



CITY OF HENDERSONVILLE
CITY COUNCIL SECOND MONTHLY MEETING
Operations Center - Assembly Room | 305 Williams St. | Hendersonville NC 28792
Wednesday, June 28, 2023 – 4:00 PM

AGENDA

1. **CALL TO ORDER**
2. **CONSIDERATION OF AGENDA**
3. **CONSENT AGENDA** - *Items are considered routine, noncontroversial in nature and are considered approved by a single motion and vote.*
 - A. Interlocal Agreement to Provide for Environmental Regulations Governing the Ecusta Trail – *Angela S. Beeker, City Attorney*
 - B. Resolution to accept grant funds - *Mark Stierwalt, Public Works*
4. **PRESENTATIONS**
 - A. Downtown Parking Update – *Brian Pahle, Assistant City Manager*
 - B. Proposed regulations related to predatory towing and wheel locks – *Daniel Heyman, Staff Attorney*
 - C. Amendments to Chapter 10 - Animals – *Daniel Heyman, Staff Attorney and Caroline Gunther, ASAC Chair*
 - D. Edwards Park Update – *Brian Pahle, Assistant City Manager*
5. **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.



CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

SUBMITTER: Angela Beeker, City Attorney **MEETING DATE:** June 28, 2023
AGENDA SECTION: CONSENT **DEPARTMENT:** Legal Department
TITLE OF ITEM: Interlocal Agreement to Provide for Environmental Regulations Governing the Ecusta Trail – *Angela S. Beeker, City Attorney*

SUGGESTED MOTION(S):

I move City Council adopt a **RESOLUTION TO APPROVE INTERLOCAL AGREEMENT FOR ECUSTA TRAIL GOVERNANCE** as presented.

SUMMARY:

Henderson County has requested that the Ecusta Trail construction and maintenance be governed by the County's flood damage prevention (Subpart A of Article VIII of Chapter 42 of the Henderson County Code), stormwater regulation, and water supply watershed protection (both Subpart B of Article VIII of Chapter 42) (the three together, the "Regulations"). An interlocal agreement providing for this and a Resolution are presented for City Council's consideration.

City Council is requested to adopt the attached Resolution for the purposes stated.

ATTACHMENTS:

1. Resolution
2. Proposed Interlocal Agreement

STATE OF NORTH CAROLINA

COUNTY OF HENDERSON

AGREEMENT ON MULTI-JURISDICTIONAL MATTER

THIS AGREEMENT (the “Agreement”) is made on the date of stated below by and between the County of Henderson (the “County”), the City of Hendersonville (“Hendersonville”) and the Town of Laurel Park (“Laurel Park”).

Facts

A. The County has obtained a lease on real property (the “Real Property”) from Ecusta Rails2Trail, LLC, for a period through and including June 30, 2171.

B. The Real Property is described deed recorded in Book 3764, at Page 590, Henderson County Registry.

C. The Real Property can be used for any purpose not in violation of Section 8(d) of the National Trails System Act (U.S. Public Law 90-543, as amended, 16 U.S.C. §§1241-1251. It is intended by the parties to be used as a public greenway and walking and biking trail (the “Ecusta Trail”).

D. The Real Property includes areas which are located within the municipal boundaries of Hendersonville and Laurel Park, and other areas which are not located within any municipality.

E. The County has previously adopted ordinances concerning flood damage prevention (Subpart A of Article VIII of Chapter 42 of the Henderson County Code), stormwater regulation, and water supply watershed protection (both Subpart B of Article VIII of Chapter 42) (the three together, the “Regulations”). The Regulations are at least as strict as the requirements of the State of North Carolina.

F. The Regulations apply to the unincorporated portions of the County and to Laurel Park, and are enforced by County staff there. Hendersonville has separate and different regulations concerning the same subject matter as the Regulations.

G. The parties have agreed that it would be in the interest of all concerned that the Real Property be subject to a single set of rules enforced by a single authority in the subjects covered by the Regulations, and have entered this Agreement.

Agreement

The parties, pursuant to Article 20 of Chapter 160A of the North Carolina General Statutes, agree as follows:

1. The purpose of this agreement is to have a uniform set of regulations, permitting and enforcement for the real estate comprising the Ecusta Trail in the areas of flood damage prevention, stormwater regulation and water supply watershed protection.

