEXIS 1147 (2014).

Definition of a public vehicular area contemplates areas generally open to and used by the public for vehicular traffic as a matter of right or areas used for vehicular traffic that are associated with places generally open to and

used by the public, such as driveways and parking lots to institutions and businesses open to the public. *State v. Ricks*, 237 N.C. App. 359, 764 S.E.2d 692, 2014 N.C. App. LEXIS 1147 (2014).

Even assuming there was sufficient evidence to allow the jury to decide whether a vacant lot was a public vehicular area, the trial court erred in abbreviating the definition of public vehicular area in the instructions and by preventing defendant from arguing his position in accordance with the statute; the entire definition of public vehicular area is significant to a determination of whether an area meets the definition, and the examples are not separable from the statute. *State v. Ricks*, 237 N.C. App. 359, 764 S.E.2d 692, 2014 N.C. App. LEXIS 1147 (2014).

Trial court properly denied defendant's motion to suppress because the driving and parking area adjacent to fuel pumps at a service station was a "public vehicular area" under the definition provided in subsection (32)(a); therefore, the automobile exception to the warrant requirement applied to the search of defendant's SUV parked at the gas pumps, and the officers only needed probable cause to search defendant's vehicle. *State v. Parker*, 2022-NCCOA-655, 2022 N.C. App. LEXIS 657 (October 4, 2022).

Driving or parking area adjacent to a fuel pump at a service station is a "public vehicular area"; the definition specifically notes "driveways" and "parking lots" on the premises of stores generally and service stations specifically are included, so these portions of the definition would apply to the area between the entry to the service station property, off the roadway, up to the area adjacent to the gas pumps. *State v. Parker*, 2022-NCCOA-655, 2022 N.C. App. LEXIS 657 (October 4, 2022).

Public vehicular areas at a "service station" should include the paved area adjacent to the fuel pumps; the inclusion of a more specific reference to "service station" in the definition in addition to "stores" and other business or retail establishments with parking areas indicates that the only remaining unique aspect of a service station, the driving/parking area near gas pumps, is also included. *State v. Parker*, 2022-NCCOA-655, 2022 N.C. App. LEXIS 657 (October 4, 2022).

"Reportable Crash." —

Defendant was properly convicted of giving false information for a motor vehicle crash report in violation of G.S. 20-279.31(b) because, inter alia, an accident in which defendant was involved was a "reportable crash," under the provisions of G.S. 20-4.01(33b). *State v. Hernandez*, 188 N.C. App. 193, 655 S.E.2d 426, 2008 N.C. App. LEXIS 76 (2008).

Contact Not Required for Accident. —

Defendant's motion to dismiss the two felony hit and run charges was properly denied because contact was not required in order for an accident to occur; and, even if defendant could not have seen behind the trailer and even if there was no contact between the motorcycle's front tire and the trailer, the circumstantial evidence was sufficient to accept a conclusion that defendant knew, or reasonably should have known, that the vehicle he was driving was involved in a crash and that someone was killed or seriously injured as a result. *State v. Gibson*, 276 N.C. App. 230, 855 S.E.2d 533, 2021- NCCOA-69, 2021 N.C. App. LEXIS 80 (2021).

Residential District. —

For cases construing earlier statutory definitions of "residential district," see *Reid v. City Coach Co.*, 215 N.C. 469, 2 S.E.2d 578, 1939 N.C. LEXIS 296 (1939); *Mitchell v. Melts*, 220 N.C. 793, 18 S.E.2d 406, 1942 N.C. LEXIS 549 (1942); *Goddard v. Williams*, 251 N.C. 128, 110 S.E.2d 820, 1959 N.C. LEXIS 533 (1959), overruled, *Young v. Woodall*, 343 N.C. 459, 471 S.E.2d 357, 1996 N.C. LEXIS 339 (1996).

Revocation. —

The contention that a revocation remains in effect not only throughout the period stated in the order of revocation but also until the person whose license was revoked applies for a restoration of his license and pays the restoration

fee required is contrary to the definition of “revocation” in this section. *Ennis v. Garrett*, 279 N.C. 612, 184 S.E.2d 246, 1971 N.C. LEXIS 897 (1971).

Where petitioner, who was driving without his license, was stopped and charged with driving while impaired, and then appeared before a magistrate who revoked his driver’s license for 10 days, petitioner’s license had been validly revoked when he was stopped the next day; thus, he was properly charged with committing a moving violation during a period of revocation by operating a motor vehicle. *Eibergen v. Killens*, 124 N.C. App. 534, 477 S.E.2d 684, 1996 N.C. App. LEXIS 1148 (1996).

When a person’s driver’s license is suspended or revoked, it is the surrendering of the privilege to drive, not the license card itself, that is of significance. *Eibergen v. Killens*, 124 N.C. App. 534, 477 S.E.2d 684, 1996 N.C. App. LEXIS 1148 (1996).

As the terms “revoked” and “suspended” with respect to defendant’s driver’s license were used interchangeably in statutes pursuant to G.S. 20-4.01(47), defendant’s claim that there was a fatal variance between the indictment, which indicated that defendant’s license was revoked, and the proof offered at trial that defendant’s license was suspended, lacked merit. *State v. Lloyd*, 187 N.C. App. 174, 652 S.E.2d 299, 2007 N.C. App. LEXIS 2253 (2007), cert. denied, 363 N.C. 586, 683 S.E.2d 214, 2009 N.C. LEXIS 823 (2009).

“Service Station.” —

Plain meaning of “service station” is a gas station, and gas stations sell gas dispensed from fuel pumps to the public, so by its plain meaning the definition of “public vehicular area” includes the area for driving or parking adjacent to gas pumps; the primary purpose of the area adjacent to gas pumps at a service station is to be used by the public for vehicular traffic, and gas pumps provide fuel for vehicles. *State v. Parker*, 2022-NCCOA-655, 2022 N.C. App. LEXIS 657 (October 4, 2022).

“Street.” —

Trial court did not err in denying defendant’s motion to suppress evidence a police officer seized from his vehicle pursuant to a traffic stop because the trial court’s findings supported its conclusion that the officer had reasonable suspicion that defendant had violated G.S. 20-129 by failing to have taillights in proper working order; considering the totality of the circumstances, the officer reasonably believed that a street in an apartment complex was a public road for purposes of G.S. 20-129(a)(4) and that under the weather conditions at the time of the stop, defendant was required to have his taillights on while his windshield wipers were in use, and the officer’s reasonable, albeit assumed to be mistaken, belief did not render the stop unconstitutional. *State v. Hopper*, 692 S.E.2d 166, 2010 N.C. App. LEXIS 641 (N.C. Ct. App. 2010), op. withdrawn, 2010 N.C. App. LEXIS 1793 (N.C. Ct. App. May 3, 2010), sub. op., 205 N.C. App. 175, 695 S.E.2d 801, 2010 N.C. App. LEXIS 1156 (2010).

Expunction. —

Inasmuch as felonious speeding to elude arrest is not an offense involving impaired driving per G.S. 20-4.01(24a), the trial court made an error of law in determining that defendant was ineligible for expunction of the offense of fleeing to elude arrest. *State v. Neira*, 270 N.C. App. 359, 840 S.E.2d 890, 2020 N.C. App. LEXIS 165 (2020).

Proof of Impaired Driving. —

In a case in which defendant passed a tow truck on the shoulder and struck and killed the victim, the trial court erred in denying his motions to dismiss the driving while impaired charge because the trooper formed his opinion of impairment entirely through passive observation of defendant, and he did not request defendant to perform any of the several field tests officers often use to gauge a motorist’s impairment; he did not ask defendant if or when he had ingested any impairing substances; and trooper’s observations occurred about five hours after the collision occurred. *State v. Nazzal*, 270 N.C. App. 345, 840 S.E.2d 881, 2020 N.C. App. LEXIS 166 (2020).

II. Types of Vehicles

Vehicles — Legislative Intent. —

The North Carolina legislature intended the provisions of the traffic laws of North Carolina applicable to the drivers of “vehicles” to apply to horseback riders irrespective of whether a horse is a vehicle. *State v. Dellinger*, 73 N.C. App. 685, 327 S.E.2d 609, 1985 N.C. App. LEXIS 3396 (1985).

“Commercial Motor Vehicle”. —

The defendant’s contention that he did not violate this section because he was not driving a “commercial motor vehicle” was without merit; the tractor-trailer was a commercial vehicle within the statutory definition although the defendant was driving it for his own private use and although he had detached the trailer portion of the tractor-trailer. *State v. Jones*, 140 N.C. App. 691, 538 S.E.2d 228, 2000 N.C. App. LEXIS 1257 (2000).

Farm Tractor. —

Farm tractors are not to be considered motor vehicles within the provisions of the Uniform Driver’s License Act or the Motor Vehicle Safety and Financial Responsibility Act. *Brown v. Fidelity & Cas. Co.*, 241 N.C. 666, 86 S.E.2d 433, 1955 N.C. LEXIS 445 (1955) (decided under repealed G.S. 20-226) .

The Motor Vehicles Act expressly defines a “farm tractor” as a “motor vehicle.” Therefore, an instruction imparting to a farm tractor and trailer on a highway special hazard status per se and rendering a motorist who collides with a farm tractor and trailer on a highway negligent per se, regardless of the circumstances or the conduct of the tractor-trailer operator constituted prejudicial error. *Davis v. Gamble*, 55 N.C. App. 617, 286 S.E.2d 629, 1982 N.C. App. LEXIS 2241 (1982).

Construing the definitions of “farm tractor” and “vehicle” together in pari materia, it is apparent that the General Assembly intended that while farm tractors are motor implements of husbandry, they were vehicles within the meaning of former G.S. 20-138 when operated upon a highway by one under the influence of intoxicating liquor or narcotic drugs. *State v. Green*, 251 N.C. 141, 110 S.E.2d 805, 1959 N.C. LEXIS 528 (1959).