2. The Regulations (to the extent that they are at least as strict as those required by the State of North Carolina) shall be the governing laws regarding flood damage prevention, stormwater regulation and watershed protection for the Real Property. In the event the State of North Carolina requires a stricter standard than the Regulations, then the State's standards shall be deemed to be a part of the Regulations for the Real Property. Enforcement of the Regulations for the Real Property shall be by personnel of the County.

3. No personnel will be appointed in the performance of this Agreement, and no costs or revenues are expected.

4. This agreement shall remain in effect for the duration of the County's lease for the Real Property. Notwithstanding, however, any party can terminate this Agreement on two year's written notice to the other parties.

5. The parties may amend the Agreement at any time all parties agree.

This Agreement effective as of July 1, 2023.

COUNTY OF HENDERSON

By: _____
REBECCA McCALL, Chair
Henderson County Board of Commissioners

Date

Attest: _____
Clerk to the Board of Commissioners

CITY OF HENDERSONVILLE

By: _____
BARBARA G. VOLK, Mayor

Date

Attest: _____
City Clerk

TOWN OF LAUREL PARK

By: _____
J. CAREY O'CAIN, Mayor

Date

Attest: _____
Town Clerk

Resolution #__-____

**RESOLUTION TO APPROVE INTERLOCAL AGREEMENT
FOR ECUSTA TRAIL GOVERNANCE**

WHEREAS, Henderson County is the Tenant of the property, owned by the Ecusta Rails2Trail, LLC, a North Carolina nonprofit corporation (“*ER2T*”), obtained by *ER2T* by way of that special warranty deed recorded in Book of Record 2764 at Page 590 of the Henderson County Registry, for the development of a greenway along the former railroad corridor, running from Transylvania County to a point in Henderson County (the “*R2T Property*”); and

WHEREAS, the lease (the “*Lease*”) between Henderson County and *ER2T* dated November 1, 2021, for the *R2T Property* provides that the County will construct and maintain a greenway within the portions of the *R2T Property* lying in Henderson County (the “*R2T Greenway*”); and

WHEREAS, Henderson County has requested that the *R2T Property* be governed by the County’s flood damage prevention (Subpart A of Article VIII of Chapter 42 of the Henderson County Code), stormwater regulation, and water supply watershed protection (both Subpart B of Article VIII of Chapter 42) (the three together, the “Regulations”) and the City of Hendersonville and the Town of Laurel Park have agreed; and

WHEREAS, Henderson County, Laurel Park and the City of Hendersonville wish to enter into an interlocal agreement as allowed by N.C.G.S. Chapter 160A, Article 20, and N.C.G.S. Chapter 160D-202(f) and (i) to carry out these terms as agreed.

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

1. The Interlocal Agreement between Henderson County, the Town of Laurel Park, and the City of Hendersonville providing for the governance of the *R2T Property* by the Regulations is approved as presented.
2. The Mayor is authorized to sign the Interlocal Agreement.
3. Hendersonville City staff are authorized to take such actions as may be necessary to implement the terms of the Interlocal Agreement.

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 Muray, City Clerk

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



CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

SUBMITTER: Mark Stierwalt **MEETING DATE:** June 28, 2023
AGENDA SECTION: CONSENT **DEPARTMENT:** Public Works
TITLE OF ITEM: *Resolution to accept grant funds*

SUGGESTED MOTION(S):

Motion to approve accepting \$20,000 in grant funds from the HCTDA for the construction of the new Disc Golf Course

SUMMARY: Resolution to accept TDA grant funds for the upcoming Disc Golf Park in Berkley Mills Park

ATTACHMENTS: Resolution, Grant Application, Contract

**RESOLUTION BY THE CITY OF HENDERSONVILLE CITY COUNCIL
ACCEPTING A GRANT FROM THE HENDERSON COUNTY TDA
FOR THE PURPOSE OF CONSTRUCTION OF A DISC GOLF COURSE**

WHEREAS, the Henderson County TDA (HCTDA) has established a grant that provides funding for a destination enhancement grant; and

WHEREAS, the City of Hendersonville has within it's park system has land suitable and designated for a disc golf course; and

WHEREAS, the City of Hendersonville, in particular its Public Works division applied for a grant from the HCTDA to establish a disc golf venue; and

WHEREAS, the City's has been awarded \$20,000.00 by the HCTDA to be used for the Allowable Purposes; and

WHEREAS, the City of Hendersonville desires to accept the grant funds, and authorize the execution of the grant funding agreement.