Trucks. —

Trucks, even if used for private purposes, are not private passenger type autos. *Harleysville Mut. Ins. Co. v. Packer*, 60 F.3d 1116, 1995 U.S. App. LEXIS 20236 (4th Cir. 1995).

Motorcycle. —

The definition of the term “motorcycle” in former G.S. 20-38 did not describe the “mailster,” a class of motor vehicle generally known as a “motor scooter.” *LeCroy v. Nationwide Mut. Ins. Co.*, 251 N.C. 19, 110 S.E.2d 463, 1959 N.C. LEXIS 506 (1959).

The statutory definition of the term “motorcycle” has no application in an action based on an insurance contract’s interpretation of the word “automobile.” *LeCroy v. Nationwide Mut. Ins. Co.*, 251 N.C. 19, 110 S.E.2d 463, 1959 N.C. LEXIS 506 (1959).

Statutory definition cited in *Anderson v. Life & Casualty Ins. Co.*, 197 N.C. 72, 147 S.E. 693, 1929 N.C. LEXIS 149 (1929) (holding that the expression “motor-driven car” in an insurance policy excluded a motorcycle) .

Electric Scooter Fell Within Statutory Definition of Vehicle. —

Defendant’s electric scooter, which was not self-balancing, with its two wheels in tandem, and which did not fall within the two statutory exceptions from a vehicle under G.S. 20-138.1(e) with regard to horses, bicycles, and lawnmowers or G.S. 20-4.01(49) as to transportation for a person with a mobility impairment, fell within the legislature’s definition of vehicle in G.S. 20-4.01(49) and, because the evidence at trial showed that his breath

alcohol concentration following arrest was 0.13, there was sufficient evidence to uphold defendant's conviction for impaired driving under G.S. 20-138.1. *State v. Crow*, 175 N.C. App. 119, 623 S.E.2d 68, 2005 N.C. App. LEXIS 2747 (2005).

Low-boy trailer and Mack truck were not private passenger motor vehicles

as they did not have a pickup body and were not delivery sedans nor panel trucks. *Nationwide Mut. Ins. Co. v. Mabe*, 342 N.C. 482, 467 S.E.2d 34, 1996 N.C. LEXIS 21 (1996).

A mobile home is a motor vehicle

and is subject to the mandatory provisions of the statutes relating to the registration of motor vehicles in this State. *King Homes, Inc. v. Bryson*, 273 N.C. 84, 159 S.E.2d 329, 1968 N.C. LEXIS 561 (1968).

It is clear under North Carolina law that a mobile home is a "motor vehicle" for purposes of the statutes dealing with registration and ownership of motor vehicles. *In re Meade*, 174 B.R. 49, 1994 Bankr. LEXIS 2222 (Bankr. M.D.N.C. 1994).

Mobile Home Is a Motor Vehicle for Purposes of Perfecting Security Interest. —

Plaintiff's argument that owner no longer intended to operate her mobile home upon the highway did not nullify defendant's properly perfected security interest in the mobile home. *Peoples Sav. & Loan Assoc. v. Citicorp Acceptance Co.*, 103 N.C. App. 762, 407 S.E.2d 251, 1991 N.C. App. LEXIS 936 (1991).

Modular Home. —

Although the title to a modular home is initially acquired through a bill of sale, once installed title must pass by way of a real property deed unlike a mobile home or trailer which passes by transfer of a certificate of origin and motor vehicle title. *Briggs v. Rankin*, 127 N.C. App. 477, 491 S.E.2d 234, 1997 N.C. App. LEXIS 988 (1997), *aff'd*, 348 N.C. 686, 500 S.E.2d 663, 1998 N.C. LEXIS 331 (1998).

Bicycle as Vehicle. —

A bicycle is a vehicle and its rider is a driver within the meaning of the motor vehicle law. *Lowe v. Futrell*, 271 N.C. 550, 157 S.E.2d 92, 1967 N.C. LEXIS 1238 (1967); *Sadler v. Purser*, 12 N.C. App. 206, 182 S.E.2d 850, 1971 N.C. App. LEXIS 1328 (1971); *Townsend v. Frye*, 30 N.C. App. 634, 228 S.E.2d 56, 1976 N.C. App. LEXIS 2328, cert. denied, 291 N.C. 178, 229 S.E.2d 689, 1976 N.C. LEXIS 964 (1976).

Trial court did not err by declining to give the jury the bicyclist's first proposed special instruction because it was not a correct statement of law, as the statutes the bicyclist relied on were limited to pedestrians, and the ordinary meaning of pedestrian had long been understood to be a person traveling on foot, not a person bicycling, and bicycles were explicitly classified as vehicles, not pedestrians, under G.S. 20-4.01(49). *Barrow v. Sargent*, 278 N.C. App. 164, 862 S.E.2d 688, 2021- NCCOA-295, 2021 N.C. App. LEXIS 304 (2021).

The operation of a bicycle upon a public highway is governed by the rules governing motor vehicles insofar as the nature of the vehicle permits. *Webb v. Felton*, 266 N.C. 707, 147 S.E.2d 219, 1966 N.C. LEXIS 1425 (1966).

A bicycle is deemed a vehicle, and the rider of a bicycle upon the highway is subject to the applicable provisions of the statutes relating to motor vehicles. *Van Dyke v. Atlantic Greyhound Corp.*, 218 N.C. 283, 10 S.E.2d 727, 1940 N.C. LEXIS 138 (1940).

A bicycle is a vehicle, and is subject to the provisions of Article 3 of this Chapter, except those which by their nature can have no application. *Tarrant v. Pepsi-Cola Bottling Co.*, 221 N.C. 390, 20 S.E.2d 565, 1942 N.C. LEXIS 474 (1942); *Oxendine v. Lowry*, 260 N.C. 709, 133 S.E.2d 687, 1963 N.C. LEXIS 807 (1963).

In interpreting an underinsured motorist excess provision, a bicycle involved in an accident with a car was considered to be a vehicle pursuant to G.S. 20-4.01(49), since it was operated upon a highway. *Sitzman v. Gov't Emples. Ins. Co.*, 182 N.C. App. 259, 641 S.E.2d 838, 2007 N.C. App. LEXIS 585 (2007).

Trial court did not err by declining to give the jury the bicyclist's first proposed special instruction because it was not a correct statement of law, as the statutes the bicyclist relied on were limited to pedestrians, and the ordinary meaning of pedestrian had long been understood to be a person traveling on foot, not a person bicycling, and bicycles were explicitly classified as vehicles, not pedestrians, under N.C. Gen. Stat. § 20-4.01(49). *Barrow v. Sargent*, 278 N.C. App. 164, 862 S.E.2d 688, 2021- NCCOA-295, 2021 N.C. App. LEXIS 304 (2021).

Handcart. —

A handcart, being moved solely by human power, is excluded from the category of vehicles defined in subdivision (38) of former G.S. 20-38 (now subdivision (49) of this section). *Lewis v. Watson*, 229 N.C. 20, 47 S.E.2d 484, 1948 N.C. LEXIS 409 (1948).

When neither named insured owned a rental car, as defined in G.S. 20-4.04(26), which was being driven by a family member when it was involved in a motor vehicle accident, a trial court erred in granting summary judgment to plaintiff insurer in its declaratory action against defendant insurer because it was impossible to determine which insurer's policy provided primary coverage due to the identical wording in the "excess" clauses of their respective policies; thus, the "excess" clauses were mutually repugnant and neither clause was given effect. *Integon Nat'l Ins. Co. v. Phillips*, 212 N.C. App. 623, 712 S.E.2d 381, 2011 N.C. App. LEXIS 1228 (2011).

School Activity Bus. —

North Carolina Industrial Commission did not have jurisdiction over a driver's action to recover for the alleged negligence of a local board of education employee in the operation of an activity bus because the waiver of governmental immunity provided in the Tort Claims Act did not apply; the school activity bus did not meet the requirement of the statute that the Commission had jurisdiction over a public school bus or school transportation service vehicle. *Irving v. Charlotte-Mecklenburg Bd. of Educ.*, 368 N.C. 609, 781 S.E.2d 282, 2016 N.C. LEXIS 30 (2016).

Bus the school employee was driving was an activity bus because the evidence showed that at the time in question the bus was not being used to transport a student to and from school for the regularly scheduled school day but was instead being used to transport a student from their place of residence at the school to their place of residence at home, outside of the regularly scheduled school day, on a route which was approximately six and a half hours round trip. *Sharpe-Johnson v. Nc Dep't of Pub. Instruction E. N.C. Sch. for the Deaf*, 280 N.C. App. 74, 867 S.E.2d 188, 2021- NCCOA-562, 2021 N.C. App. LEXIS 582 (2021).

III. Highways

Construction of Subdivision (13). —

The definition of "highway" in subdivision (13) is to be construed so as to give its terms their plain and ordinary meaning. *Smith v. Powell*, 293 N.C. 342, 238 S.E.2d 137, 1977 N.C. LEXIS 940 (1977).

The legislature has provided that, unless the context requires otherwise, the word "highway" is to be given the same connotation in all of the provisions of Chapter 20, whether they be penal, remedial or otherwise. Thus, the well known principles of statutory construction that a penal statute is to be strictly construed and a statute designed to promote safety is to be liberally construed have no application. *Smith v. Powell*, 293 N.C. 342, 238 S.E.2d 137, 1977 N.C. LEXIS 940 (1977).

"Highway" Distinguished from Roadway. —

The definitions of “highway” and “roadway,” considered together, show that the legislature in defining “highway” intended to make it clear that the entire “width” between the right-of-way lines is included in a “highway” as distinguished from a “roadway.” *Smith v. Powell*, 293 N.C. 342, 238 S.E.2d 137, 1977 N.C. LEXIS 940 (1977).