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

1. The City hereby accepts the grant from the HCTDA to be used for the Allowable Purposes; and
2. The City Manager is authorized to execute the Grant Agreement, with such changes as he deems appropriate, provide they are consistent with the terms of this Resolution;
3. City Staff are authorized and directed to proceed with the development of the disc golf course.

Adopted by the City Council of the City of Hendersonville, North Carolina on this ____day of June, 2023.

Attest:

Barbara G. Volk, Mayor, City of Hendersonville

Jill Murray, City Clerk

Approved as to form:

Angela S. Beeker, City Attorney

GRANT AGREEMENT

This GRANT AGREEMENT (the “Grant Agreement”) is entered into as of the Effective Date between the Henderson County Tourism Development Authority, a public authority pursuant to the laws of North Carolina, (“Grantor”) and the City of Hendersonville, a municipal government pursuant to the laws of North Carolina, (“Grantee”). Each of the Grantor and the Grantee is a “Party” and collectively they are the “Parties”.

WHEREAS, pursuant to the North Carolina Session Law 2013-61, the Grantor provides financial assistance for tourism-related projects designed to increase the use of lodging facilities, meeting facilities or convention facilities in Henderson County and/or to attract tourists or business travelers to Henderson County; and,

WHEREAS, the Grantee has submitted the application attached hereto and incorporated herein as Exhibit A (the “Application”) to the Grantor requesting partial funding for the construction of the Project (as defined below); and,

WHEREAS, the Grantor has determined that the Project is designed to increase the use of lodging facilities, meeting facilities, or convention facilities in Henderson County and/or to attract tourists or business travelers to Henderson County, and therefore wishes to provide partial funding for the Project as described in and subject to the terms and conditions of this Grant Agreement.

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, the Parties covenant and agree as follows:

ARTICLE I: THE GRANT

1.01 The Project. The Project is described in Exhibit A attached hereto and hereby incorporated herein. The Project is located at a property with the address of 96 Balfour Road, Hendersonville, NC 28792 (the “Project Property”).

1.02 The Grant. Subject to the terms and conditions set forth herein, the Grantor agrees to make a grant to Grantee in the Amount of \$20,000 to partially fund the Project (the “Grant”). The Grant will be disbursed as described below. The Grant may only be used for capital expenditures. Notwithstanding anything herein to the contrary, the Grantee agrees and acknowledges that all of the Grantor’s obligations under this Grant Agreement, including its obligation to disburse the Grant, are contingent upon the distribution to Grantor from Henderson County of sufficient funds to allow the Grantor to make the Grant.

1.03 Disbursements. The Grant will be disbursed as follows:
The Grant will be disbursed in one (1) disbursement. The disbursement shall be paid within thirty (30) days of execution of this Agreement by both parties.

1.04 Term. The term of this Grant Agreement will commence on the Effective

Date and continue for four years after the Completion Date (as noted in the applicable Annual Report and approved by the Grantor) unless terminated earlier according to the terms of this Grant Agreement.

ARTICLE II: REPRESENTATIONS AND WARRANTIES

The Grantee represents and warrants to the Grantor that:

2.01 Existence, Qualification and Power. The Grantee (a) is duly organized, validly existing and in good standing under the laws of its state of formation, and (b) has all requisite power and authority and all requisite governmental licenses, authorizations, consents and approvals to own its assets, carry on its business and execute, deliver and perform its obligations under this Grant Agreement.

2.02 Authorization; No Contravention. The execution, delivery and performance by the Grantee of this Grant Agreement, has been duly authorized by all necessary action, and does not (a) contravene the terms of the Grantee's organizational documents; (b) conflict with or result in any breach or contravention of, or the creation of any lien under any contract to which the Grantee is a party, including any lease or other agreement related to the Project Property, or any order, injunction, writ or decree of any governmental authority or any arbitral award to which the Grantee is subject; (c) violate any law; or (d) result in any limitations on any licenses, permits or other approvals applicable to the business, operations or properties of the Grantee.

2.03 Binding Effect. This Grant Agreement has been duly executed and delivered by the Grantee. This Grant Agreement constitutes a legal, valid and binding obligation of the Grantee, enforceable against the Grantee in accordance with its terms, except as enforceability may be limited by applicable bankruptcy law or by equitable principles relating to enforceability.