Definition of “Highway” Is Concerned with Width, Not Depth. —

While it is true that a “highway” or a “street” is not limited to its surface so far as the right of the State to use, maintain and protect it from damage and private use are concerned, and in this sense, it includes not only the entire thickness of the pavement and the prepared base upon which it rests but also so much of the depth as may not unfairly be used as streets are used for the laying therein of drainage systems and conduits for sewer, water and other services, nevertheless, the primary concern of the legislature in defining “highway” as used in Chapter 20 was with the “width,” not the depth. “Width” means “the lineal extent of a thing from side to side.” *Smith v. Powell*, 293 N.C. 342, 238 S.E.2d 137, 1977 N.C. LEXIS 940 (1977).

Portion of Sidewalk as Highway. —

The portion of a sidewalk between a street and a filling station, open to the use of the public as a matter of right for the purposes of vehicular traffic, was a “highway” within the meaning of former G.S. 20-138, prohibiting drunken driving. *State v. Perry*, 230 N.C. 361, 53 S.E.2d 288, 1949 N.C. LEXIS 645 (1949).

Portion of Sidewalk Not a Highway. —

Trial court did not err by declining the bicyclist’s proposed instruction on the definition of highway because he failed to show that it was supported by the evidence, as he failed to present evidence supporting the inference that the particular sidewalk upon which he was riding his bicycle was part of the highway, as there was no evidence that the sidewalk was between property or right-of-way lines of the property upon which the road was located, nor was there evidence that the sidewalk was crossed by drivers to access a parking lot open to the public for vehicular traffic. *Barrow v. Sargent*, 278 N.C. App. 164, 862 S.E.2d 688, 2021- NCCOA-295, 2021 N.C. App. LEXIS 304 (2021).

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Area beneath Highway Bridge Not “Highway”. —

A petitioner who drove a motor vehicle only within the limits of the area beneath a highway bridge did not drive on a “highway” as that term is used in G.S. 20-16.2. *Smith v. Powell*, 293 N.C. 342, 238 S.E.2d 137, 1977 N.C. LEXIS 940 (1977).

Emergency strip adjacent to interstate highways

falls within the literal language of the definition of “highway” as contained in this section. *State v. Kelley*, 65 N.C. App. 159, 308 S.E.2d 720, 1983 N.C. App. LEXIS 3402 (1983).

Intersection. —

With reference to the right-of-way as between two vehicles approaching and entering an intersection, the law of this State makes no distinction between a “T” intersection and one at which the two highways cross each other completely. *Dawson v. Jennette*, 278 N.C. 438, 180 S.E.2d 121, 1971 N.C. LEXIS 988 (1971).

Where one public highway joins another, but does not cross it, the point where they join is an intersection of public highways. *Goss v. Williams*, 196 N.C. 213, 145 S.E. 169, 1928 N.C. LEXIS 322 (1928).

When the failure to explain the law so the jury could apply it to the facts is specifically called to the court's attention by a juror's request for information, it should tell the jury how to find the intersection of the streets as fixed by statute, and how, when the motorist reaches the intersection, he is required to drive in making a left turn. *Pearsall v. Duke Power Co.*, 258 N.C. 639, 129 S.E.2d 217, 1963 N.C. LEXIS 448 (1963).

IV. Involving Alcohol

Alcohol Concentration. —

Police officer who had been issued a permit to perform chemical analysis under the authority of G.S. 20-139.1(b) by the Department of Human Resources was permitted by subdivision (0.2) of this section (now subdivision (1b)) to express alcohol concentration in terms of 210 liters of breath, as well as 100 milliliters of blood. *State v. Midgett*, 78 N.C. App. 387, 337 S.E.2d 117, 1985 N.C. App. LEXIS 4294 (1985).

“Chemical analyst”

for purposes of G.S. 20-139.1 includes a person who was validly licensed by the Department of Human Resources to perform chemical analyses immediately prior to the enactment of the Safe Roads Act. To hold otherwise would mean that an individual licensed to perform chemical analyses under one statute would automatically lose his license when the testing procedures are merely recodified in another statute. Obviously the legislature did not intend that result. *State v. Dellinger*, 73 N.C. App. 685, 327 S.E.2d 609, 1985 N.C. App. LEXIS 3396 (1985).

Driving While Impaired. —

Sufficient evidence supported a conviction of driving while impaired, G.S. 20-138.1, because a trooper testified that the reading on the Intoxilyzer 5000 rounded down, that he administered the Intoxilyzer test two times, and that each administration showed defendant's BAC to be .08. *State v. Arrington*, 215 N.C. App. 161, 714 S.E.2d 777, 2011 N.C. App. LEXIS 1739 (2011) (decided under former G.S. 143B-262.4).

Defendant's impaired driving charge was not dismissed because, (1) under the corpus delicti rule, defendant's admission was corroborated with a wrecked vehicle, a shoe matching defendant's shoe in the vehicle's driver's side footwell, the absence of others in the area, defendant's consistent injury, and the lack of another explanation for the wreck, and (2) defendant's blood alcohol level was above the statutory limit. *State v. Hines*, 259 N.C. App. 358, 816 S.E.2d 182, 2018 N.C. App. LEXIS 429 (2018).

Context of finding the existence of a grossly aggravating factor based upon a prior driving while impaired conviction in superior court requires an interpretation that a “prior conviction” not be limited to only those not pending on direct appeal in the appellate courts; because there is no language limiting that definition to a “final” conviction or only those not challenged on appeal, the courts have no authority to interpret the statute as imposing such a limitation. *State v. Cole*, 262 N.C. App. 466, 822 S.E.2d 456, 2018 N.C. App. LEXIS 1154 (2018).

Evidence was sufficient to support defendant's conviction of driving while impaired because the officer found defendant in the driver's seat of a stationary vehicle with the engine running, the officer testified that defendant was apparently sleeping, there was a strong odor of alcohol on the defendant's breath, the defendant's speech was slurred, officers saw an alcohol bottle between the defendant's legs, defendant admitted that the defendant had consumed alcohol, defendant's blood test results indicated that the blood contained alcohol, THC, THCA, amphetamine, and methamphetamine, and defendant refused to submit to an intoxilyzer test. *State v. Hoque*, 269 N.C. App. 347, 837 S.E.2d 464, 2020 N.C. App. LEXIS 15 (2020).

Offense Involving Impaired Driving — Similar Offense in Another Jurisdiction. —

Although the definitions of “impairment” under North Carolina and New York laws are not identical and the statutes do not “mirror” one another, they are “substantially equivalent”; consequently, the trial court did not err in determining that defendant's prior conviction under New York law was a grossly aggravating factor in sentencing

him under North Carolina law. *State v. Parisi*, 135 N.C. App. 222, 519 S.E.2d 531, 1999 N.C. App. LEXIS 975 (1999).

Under Influence of Impairing Substance. —

The offense of impaired driving is proven by evidence that defendant drove a vehicle on any highway in this State while his physical or mental faculties, or both, were “appreciably impaired by an impairing substance.” *State v. George*, 77 N.C. App. 580, 335 S.E.2d 768, 1985 N.C. App. LEXIS 4172 (1985).

Where the tortfeasor rear-ended the injured party’s vehicle, the trial court erred in granting the tortfeasor’s motion for summary judgment on the injured party’s punitive damages claim, because the tortfeasor failed to show that he was not under the influence of an impairing substance under G.S. 20-4.01(14a), where he admitted to drinking two beers and taking three prescription drugs before the accident; the tortfeasor offered no evidence that the prescription drugs, mixed with alcohol, were not an impairing substance. *Byrd v. Adams*, 152 N.C. App. 460, 568 S.E.2d 640, 2002 N.C. App. LEXIS 1067 (2002).

Admissible trial evidence established beyond a reasonable doubt that defendant was driving a vehicle while under the influence of alcohol in violation of G.S. 20-138.1; evidence showing that defendant was under the influence of alcohol included, inter alia: (1) weaving; (2) erratic braking; (3) driving 70 MPH in a 50 MPH zone; (4) the strong odor of alcohol on defendant’s person; (5) defendant’s unsteady balance; and (6) his statement that he had consumed alcohol. *United States v. Van Hazel*, 468 F. Supp. 2d 792, 2006 U.S. Dist. LEXIS 94757 (E.D.N.C. 2006).

Lab report of defendant’s blood sample indicated that three of the drugs found in defendant’s blood were listed in N.C. Gen. Stat. ch. 90 as Schedule II controlled substances, and therefore were impairing substances under G.S. 20-4.01(14a). *State v. Braswell*, 222 N.C. App. 176, 729 S.E.2d 697, 2012 N.C. App. LEXIS 961 (2012).

Opinion Notes

OPINIONS OF ATTORNEY GENERAL

Trailers designed to run upon the highways

and pulled by a self-propelled vehicle are motor vehicles for the purposes of this Chapter. See opinion of the Attorney General to Clyde R. Cook, Jr., Asst. Comm’r of Motor Vehicles, 60 N.C. Op. Att’y Gen. 90 (1992).

“Public vehicular area”

includes streets leading into privately owned trailer parks which rent, lease and sell individual lots. See opinion of Attorney General to Mr. Henry A. Harkey, Assistant District Attorney, 45 N.C. Op. Att’y Gen. 284 (1976).

The parking lot of the restaurant

is within the definition of “public vehicular area” under subdivision (32) of this section when the restaurant is closed. See opinion of Attorney General to Mr. James C. Yeatts, III, Assistant District Attorney, 17-B Judicial District, 52 N.C. Op. Att’y Gen. 6 (1982).

Section 20-217, a safety statute designed to prevent the passing of a school bus

displaying its mechanical stop signal while receiving or discharging passengers, has no application to a “public vehicular area.” See opinion of Attorney General to Mr. Alan Leonard, District Attorney, Twenty-Ninth Judicial District, — N.C.A.G. — (Mar. 9, 1987).

Vehicle which is constructive total loss now defined as salvage vehicle under this section.

See opinion of Attorney General to Mr. James E. Rhodes, Director, Vehicle Registration Section, Division of Motor Vehicles, North Carolina Department of Transportation, — N.C.A.G. — (May 20, 1988).

As to treatment by insurer of wrecked vehicle as constructive total loss,

thereby declaring it a total loss, so as to harmonize subdivision (33)(d) and G.S. 20-109.1(a)(1). See opinion of Attorney General to Mr. James E. Rhodes, Director, Vehicle Registration Section, Division of Motor Vehicles, North Carolina Department of Transportation, — N.C.A.G. — (May 20, 1988).

New definition of salvage motor vehicle enacted by Session Laws 1987, c. 607 in subdivision (33)(d) and G.S. 20-109.1 must be read in pari materia.

See opinion of Attorney General to Mr. James E. Rhodes, Director, Vehicle Registration Section, Division of Motor Vehicles, North Carolina Department of Transportation, — N.C.A.G. — (May 20, 1988).

Private carriers operated by drivers employed in logging operations are entitled to the exemption for “farm” vehicles under G.S. 20-37.16(e)(3) if

agricultural or forest products being transported were raised and grown by farmer/forester and he does not engage in business of buying products for resale. Then he and his employees could transport such forest products within 150 miles of farm in vehicles not used in common or contract motor carrier operations without obtaining a commercial driver's license. Conversely, if forest products were not raised and grown by forester, or he engages in buying forest products for resale, transporting of those products by him or his employees would not be exempt from commercial driver's license requirements for, as to those forest products, forester was not a farmer. See opinion of Attorney General to Rep. Beverly M. Purdue, 3rd District: Craven, Lenoir, Pamlico Counties, 60 N.C. Op. Att'y Gen. 30 (1990).

Research References & Practice Aids

Cross References.

As to designation of an area of private property as a public vehicular area, see G.S. 20-219.4.

Legal Periodicals.

For note discussing the definition of “driving” under the North Carolina Safe Roads Act, in light of *State v. Fields*, 77 N.C. App. 404, 335 S.E.2d 69 (1985), see 64 N.C.L. Rev. 127 (1986).

N.C. Gen. Stat. § 20-50

Current through Session Laws 2023-105 of the 2023 Regular Session of the General Assembly, but does not reflect possible future codification directives from the Revisor of Statutes pursuant to G.S. 164-10.

General Statutes of North Carolina > Chapter 20. Motor Vehicles. (Arts. 1 — 18) > Article 3. Motor Vehicle Act of 1937. (Pts. 1 — 12) > Part 3. Registration and Certificates of Titles of Motor Vehicles. (§§ 20-50 — 20-71.1)

§ 20-50. Owner to secure registration and certificate of title; temporary registration markers.

(a) A vehicle intended to be operated upon any highway of this State must be registered with the Division in accordance with G.S. 20-52, and the owner of the vehicle must comply with G.S. 20-52 before operating the vehicle. A vehicle that is leased to an individual who is a resident of this State is a vehicle intended to be operated upon a highway of this State.

The Commissioner of Motor Vehicles or the Commissioner's duly authorized agent is empowered to grant a special one-way trip permit to move a vehicle without license upon good cause being shown. When the owner of a vehicle leases the vehicle to a carrier of passengers or property and the vehicle is actually used by the carrier in the operation of its business, the license plates may be obtained by the lessee, upon written consent of the owner, after the certificate of title has been obtained by the owner. When the owner of a vehicle leases the vehicle to a farmer and the vehicle is actually used by the farmer in the operation of a farm, the license plates may be obtained by the farmer at the applicable farmer rate, upon written consent of the owner, after the certificate of title has been obtained by the owner. The lessee shall make application on an appropriate form furnished by the Division and file such evidence of the lease as the Division may require.

(b) The Division may issue a temporary license plate for a vehicle. A temporary license plate is valid for the period set by the Division. The period may not be less than 10 days nor more than 60 days.

A person may obtain a temporary license plate for a vehicle by filing an application with the Division and paying the required fee. An application must be filed on a form provided by the Division.

The fee for a temporary license plate that is valid for 10 days is ten dollars (\$10.00). The fee for a temporary license plate that is valid for more than 10 days is the amount that would be required with an application for a license plate for the vehicle. If a person obtains for a vehicle a temporary license plate that is valid for more than 10 days and files an application for a license plate for that vehicle before the temporary license plate expires, the person is not required to pay the fee that would otherwise be required for the license plate.

A temporary license plate is subject to the following limitations and conditions:

- (1) It may be issued only upon proper proof that the applicant has met the applicable financial responsibility requirements.
- (2) It expires on midnight of the day set for expiration.
- (3) It may be used only on the vehicle for which issued and may not be transferred, loaned, or assigned to another.
- (4) If it is lost or stolen, the person who applied for it must notify the Division.
- (5) It may not be issued by a dealer.

(6) The provisions of G.S. 20-63, 20-71, 20-110 and 20-111 that apply to license plates apply to temporary license plates insofar as possible.

History

1937, c. 407, s. 15; 1943, c. 648; 1945, c. 956, s. 3; 1947, c. 219, s. 2; 1953, c. 831, s. 3; 1957, c. 246, s. 2; 1961, c. 360, s. 1; 1963, c. 552, s. 1; 1973, c. 919; 1975, c. 462; c. 716, s. 5; c. 767, s. 1; 1995, c. 394, s. 1; 1999-438, s. 26; 2005-276, s. 44.1(i); 2015-241, s. 29.35(b).

Annotations

Notes

Local Modification.

Moore: 1995, c. 13, s. 3, as amended by 2002-82, s. 2, as amended by 2005-11, s. 2; city of Conover: 2003-124, s. 1, as amended by 2004-58, s. 1, 2007-204, s. 1, 2007-259, s. 1, 2009-459, s. 5, 2011-171, s. 1, and 2013-172, s. 1; city of Lowell: 2003-124, s. 1, as amended by 2004-58, s. 1, 2007-204, s. 1, 2007-259, s. 1, 2009-459, s. 5, 2011-171, s. 1, and 2013-172, s. 1; town of Banner Elk: 2021-97, s. 1; town of Beech Mountain: 2003-124, s. 1, as amended by 2007-204, s. 1, 2007-259, s. 1, 2009-459, s. 6; town of Caswell Beach: 2006-149, s. 1.1; town of Cramerton: 2003-124, s. 1, as amended by 2004-58, 2007-204, s. 1, 2007-259, 2009-459, 2011-171, s. 1, and 2013-172, s. 1; town of North Topsail Beach: 2003-124, s. 1, as amended by 2004-59, s. 1, 2007-204, s. 1, 2007-259, s. 1, 2009-459, s. 5, 2011-171, s. 1, and 2013-172, s. 1; town of Seven Devils: 2003-124, s. 1, as amended by 2004-58, s. 1, 2007-204, s. 1, 2007-259, s. 1, 2009-459, s. 5, 2011-171, s. 1, and 2013-172, s. 1; town of Spencer: 2021-97, s. 1.

Editor's Note.

Session Laws 2020-3, s. 4.7(a)-(h), as amended by Session Laws 2020-97, ss. 3.15(a), 3.16(a), provides: "(a) Definition. — For purposes of this section, 'credential' means any of the following issued by the Division of Motor Vehicles:

"(1) Drivers license.

"(2) Learner's permit.

"(3) Limited learner's permit.

"(4) Limited provisional license.

"(5) Full provisional license.

"(6) Commercial drivers license.

"(7) Commercial learner's permit.

"(8) Temporary driving certificate.

"(9) Special identification card.

"(10) Handicapped placard.

"(11) Vehicle registration.

“(12) Temporary vehicle registration.

“(13) Dealer license plate.

“(14) Transporter plate.

“(15) Loaner/Dealer ‘LD’ plate.

“(16) Vehicle inspection authorization.

“(17) Inspection station license.

“(18) Inspection mechanic license.

“(19) Transportation network company permit.

“(20) Motor vehicle dealer license.

“(21) Sales representative license.

“(22) Manufacturer license.

“(23) Distributor license.

“(24) Wholesaler license.

“(25) Driver training school license.

“(26) Driver training school instructor license.

“(27) Professional housemoving license.

“(b) Extend Validity of Credentials. — Notwithstanding renewal, duration, or expiration provisions of G.S. 20-7, 20-11, 20-37.6, 20-37.7, 20-37.13, 20-50, 20-66, 20-79, 20-79.02, 20-79.2, 20-183.4B, 20-183.4D, 20-280.3, 20-288, 20-324, and 20-359, or any other provision of law to the contrary, the Division of Motor Vehicles shall extend for a period of five months the validity of any credential that expires on or after March 1, 2020, and before August 1, 2020. The Division shall extend for a period of five months the validity of any credential listed in subdivisions (6), (7), (9), (10), and (18) of subsection (a) of this section that expires on or after March 1, 2020, and before the date 30 days after the date the Governor (i) rescinds Executive Order No. 116 or (ii) issues another executive order lifting restrictions on Division of Motor Vehicles functions. Notwithstanding G.S. 20-37.13(h) and G.S. 20-37.13A(a), the Division of Motor Vehicles is authorized to waive the requirement that commercial drivers license and commercial learner's permit holders have a medical examination and certification, as required by federal law, consistent with any waiver of medical qualifications standards issued by the Federal Motor Carrier Safety Administration. A credential extended under this section shall expire five months from the date it otherwise expires as prescribed by law prior to this section. However, the subsequent expiration of a credential extended under this section shall occur on the date prescribed by law prior to this section without regard to the extension. The Division shall notify individuals affected by an extension granted under this section, including information on new expiration dates and how the extension affects subsequent renewal and expiration dates.

“(b1) Extension of Intrastate Medical Waivers. — Notwithstanding the limitation on duration of waivers in G.S. 20-37.13A(b), the Division of Motor Vehicles may extend for up to five months the validity of a medical waiver issued by the Division under G.S. 20-37.13A if the waiver expires on or after March 1, 2020, and before the date 30 days after the date the Governor (i) rescinds Executive Order No. 116 or (ii) issues another executive order lifting restrictions on Division of Motor Vehicles functions, and the Division's Medical Review Unit determines the extension is appropriate.