2.04 The Project. The Project is located at the Project Property in Henderson County, North Carolina. Grantee is the fee simple owner of the Project Property, has a valid leasehold interest in the Project Property, or otherwise has the right to possess the Project Property and to construct the Project on the Project Property. No third party consents, including but not limited to the consent of any landlord or other landowner, are required to be obtained by Grantee to commence or complete the Project.

2.05 Disclosure. Neither the Application, nor any accompanying or additional information or materials submitted to the Grantor relating to the Project, including the representations and warranties in this Grant Agreement, contain any material misstatement of fact or omit to state any material fact regarding the Grantee or the Project.

2.06 No Material Adverse Change. Since the date of the Application, there have been no material adverse changes to the Grantee or the Project.

ARTICLE III: AFFIRMATIVE COVENANTS

During the Term of this Grant Agreement, the Grantee must:

3.01 Annual Reports. Deliver Annual Reports to the Grantor via the methods described in Section 6.09 that include:

- (a) The expected or actual Commencement Date;
- (b) The expected or actual Completion Date;
- (c) After the Completion Date, a description of the increase in use of lodging facilities, meeting facilities or convention facilities in Henderson County, or the attraction of tourists or business travelers to Henderson County, as a result of the Project, including measurement techniques where applicable; and
- (d) A certification from the Grantee of the following as of the date of the Annual Report: (i) the representations and warranties of the Grantee contained in this Grant Agreement are true and correct in all material respects; and (ii) there is no Default or Event of Default under this Grant Agreement.

3.02 Notices. Promptly (and in any event within five business days) notify the Grantor in writing via the methods described in Section 6.09 of: (a) the occurrence of any Default or Event of Default; (b) any litigation, lien, demand, claim, notice, investigation or proceeding threatened against or affecting the Grantee and the Project; (c) any loss, damage or destruction related to the Project that may adversely affect the Project as represented by any and all terms of the Grant Agreement; (d) any breach of any contract related to the Project, including the Construction Contract; or (e) anything that could reasonably be expected to have a material adverse effect on the Project or the Grantee's ability to complete the Project. Each such notice must specify any portions of this Grant Agreement which have been breached and must set forth details of the reason for giving the notice and state what action the Grantee has taken and proposes to take with respect thereto.

3.03 Maintenance of Project. Maintain, preserve and protect the Project and obtain building risk insurance.

3.04 Compliance with Laws, Etc. Comply with the requirements of all laws, and obtain and maintain in good standing all required licenses, permits, authorizations and approvals of each governmental authority necessary to the conduct of its business or the Project.

3.05 Books and Records. Maintain and cause any contractors to maintain proper books of record and account, in which full, true and correct entries consistently applied must be made of all financial transactions and matters involving the Project.

3.06 Inspection Rights. Permit representatives and independent contractors of the Grantor to visit and inspect the Project and to discuss the Project and the Grantee's business with the Grantee's directors and officers, all at such reasonable times during normal business hours, upon reasonable advance notice; provided, however, that when a Default or an Event of Default exists the Grantor (or any of its representatives or independent contractors) may do any of the foregoing at any time during normal business

hours and without advance notice.

3.07 Use of Grant. Grant disbursements may only be used for the building of a disc golf course as set forth in **Exhibit A**.

3.08 Recognition of Grantor. Recognize the Grant made by Grantor by:

- (a) Acknowledging the Grantor when announcing sponsors or donors of the Project and in printed or on-site donor lists, fundraising materials and press releases, in all cases as approved in advance by Grantor;
- (b) Promptly after the Effective Date and the Completion Date, issuing a press release (approved in advance by Grantor) sharing the details of the Project and acknowledging the Henderson County Tourism Development Authority as having made the Grant and distributing the press release to major media channels in Henderson County and across the Grantee's social media channels; and,
- (c) Within ninety (90) days of the Completion Date, creating permanent signage on the Project Property (approved in advance by Grantor) that recognizes the tourism and lodging community and the Henderson County Tourism Development Authority for the Grant.

ARTICLE IV: NEGATIVE COVENANTS

During the Term of this Grant Agreement, Grantee will not:

4.01 Fundamental Changes. Merge, dissolve, liquidate, consolidate with or into another entity; dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired) or all or substantially all of the assets related to the Project; materially change ownership or management; or become a for-profit entity.