“(c) Driving Eligibility Certificates. — Notwithstanding G.S. 20-11(n)(3), a driving eligibility certificate dated on or after February 9, 2020, and before March 10, 2020, remains valid and may be accepted by the Division of Motor Vehicles to meet the requirements for a license or permit issued under G.S. 20-11 until 30 days after the date the Governor rescinds Executive Order No. 116 or the date the Division reopens all drivers license offices, whichever is earlier.

“(d) Waive Penalties. — Notwithstanding any provision of law to the contrary, the Division shall waive any fines, fees, or penalties associated with failing to renew a credential during the period of time the credential is valid by extension under subsection (b) of this section.

“(e) Motor Vehicle Taxes. — Notwithstanding any provision of law to the contrary, due dates for motor vehicle taxes that are tied to registration expiration under Article 22A of Chapter 105 of the General Statutes shall be extended to correspond with extended expiration dates under subsection (b) of this section.

“(f) Validity by Extension a Defense. — A person may not be convicted or found responsible for any offense resulting from failure to renew a credential issued by the Division if, when tried for that offense, the person shows that the offense occurred during the period of time the credential is valid by extension under subsection (b) of this section.

“(g) Report. — Within 30 days of the extensions made under subsection (b) of this section, the Division shall submit a report to the Joint Legislative Transportation Oversight Committee and the Fiscal Research Division detailing implementation of this section.

“(h) Effective Date. — This section is effective retroactively to March 1, 2020, and applies to expirations occurring on or after that date.”

Session Laws 2020-3, s. 5, is a severability clause.

Session Laws 2020-97, s. 4.5, is a severability clause.

Executive Order No. 116, which declared a State of Emergency to coordinate the state of North Carolina’s response and protective action to address the COVID-19 public health emergency, was rescinded by Governor Roy Cooper in Executive Order No. 267, effective August 15, 2022.

Effect of Amendments.

Session Laws 2005-276, s. 44.1(i), effective October 1, 2005, and applicable to fees collected on or after that date, substituted “five dollars (\$5.00)” for “three dollars (\$3.00)” in the third paragraph of subsection (b).

Session Laws 2015-241, s. 29.35(b), effective January 1, 2016, substituted “ten dollars (\$10.00)” for “five dollars (\$5.00)” in the first sentence of the third paragraph in subsection (b). For applicability, see editor’s note.

CASE NOTES

A “certificate of number” required by § 75A-5 is not a “certificate of title”

to be compared with that required by this section for vehicles intended to be operated on the highways. *Lane v. Honeycutt*, 14 N.C. App. 436, 188 S.E.2d 604, 1972 N.C. App. LEXIS 2147, cert. denied, 281 N.C. 622, 190 S.E.2d 466, 1972 N.C. LEXIS 1127 (1972).

As to the applicability of the mandatory provisions of motor vehicles to mobile homes,

see *King Homes, Inc. v. Bryson*, 273 N.C. 84, 159 S.E.2d 329, 1968 N.C. LEXIS 561 (1968).

Registration and Certificate of Title Not Required. —

Where purchaser of real property did not need to transport permanently attached mobile home along the highways and had no intention of doing so, purchaser was not required to register the mobile home nor to obtain a certificate of title; the mobile home was permanently affixed to the land when the property was deeded to the debtors and all parties intended the transaction to be one involving the sale of real property. In re Meade, 174 B.R. 49, 1994 Bankr. LEXIS 2222 (Bankr. M.D.N.C. 1994).

Reasonable Suspicion Vehicle Did Not Have Proper Registration Tag. —

Officer possessed reasonable suspicion to believe that defendant was operating defendant's vehicle without a proper registration tag because the tag displayed was just a piece of paper with a date written on it, rather than the piece of cardboard that car dealers normally hand out when a vehicle is purchased. State v. Smith, 192 N.C. App. 690, 666 S.E.2d 191, 2008 N.C. App. LEXIS 1661 (2008), cert. denied, 560 U.S. 925, 130 S. Ct. 3325, 176 L. Ed. 2d 1221, 2010 U.S. LEXIS 4297 (2010).

For comparison of mortgage registration statute with prior similar statute,

see Carolina Disct. Corp. v. Landis Motor Co., 190 N.C. 157, 129 S.E. 414, 1925 N.C. LEXIS 33 (1925).

Modular Homes. —

Although the title to a modular home is initially acquired through a bill of sale, once installed title must pass by way of a real property deed unlike a mobile home or trailer which passes by transfer of a certificate of origin and motor vehicle title. Briggs v. Rankin, 127 N.C. App. 477, 491 S.E.2d 234, 1997 N.C. App. LEXIS 988 (1997), aff'd, 348 N.C. 686, 500 S.E.2d 663, 1998 N.C. LEXIS 331 (1998).

Opinion Notes**OPINIONS OF ATTORNEY GENERAL****This section requires the owner of a motor vehicle to register the vehicle and obtain a certificate of title**

from the Department (now Division) of Motor Vehicles. See opinion of Attorney General to Mr. Eric L. Gooch, Director, Sales and Use Tax Division, North Carolina Department of Revenue, 40 N.C. Op. Att'y Gen. 446 (1969).

Research References & Practice Aids**Legal Periodicals.**

For note discussing the extension of the family purpose doctrine to motorcycles and private property, see 14 Wake Forest L. Rev. 699 (1978).

N.C. Gen. Stat. § 20-54

Current through Session Laws 2023-105 of the 2023 Regular Session of the General Assembly, but does not reflect possible future codification directives from the Revisor of Statutes pursuant to G.S. 164-10.

General Statutes of North Carolina > Chapter 20. Motor Vehicles. (Arts. 1 — 18) > Article 3. Motor Vehicle Act of 1937. (Pts. 1 — 12) > Part 3. Registration and Certificates of Titles of Motor Vehicles. (§§ 20-50 — 20-71.1)

§ 20-54. Authority for refusing registration or certificate of title.

The Division shall refuse registration or issuance of a certificate of title or any transfer of registration upon any of the following grounds:

- (1) The application contains a false or fraudulent statement, the applicant has failed to furnish required information or reasonable additional information requested by the Division, or the applicant is not entitled to the issuance of a certificate of title or registration of the vehicle under this Article.
- (2) The vehicle is mechanically unfit or unsafe to be operated or moved upon the highways.
- (3) The Division has reasonable ground to believe that the vehicle is a stolen or embezzled vehicle, or that the granting of registration or the issuance of a certificate of title would constitute a fraud against the rightful owner or another person who has a valid lien against the vehicle.
- (4) The registration of the vehicle stands suspended or revoked for any reason as provided in the motor vehicle laws of this State, except in such cases to abide by the ignition interlock installation requirements of G.S. 20-17.8.
- (5) The required fee has not been paid, including any additional registration fees or taxes due pursuant to G.S. 20-91(c).
- (6) The vehicle is not in compliance with the inspection requirements of Part 2 of Article 3A of this Chapter or a civil penalty assessed as a result of the failure of the vehicle to comply with that Part has not been paid.
- (7) The Division has been notified that the motor vehicle has been seized by a law enforcement officer and is subject to forfeiture pursuant to G.S. 20-28.2, et seq., or any other statute. However, the Division shall not prevent the renewal of existing registration prior to an order of forfeiture.
- (8) The vehicle is a golf cart or utility vehicle.
- (9) The applicant motor carrier is subject to an order issued by the Federal Motor Carrier Safety Administration or the Division. The Division shall deny registration of a vehicle of a motor carrier if the applicant fails to disclose material information required, or if the applicant has made a materially false statement on the application, or if the applicant has applied as a subterfuge for the real party in interest who has been issued a federal out-of-service order, or if the applicant's business is operated, managed, or otherwise controlled by or affiliated with a person who is ineligible for registration, including the applicant entity, a relative, family member, corporate officer, or shareholder. The Division shall deny registration for a vehicle that has been assigned for safety to a commercial motor carrier who has been prohibited from operating by the Federal Motor Carrier Safety Administration or a carrier whose business is operated, managed, or otherwise controlled by or affiliated with a person who is ineligible for registration, including the owner, a relative, family member, corporate officer, or shareholder.

- (10) The North Carolina Turnpike Authority has notified the Division that the owner of the vehicle has not paid the amount of tolls, fees, and civil penalties the owner owes the Authority for use of a Turnpike project.
- (11) The Division has been notified (i) pursuant to G.S. 20-217(g2) that the owner of the vehicle has failed to pay any fine imposed pursuant to G.S. 20-217 or (ii) pursuant to G.S. 153A-246(b)(14) that the owner of the vehicle has failed to pay a civil penalty due under G.S. 153A-246.
- (12) The owner of the vehicle has failed to pay any penalty or fee imposed pursuant to G.S. 20-311.
- (13) The Division has been notified by the State Highway Patrol that the owner of the vehicle has failed to pay any civil penalty and fees imposed by the State Highway Patrol for a violation of Part 9 of Article 3 of this Chapter.

History

1937, c. 407, s. 19; 1975, c. 716, s. 5; 1993 (Reg. Sess., 1994), c. 754, s. 7; 1998-182, s. 9; 2001-356, s. 3; 2002-152, s. 1; 2007-164, s. 5; 2008-225, s. 7; 2009-319, s. 1; 2013-293, s. 4; 2015-241, s. 29.31(b); 2016-87, s. 4; 2017-188, s. 3; 2019-196, s. 2.

Annotations

Notes

Local Modification.

Moore: 1995, c. 13, s. 3, as amended by 2002-82, s. 2, as amended by 2005-11, s. 2; city of Conover: 2003-124, s. 1, as amended by 2004-58, s. 1, 2007-204, s. 1, 2007-259, s. 1, 2009-459, s. 5, 2011-171, s. 1, and 2013-172, s. 1; city of Lowell: 2003-124, s. 1, as amended by 2004-58, s. 1, 2007-204, s. 1, 2007-259, s. 1, 2009-459, s. 5, 2011-171, s. 1, and 2013-172, s. 1; town of Banner Elk: 2021-97, s. 1; town of Beech Mountain: 2003-124, s. 1, as amended by 2007-204, s. 1, 2007-259, s. 1, 2009-459, s. 5, 2011-171, s. 1, and 2013-172, s. 1; town of Caswell Beach: 2006-149, s. 1.1; town of Cramerton: 2003-124, s. 1, as amended by 2004-58, 2007-204, s. 1, 2007-259, 2009-459, 2011-171, s. 1, and 2013-172, s. 1; town of North Topsail Beach: 2003-124, s. 1, as amended by 2004-59, s. 1, 2007-204, s. 1, 2007-259, s. 1, 2009-459, s. 5, 2011-171, s. 1, and 2013-172, s. 1; town of Seven Devils: 2003-124, s. 1, as amended by 2004-58, s. 1, 2007-204, s. 1, 2007-259, s. 1, 2009-459, s. 5, 2011-171, s. 1, and 2013-172, s. 1; town of Spencer: 2021-97, s. 1.

Effect of Amendments.

Session Laws 2007-164, s. 5, effective July 1, 2007, added the language following “laws of this State” in subdivision (4); added the language following “not been paid” in subdivision (5); and made minor punctuation changes.

Session Laws 2008-225, s. 7, effective January 1, 2011, added subdivision (10).

Session Laws 2009-319, s. 1, effective July 17, 2009, deleted “emissions” preceding “inspection” in subdivision (6).

Session Laws 2013-293, s. 4, effective December 1, 2013, added subdivision (11). For applicability, see Editor’s note.

Session Laws 2015-241, s. 29.31(b), effective January 1, 2016, added subdivision (12). For applicability, see editor’s note.

Session Laws 2016-87, s. 4, effective October 1, 2016, added subdivision (13). See editor’s note for applicability.

Session Laws 2017-188, s. 3, effective July 25, 2018, inserted the clause (i) designation and added (ii) in subdivision (11). For applicability, see editor's note.

Session Laws 2019-196, s. 2, effective November 12, 2019, rewrote subdivision (9), which formerly read: "The applicant motor carrier is subject to an order issued by the Federal Motor Carrier Safety Administration or the Division to cease all operations based on a finding that the continued operations of the motor carrier pose an 'imminent hazard' as defined in 49 C.F.R. § 386.72(b)(1)."

Research References & Practice Aids

Cross References.

As to fees, see G.S. 20-85.

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N.C. Gen. Stat. § 20-121.1

Current through Session Laws 2023-105 of the 2023 Regular Session of the General Assembly, but does not reflect possible future codification directives from the Revisor of Statutes pursuant to G.S. 164-10.

General Statutes of North Carolina > Chapter 20. Motor Vehicles. (Arts. 1 — 18) > Article 3. Motor Vehicle Act of 1937. (Pts. 1 — 12) > Part 9. The Size, Weight, Construction and Equipment of Vehicles. (§§ 20-115 — 20-137.5)

§ 20-121.1. Operation of a low-speed vehicle, mini-truck, or modified utility vehicle on certain roadways.

The operation of a low-speed vehicle, mini-truck, or modified utility vehicle is authorized with the following restrictions:

- (1) A low-speed vehicle may be operated only on streets and highways where the posted speed limit is 35 miles per hour or less. A mini-truck or modified utility vehicle may be operated only on streets and highways where the posted speed limit is 55 miles per hour or less; provided, a modified utility vehicle may not be operated on any street or highway having four or more travel lanes unless the posted speed limit is 35 miles per hour or less. This subdivision does not prohibit a low-speed vehicle, mini-truck, or modified utility vehicle from crossing a road or street at an intersection where the road or street being crossed has a posted speed limit of more than 35 miles per hour.
- (2) A low-speed vehicle or mini-truck shall be equipped with headlamps, stop lamps, turn signal lamps, tail lamps, reflex reflectors, parking brakes, rearview mirrors, windshields, windshield wipers, speedometer, seat belts, and a vehicle identification number. Any such required equipment shall be maintained in proper working order.
- (2a) A modified utility vehicle shall be equipped with headlamps, stop lamps, turn signal lamps, tail lamps, reflex reflectors, parking brakes, rearview mirrors, a speedometer, seat belts, and a vehicle identification number. Any such required equipment shall be maintained in proper working order. If a modified utility vehicle does not have a vehicle identification number, upon application by the owner, the Division shall assign a vehicle identification number to the modified utility vehicle prior to registration. The operator of and all passengers on a modified utility vehicle that is not equipped with a windshield and windshield wipers shall wear a safety helmet, with a retention strap properly secured, that complies with Federal Motor Vehicle Safety Standard (FMVSS) 218.
- (3) A low-speed vehicle, mini-truck, or modified utility vehicle shall be registered and insured in accordance with G.S. 20-50 and G.S. 20-309.
- (4) Notwithstanding the provisions of any other subdivision of this section, the Department of Transportation may prohibit the operation of low-speed vehicles, mini-trucks, or modified utility vehicles on any road or highway if it determines that the prohibition is necessary in the interest of safety.
- (5) Low-speed vehicles must comply with the safety standards in 49 C.F.R. § 571.500.
- (6) Regardless of age, a mini-truck shall not qualify as an antique vehicle or historic vehicle as described in G.S. 20-79.4(b).

History

2001-356, s. 5; 2019-34, s. 3; 2020-40, s. 3; 2021-33, s. 2.

Annotations

Notes

Effect of Amendments.

Session Laws 2019-34, s. 3, effective June 21, 2019, inserted “or mini-truck” following “vehicle” throughout the section; inserted the second sentence in subdivision (1); added the second sentence in subdivision (2); and added subdivision (6).

Session Laws 2020-40, s. 3, effective October 1, 2020, substituted “vehicle, mini-truck, or modified utility truck vehicle” for “vehicle or mini-truck” throughout the section; and added the third sentence in subdivision (2).

Session Laws 2021-33, s. 2, effective October 1, 2021, in subdivision (1), added the proviso at the end of the second sentence, and inserted “subdivision” in the third sentence; in subdivision (2), substituted “low-speed vehicle or mini-truck” for “low-speed vehicle, mini-truck, or modified utility vehicle” near the beginning of the first sentence, and deleted the last sentence, which read: “If a modified utility vehicle does not have a vehicle identification number, upon application by the owner, the Division shall assign a vehicle identification number to the modified utility vehicle prior to registration”; added subdivision (2a); and substituted “Notwithstanding the provisions of any other subdivision of this section, the” for “The” in subdivision (4).

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CITY OF HENDERSONVILLE

AGENDA ITEM SUMMARY

SUBMITTER:

John Connet

MEETING DATE:

9/7/2023

AGENDA SECTION:

NEW BUSINESS

DEPARTMENT:

Administration

TITLE OF ITEM:

Rescheduling of November Workshop Meeting – *John Connet, City Manager*

SUGGESTED MOTION(S):

I move that City Council schedule their November workshop meeting on Monday, November 20, 2023.

SUMMARY:
The November workshop meeting is scheduled for Wednesday, November 23, 2023, which is the night before Thanksgiving. The Community Development Team would like hold a “Joint Workshop” meeting between the Planning Board and City Council to discuss the Comprehensive Plan. Therefore, we are proposing to move your workshop meeting to Monday November 20. 2023 at 4:00 PM. .

BUDGET IMPACT: \$

Is this expenditure approved in the current fiscal year budget? EnterTextHere

If no, describe how it will be funded. EnterTextHere

ATTACHMENTS: None



CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

SUBMITTER: Angela Beeker, City Attorney **MEETING DATE:** September 7, 2023

AGENDA SECTION: NEW BUSINESS **DEPARTMENT:** Legal Department

TITLE OF ITEM: Nonconsensual Towing Ordinance— *Angela S. Beeker, City Attorney*

SUGGESTED MOTION(S):

I move City Council to adopt **AN ORDINANCE OF THE CITY OF HENDERSONVILLE CITY COUNCIL ADOPTING CERTAIN PROVISIONS REGARDING THE NONCONSENSUAL TOWING OF MOTOR VEHICLES FROM PRIVATELY OWNED LOTS**, as presented.

SUMMARY:

Attached for City Council's consideration is the proposed **AN ORDINANCE OF THE CITY OF HENDERSONVILLE CITY COUNCIL ADOPTING CERTAIN PROVISIONS REGARDING THE NONCONSENSUAL TOWING OF MOTOR VEHICLES FROM PRIVATELY OWNED LOTS**

City Council is requested to adopt this ordinance as presented.

ATTACHMENTS:

Draft Ordinance

**AN ORDINANCE OF THE CITY OF HENDERSONVILLE CITY COUNCIL
ADOPTING CERTAIN PROVISIONS REGARDING THE NONCONSENSUAL
TOWING OF MOTOR VEHICLES FROM PRIVATELY OWNED LOTS**

WHEREAS, The City of Hendersonville City Council has a significant governmental interest in protecting the health, safety, and welfare of the general public, and preserving the public order; and

WHEREAS, North Carolina General Statutes 160A-174 authorizes municipalities to regulate or abate acts, omissions, or conditions, detrimental to the health, safety, or welfare of the public, and the peace and dignity of the city; and

WHEREAS, some nonconsensual towing and booting practices disrupt the public order and threaten the safety and welfare of the general public and the City Council the City of Hendersonville wishes to enact regulations to protect members of the general public from such practices;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HENDERSONVILLE, NORTH CAROLINA that:

SECTION 1. This Ordinance shall be known as “An Ordinance Addressing Nonconsensual Towing of Motor Vehicles From Privately Owned Lots.”