4.02 Change in Nature of Business. Engage in any material line of business substantially different from those lines of business conducted by the Grantee on the Effective Date.

4.03 Change in Project. Alter, change, modify, add to or decrease the Project or its scope in any material way without the prior written consent of the Grantor and execution of an amended Exhibit A.

4.04 Defaults. Breach or default or take any action that could lead to a breach or default or termination of this Grant Agreement, any lease or other agreement related to the Project Property, any agreements to be submitted in a Disbursement Report or any other agreements related to the Project.

ARTICLE V: EVENTS OF DEFAULT AND REMEDIES

5.01 Events of Default. The occurrence of any of the following constitutes an Event of Default:

- (a) Grantee breaches or fails to perform or observe any covenant or agreement contained in this Grant Agreement;
- (b) Grantee institutes or consents to the institution of any proceeding under any bankruptcy or insolvency laws, or makes an assignment for the benefit of creditors; or applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer for it or for all or any material part of its property; or any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer is appointed without the application or consent of the Grantee;
- (c) Grantor reasonably determines in its sole and exclusive judgment: (i) it is unlikely that the Project can be completed or it is unlikely that the Project can be completed without undue delay; (ii) the Project will not be completed in accordance with the description of the Project in Exhibit A; or (iii) the Project has experienced, or is reasonably likely to experience, an event that will have a material adverse effect on the Project or the Grantee's ability to complete the Project;
- (d) Any actual or threatened litigation, liens, demands, claims, notices, investigations or proceedings against or affecting the Grantee or the Project; or
- (e) Any loss, damage or destruction related to the Project that may adversely affect the Project as represented by any and all terms of the Grant Agreement.

5.02 Remedies Upon Event of Default. If any Event of Default occurs, the Grantor may, but shall not be required to take, any one or more of the following actions:

- (a) Terminate this Grant Agreement;
- (b) If all or any portion of the Grant Amount has not yet been disbursed, delay all remaining disbursements of the Grant Amount and require the Grantee to present a Project update to the Grantor during its next funding cycle and/or cancel the remaining disbursements and terminate this Grant Agreement;
- (c) If any portion of the Grant Amount has been disbursed, send notice to the Grantee requiring it to repay the amount disbursed to the Grantor within thirty days; and/or
- (d) exercise on behalf of itself all rights and remedies available to it under this Grant Agreement and applicable law; provided, however, that notwithstanding anything herein to the contrary, upon the occurrence of an actual or deemed entry of an order for relief with respect to the Grantee under the Bankruptcy Code of the United States, the obligation of the Grantor to make any remaining disbursements will automatically terminate, without further act of the Grantor.

5.03 Termination. At the end of the Term of this Grant Agreement the Grantor may require the Grantee to provide to the Grantor copies of all of its records regarding

the Grant and the Project.

ARTICLE V: MISCELLANEOUS

6.01 Open Meetings and Public Records. The Grantee acknowledges and agrees that the Grantor is subject to the requirements regarding “public records” under all applicable statutes, regulations and other laws. All information disclosed to the Grantor which is a public record may be disclosed by the Grantor if requested. **GRANTOR IS NOT AND WILL NOT BE LIABLE FOR ANY DAMAGES ARISING FROM THE RELEASE OF OR USE BY OTHERS OF ANY INFORMATION OR OTHER MATERIALS OBTAINED THROUGH GRANTOR.**

6.02 Attorney Costs, Expenses and Taxes. Each of Grantor and Grantee will remain liable for and pay its own fees and expenses, including legal, accounting, taxes, and any other fees, incurred in connection with the Project and this Grant Agreement. In the event of any dispute regarding this Grant Agreement, the prevailing Party will be entitled to recover reasonable attorneys’ fees and other costs incurred, in addition to any relief to which such Party may be entitled.

6.03 Nonliability of Grantor. The relationship between the Grantee and the Grantor is solely that of grantor and grantee. The Grantor does not have any fiduciary relationship with or duty to the Grantee arising out of or in connection with this Grant Agreement. The Grantor does not undertake any responsibility to the Grantee to review or inform the Grantee of any matter in connection with Project. The Grantee agrees that the Grantor will not be liable to the Grantee for any liabilities, obligations, losses, damages, penalties, claims, demands, actions, judgments, suits, costs, expenses or disbursements (including attorneys’ fees and other reasonable costs) of any kind or nature whatsoever suffered by the Grantee in connection with, arising out of, or in any way related to this Grant Agreement or the Project, or any act, omission or event occurring in connection therewith.