SECTION 2. Chapter 36 – Offenses and Miscellaneous Provisions of the Code of Ordinances for the City of Hendersonville is hereby amended by adding an article, to be numbered VII, which reads as follows:

**ARTICLE VII. – NONCONSENSUAL TOWING AND BOOTING ON
PRIVATELY OWNED PRIVATE PARKING LOTS**

Sec. 301. – Definitions

Motor vehicle means a vehicle which is self-propelled and every vehicle designed to run upon the highways which is pulled by a self-propelled vehicle. This term shall not include mopeds or electric assisted bicycles.

Commercial Parking Lot means a parking lot whose primary purpose is parking by the general public for a fee, typically based on minutes, hours, or daily rates, allowing parking on a first-come, first served, upon entry, basis. The fact that some of the spaces are leased or rented for part of all of the time shall not change the classification of a commercial parking lot to a leased parking lot. Unless specifically exempted, all commercial parking lots are regulated by this article, whether parking by the general public for a fee is permitted all or part of the time.

Commercial Parking Lot Operator means any owner or operator of a commercial parking lot.

Communal parking lot means a parking lot whose primary purpose is to provide parking spaces to accommodate the following (regardless of whether a fee is charged):

- (1) owners, clients, employees, customers, tenants and/or other invitees of a nonresidential establishment (i.e. commercial, professional, institutional, for profit, nonprofit, educational, etc.);
- (2) owners, tenants, residents, and/or other invitees, of an establishment consisting of attached dwelling units utilizing shared parking (i.e., apartments, condominiums, townhomes, dormitories, group quarters, etc.); or
- (3) a combination of (1) and (2).

One or more parking spaces dedicated to one or more attached dwelling units shall be considered a communal parking lot, regardless of whether the attached dwelling unit(s) is/are attached to another dwelling unit or is/are part of a nonresidential establishment. If all or part of a communal parking lot is open for parking by the general public for a fee for all or part of the time, compliance with the posting requirements of a commercial parking lot shall be required during such times as they are open to the general public to park for a fee (reference Sec. 307).

Leased Parking Lot means a parking lot (that is not a communal parking lot) whose primary purpose is to lease or rent parking spaces to persons, or entities, on a pre-arranged basis, typically charging on a weekly or monthly basis. If all or part of a leased parking lot is open for parking by the general public for a fee for all or part of the time, compliance with the posting requirements of a commercial parking lot shall be required during such times as they are open to the general public to park for a fee (reference Sec. 307).

Nonconsensual booting means the placement of a wheel lock, or other similar device, to immobilize the motor vehicle, without the consent of the owner or operator of the motor vehicle.

Nonconsensual towing means the towing of a motor vehicle without the permission or consent of the owner or operator of the motor vehicle.

Private Parking lot means an area, used, or intended to be used, primarily for the parking or storage of one or more motor vehicles, which is privately owned, leased or operated, and which is one of the following:

- (1) A commercial parking lot, including temporary commercial parking lots; or
- (2) A communal parking lot; or
- (3) A leased parking lot

Private parking lots include both parking lots that are primary uses and accessory uses of real property. All public streets, public rights of way, and public alleys are specifically excluded from this definition, regardless of ownership.

Service Provider means a towing service or a wheel lock service.

Temporary Commercial Parking Lot means a commercial parking lot that operates for less than ten (10) days in a calendar year. Temporary commercial parking lots shall not have to comply with the posting requirements of Section 307.

Tow storage lot means a lot that the towing service uses to store the motor vehicles that they have towed.

Towing service means any person or entity that engages in the business of towing motor vehicles for a fee.

Tow truck operator means the driver or person in most direct control of a tow truck.

Wheel lock means a wheel lock, boot, or any other instrument that is attached to a motor vehicle in order to immobilize it.

Wheel lock service means any person or entity that engages in the business of applying wheel locks onto motor vehicles for a fee.

Wheel lock operator means the person who physically applies a wheel lock onto a motor vehicle or most directly causes the application of a wheel lock onto a motor vehicle.

Sec. 302. – Findings

The City Council for the City of Hendersonville makes the following findings:

- (a) The city council of the City of Hendersonville has a significant governmental interest in protecting the health, safety, and welfare of the general public and preserving the public order.
- (b) G.S. 160A-174 allows a municipality by ordinance to define, prohibit, regulate, or abate acts, omissions, or conditions, detrimental to the health, safety, or welfare of the public, and the peace and dignity of the municipality.
- (c) Some practices related to the non-consensual towing or booting of motor vehicles from private parking lots have exposed the public or members of the towing industry to harm. Non-consensual towing or booting can leave unknowing drivers without means of transportation and can lead to altercations between vehicle owners and towing personnel.
- (d) Inadequate notification of parking restrictions and fees for private parking lots can lead to inadvertent unauthorized parking on the lot and nonconsensual towing or booting of vehicles.
- (e) The Hendersonville City Council desires to minimize the harmful and adverse effects resulting from the non-consensual towing of motor vehicles from private parking lots, while also protecting the lot owners' and lessees' property rights, by enacting an ordinance that will assist in making sure that:
 - i. Parking is available to those lawfully present on the private parking lots.
 - ii. The public is aware that their vehicle may be towed or booted if they park in a private parking lot without permission, or without paying applicable fees.
 - iii. If a vehicle parked on a private parking lot is subject to nonconsensual towing or booting, the vehicle owner or operator has a reasonable means of securing the return of the personal property within the motor

vehicle and the motor vehicle itself, without being subjected to coercive practices.

Sec. 304. –Service Provider Permits required.

It shall be unlawful for any service provider to engage in the nonconsensual towing or nonconsensual booting of motor vehicles from a private parking lot without first obtaining a permit from the City of Hendersonville Police Department.

- (1) All service providers must have in place a general liability policy of the insurance covering the service provided.
- (2) All service providers must be authorized to conduct business in the State of North Carolina.
- (3) All service provider shall provide to the Police Department, and keep current, on a form provided by the City the following information:
 - a. Name of the towing service or booting service;
 - b. Whether they will be engaged in towing or booting of motor vehicles, or both;
 - c. The physical address of the service provider;
 - d. The name and contact number for the service provider's primary manager, operator, or supervisor;
 - e. The make, model, and tag number of each tow truck in service within the City of Hendersonville;
 - f. An unexpired certificate of insurance, showing the City of Hendersonville as the certificate holder, evidencing the general liability insurance policy required by the terms of this Sec. 304;
 - g. The address of all tow storage lots; and
 - h. Their fee schedule (ref Sec. 308).
- (4) A permit will not be issued to a service provider whose permit has been revoked for repeated violations of this article during such period of revocation.

Sec. 305. – Posted notice required for nonconsensual towing or nonconsensual booting from a private parking lot.

- (a) It shall be unlawful for a service provider to engage in the nonconsensual towing or nonconsensual booting of a motor vehicle which is parked on a private parking lot if the notice required by this section 305 is not posted on the private parking lot.
- (b) It shall be unlawful for any person to cause or permit the nonconsensual towing or nonconsensual booting of a motor vehicle which is parked on a private parking lot if the notice required by this section 305 is not posted on the private parking lot.
- (c) The notice required by this section 305 shall be by signs, placed upon the private parking lot, which meet all of the following requirements:

- (1) All signs shall be a minimum of 18 inches by 24 inches, and a maximum of six square feet in size (a combination of signs adjacent to one another may be considered as one sign.)
- (2) Signs shall be:
 - i. Prominently placed on the private parking lot at each access or curb cut allowing vehicular access to the property (whether such access be from a street or adjacent property) and in at least one other location (not at an access point) on the private parking lot. Notwithstanding the foregoing, at least one sign must be visible and legible from all spaces within the private parking lot; or
 - ii. Placed at each parking space that restricts or prohibits parking within the private parking lot.
- (3) Each sign required by this Section shall display, at a minimum, the following:
 - i. In not less than two inch high letters on a contrasting background, the words “tow-away zone,” “towing enforced,” or a similar phrase, or in the case of a wheel lock being applied, the words “unauthorized vehicles booted,” “wheel locks in use,” or similar phrase.
 - ii. In not less than two-inch high letters on a contrasting background, a statement indicating that parking by is prohibited or otherwise restricted by the use of a phrase such as “leased parking only,” “no parking,” “parking for customers only,” “parking for residents only,” “paid parking only,” or a similar phrase. If parking is not prohibited or restricted on a continuous basis, the days of the week and hours of the day during which parking is prohibited or restricted shall be posted.
 - iii. In not less than one-inch high letters on a contrasting background, the name and telephone number of the service provider at which a person available to release the motor vehicle that has been towed, removed, or immobilized may be reached at any time, twenty-four hours per day, seven days per week. (See Sec. 308 for required response times).
 - iv. In not less than one-inch high letters on a contrasting background, the fees and charges of the service provider (Reference Sec. 308).
 - v. In not less than one-inch high letters, on a contrasting background, the web address for the City’s webpage designated by the City to provide information for persons whose vehicles have been towed from a private parking lot.
- (d) The signs displaying the notice required by this section shall not be placed on a sidewalk or other area designated for pedestrian traffic.
- (e) The signs displaying the notice required by this section shall be kept clear of visual obstruction, such as vegetation, so that they are plainly visible by drivers entering and parking on the property.

- (f) Signs existing as of November 1, 2023 may be augmented with supplemental signs placed adjacent to them that, together, meet the requirements of this ordinance. Additionally, letter height requirements shall not apply to such pre-existing signs. Additions to, replacement of, or modification of existing signs shall be required to comply with the terms of this ordinance.

Sec. 306. – Exceptions to notice requirements for towing from a private parking lot.

No notice shall be required to be posted on a private parking lot for the nonconsensual towing or removal of a motor vehicle in any of the following circumstances:

- (1) The motor vehicle is towed pursuant to Chapter 36, Article VI of the City of Hendersonville Code of Ordinances;
- (2) The towing of the motor vehicles is authorized by the North Carolina General Statutes.
- (3) The motor vehicle is towed pursuant to the order of a court of competent jurisdiction.
- (4) The motor vehicle is towed pursuant to the order of a law enforcement officer.

Section 307. – Posted notice requirements for commercial parking lots

- (a) It shall be unlawful for any commercial parking lot operator to operate a commercial parking lot if all posted notice requirements of this Section are not met. As used herein, “commercial parking lot operator” includes any person acting for, on behalf of, or with the permission of, the commercial parking lot operator.
- (b) The notice required by this Section shall be by signs, placed upon the property which meet all of the following requirements:
 - (1) All signs shall be a minimum of 18 inches by 24 inches, and a maximum of six square feet in size (a combination of signs located adjacent to one another may be considered as one sign);
 - (2) Signs shall be prominently placed on the commercial parking lot so that at least one sign, containing all required information, is plainly visible and legible to all persons parking in the commercial parking lot. Notwithstanding the foregoing, a minimum of two (2) signs shall be placed on all commercial parking lots.
- (c) Each sign required by this Section shall display, at a minimum, the following:
 - (1) In not less than two inch high letters on a contrasting background, the words “Paid Parking Lot” or similar phrase indicating that all persons parking must pay for parking in the lot, and the hours during which payment is required, and the hours that parking is otherwise restricted, if applicable. Such sign must be distinguishable from City paid parking lot signs, and must clearly indicate that the commercial parking lot is not owned or operated by the City of Hendersonville.

- (2) In not less than two-inch high letters on a contrasting background, a statement indicating the fees applicable to parking in the lot, the method and place for payment, and the types of payment accepted. (Reference Sec. 306(d))
- (3) In not less than 1 ½ inch high letters on a contrasting background, any parking rules which apply to the commercial parking lot. If there are fees for overtime parking or for failing to pay for parking, this must be clearly stated, including the amounts of such fees.
- (4) In not less than one-inch high letters on a contrasting background, the name and telephone number of the name of the owner or operator of the commercial parking lot and a phone number at which the owner or operator may be reached during normal business hours, M-F. (Please see section 308 for required response times.)
- (d) The signs displaying the notice required by this section shall not be placed on a sidewalk or other area designated for pedestrian traffic.
- (e) The signs displaying the notice required by this section shall be kept clear of visual obstruction, such as vegetation, so that they are plainly visible by drivers entering and parking on the property.
- (f) Signs existing as of November 1, 2023 may be augmented with supplemental signs placed adjacent to them that, together, meet the requirements of this ordinance. Additionally, letter height requirements shall not apply to such pre-existing signs. Additions to, replacement of, or modification of existing signs shall be required to comply with the terms of this ordinance.

Sec. 308. – Fees and other requirements

- (a) Fees for towing and storage; other requirements.
 - (1) All service providers shall have a fee schedule for the different services provided. The service provider must provide the fee schedule to the Hendersonville Police Department. Any changes in fees must be provided to the Police Department and posted on the signs required by this article at least 24 hours before they go into effect. Only fees reflected in the fee schedule filed with the Hendersonville Police Department and posted on the private parking lot may be charged.
 - (2) The service provider shall provide a receipt for each payment at the time the payment is made. Each receipt shall be legible and shall contain the following information:
 - a. The name address and telephone number of the service provider.
 - b. First and last name of the tow truck operator or wheel lock operator.
 - c. An itemized breakdown of all fees charged.

- d. A clear and accurate reason for the nonconsensual towing or nonconsensual booting, and the date, location of private parking lot, and time of the towing or booting.
 - (3) All service providers shall, at a minimum, accept payment by cash, debit card, and at least two major national credit cards. All tow truck operators and wheel lock operators must be able to accept all required forms of payment at the private parking lot, and at the tow storage lot.
 - (4) A person with the authority and ability to release the motor vehicle must answer the call, or return the call, within 15 minutes of a message being left on a voice mail or answering machine type device. The vehicle must be available for release at the tow storage lot within 30 minutes of the call being answered or the call being returned, whichever is later, but in no event less than 45 minutes from the message being left.
- (b) Fees for commercial parking lots; other requirements
- (1) If persons are charged a fee for parking in a commercial parking lot, for overtime parking, or for not paying for parking, a commercial parking lot owner or operator may not use the words “citation”, “ticket”, “penalty”, “fine”, or other words that would tend to deceive the public that such fee is being assessed by the City of Hendersonville or other governmental body.
 - (2) All commercial parking lot operators shall provide a method for persons charged a fee to contest or otherwise question the fee that was charged by the commercial parking lot operator.
 - (3) All commercial parking lot owners and operators shall, at a minimum, accept payment by debit card, and at least two major national credit cards.
 - (4) A person with the authority must answer a call, received during the commercial parking lot operator’s normal business times, M-F, or return the call, within 24 hours of a message being left on a voice mail or answering machine type device. Calls received, or messages left, outside of the operator’s normal business times shall be returned no later than the business day next following the call.

Sec. 309. – Report to police department

When engaging in the nonconsensual towing a motor vehicle from a private parking lot, a tow truck operator shall report by telephone to the City of Hendersonville Police Department the license tag number and description of the motor vehicle being towed, the private parking lot that the motor vehicle is being towed from and the address of the tow storage lot. This report to the police department shall be made before the tow truck towing the motor vehicle leaves the private parking lot.

Sec. 310. – Release prior to tow or immobilization

If, prior to the nonconsensual towing or nonconsensual booting of a motor vehicle on a private parking lot, the owner or operator or other person able to move the motor vehicle returns to the private parking lot, the tow truck operator or wheel lock operator shall release the motor vehicle to that person upon payment of the applicable fees.

Sec. 311. – Regulations towing to a tow storage lots

- (a) A towing service towing a motor vehicle from a private parking lot may only use a tow storage lot that accepts cash, debit, and at least two (2) nationally recognized credit cards for payment of the storage fees.
- (b) A towing service shall store all motor vehicles towed from a private parking lot at a tow storage lot located within 15 miles as the crow flies from the point of tow.
- (c) A towing service shall only store motor vehicles towed from a private parking lot at tow storage lots that are clearly identified with a sign stating the name of the tow storage lot, that are secured with a fence and a locked gate, and that provide security lighting meeting the requirements of Sec 6-19 of the Hendersonville Zoning Ordinance.
- (d) Tow storage lots may be subject to annual inspections by the Hendersonville Police Department for compliance with this Article.

Sec. 312. – Regulations for wheel locks

Immediately upon installing the wheel immobilization device, a blaze orange warning decal at least 24 square inches in size shall be prominently placed in the center of the driver's side window or on the front windshield directly in front of the vehicle steering wheel. The warning decal must clearly and legibly inform the operator of the vehicle that a locking device has been installed on the front wheel of the vehicle and that attempting to move the vehicle will cause serious damage to the vehicle. The decal must display the telephone number and address of the wheel lock service provider. Upon payment of the applicable fees, the wheel lock service provider shall remove the decal and shall have in possession the appropriate materials needed to remove all parts of the decal and residue.

Sec. 313. – Enforcement and Penalties

- (a) This Article shall be enforced by the Hendersonville Police Department, including (1) any sworn officer and (2) any unsworn employee designated by the Chief of Police.
- (b) Any violation of the provisions of this article or a failure to comply with any of its requirements shall subject the offender to a civil penalty as follows:
 - (1) In the amount of three hundred dollars (\$300.00) for the first offense; and
 - (2) In the amount of six hundred dollars (\$600.00) for each offense when the offense is the second offense within a twelve-month period; and

- (3) In the amount of one thousand two hundred (\$1,200.00) for each offense when the offense is the third or subsequent offense within a twelve-month period.
- (c) The third violation within any twelve-month period may result in the revocation of a service provider permit's issued under this article. Such revocation shall be effective for a period of 90 days. Only the Hendersonville Chief of Police shall be authorized to revoke a permit. Any service provider who's permit has been revoked shall be required to apply for and receive a new permit before resuming towing and booting operations in the City of Hendersonville.
- (d) This article may also be enforced by an appropriate equitable action, injunction, or order of abatement issued by a court of competent jurisdiction.
- (e) Any one, all, or any combination of the foregoing penalties and remedies may be used to enforce this article.

SECTION 3. If any provision of this ordinance or its application is held invalid, the invalidity does not affect other provisions or applications of this ordinance that can be given effect without the invalid provisions or application, and to this end the provisions of this ordinance are severable.

SECTION 4. It is the intention of the city council and it is hereby ordained, that the provisions of this ordinance shall become and be made part of the Code of Ordinances, City of Hendersonville, North Carolina, and the sections of this ordinance may be renumbered to accomplish such intention.

SECTION 5. This Ordinance shall be effective November 1, 2023.

Adopted by the City Council of the City of Hendersonville, North Carolina on this ____ day of _____, 2023.

Attest:

Barbara G. Volk, Mayor, City of Hendersonville

Jill Murray, City Clerk

Approved as to form:

Angela S. Beeker, City Attorney



CITY OF HENDERSONVILLE

AGENDA ITEM SUMMARY

SUBMITTER:

John Connet

MEETING DATE:

9/07/2023

AGENDA SECTION:

CLOSED SESSION

DEPARTMENT:

Administration

TITLE OF ITEM:

Closed Session – *John Connet, City Manager*

SUGGESTED MOTION(S):

I move that City Council enter closed session pursuant to NCGS § 143-318.11 (a) (1) and (6) to prevent the disclosure of information that is privileged or confidential pursuant to the law of this State or of the United States, or not considered a public record within the meaning of Chapter 132 of the General Statutes, And the public body and to consider the qualifications, competence, performance, character, fitness of an individual public officer or employee.

SUMMARY:

City staff is requesting a closed session to prevent the disclosure of information that is privileged or confidential pursuant to the law of this State or of the United States, or not considered a public record within the meaning of Chapter 132 of the General Statutes and to consider the qualifications, competence, performance, character, fitness of an individual public officer or employee.

BUDGET IMPACT: \$ TBD

Is this expenditure approved in the current fiscal year budget? NA

If no, describe how it will be funded. NA

ATTACHMENTS:

None