6.04 Indemnification by the Grantee. The Grantee agrees to indemnify and hold harmless the Grantor and its affiliates, directors, officers, employees, counsel, trustees, advisors, and agents from and against any and all liabilities, obligations, losses, damages, penalties, claims, demands, actions, judgments, suits, costs, expenses and disbursements (including attorneys’ fees and other reasonable costs) of any kind or nature whatsoever which may at any time be imposed on, incurred by or asserted against any such indemnitee in any way relating to or arising out of or in connection with this Grant Agreement or the Project.

6.05 Integration; Counterparts; Amendment; Waiver; Severability. This Grant Agreement, including recitals and attached Exhibits, comprises the complete and integrated agreement of the Parties on the subject matter hereof and supersedes all prior agreements, written or oral, on such subject matter. This Grant Agreement may be executed in one or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. No amendment, consent or waiver of any provision of this Grant Agreement, and no consent to any departure by the

Grantee therefrom, will be effective unless in writing signed by the Grantor and the Grantee, and any such waiver or consent will be effective only in the specific instance and for the specific purpose for which given. No failure by the Grantor to exercise, and no delay by the Grantor in exercising, any right, remedy, power or privilege hereunder will operate as a waiver thereof; nor will any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. If any provision of this Grant Agreement is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remaining provisions of this Grant Agreement will not be affected or impaired.

6.06 Survival of Representations and Warranties. All representations and warranties made hereunder will survive the execution and delivery of this Grant Agreement.

6.07 Governing Law; Venue. This Grant Agreement will be governed by and construed in accordance with the substantive laws of North Carolina without regard to its conflict of laws provisions. Any legal action, suit or proceeding brought by either Party arising out of this Grant Agreement must be brought in a state or federal court in Henderson County, North Carolina, which will be the sole and exclusive venue for any such action, suit or proceeding.

6.08 Successors and Assigns; No Third Party Rights. The provisions of this Grant Agreement are binding upon and inure to the benefit of the Parties and their permitted successors and assigns; provided, however, that the Grantee may not assign or otherwise transfer the Grant or any of its rights, benefits or obligations hereunder. Nothing herein is intended or may be construed to confer upon or give any person other than the Grantor and the Grantee or their permitted successors and assigns, any legal or equitable rights, remedies or claims under or by reason of this Grant Agreement.

6.09 Notices, Reports, and Other Communications; Consents. All notices, reports, and other communications provided for or required by this Grant Agreement must be in writing and must be sent via a nationally recognized delivery service such as FedEx or UPS, electronically mailed or hand delivered to the applicable address:

if to the Grantor: **Henderson County Tourism Development Authority
201 South Main Street
Hendersonville, NC 28792**

if to the Grantee: **City Of Hendersonville Parks Department
305 Williams Street
Hendersonville, NC 28792**

All such notices, reports, and other communications will be deemed to be given or made upon receipt by the relevant Party. Grantor may withhold any requested consent in its sole discretion.

6.10 Further Cooperation. At the request of Grantor, Grantee agrees to cooperate fully, to promptly execute any and all supplementary documents, and to promptly take all additional actions that may be necessary to give full force and effect to the terms of this Grant Agreement.

[SIGNATURE PAGE TO FOLLOW]

City Of Hendersonville Parks Department
FINAL date

IN WITNESS WHEREOF, the Parties have caused this Grant Agreement to be duly executed as of the Effective Date.

GRANTOR:

HENDERSON COUNTY TOURISM
DEVELOPMENT AUTHORITY

By:

Name: Michelle Owens

Title: Executive Director

GRANTEE:

City of Hendersonville

By:

Name:

Title:

EXHIBIT A

THE APPLICATION

4871-0965-5071, v. 2

2022-2023 Henderson County TDA Grant Program Application

How did you hear about the HCTDA Grants Program?	Online
Business/Organization	City Of Hendersonville Parks Department
Type of Business/Organization	Government
Are you applying for a lodging property?	No
Contact Person	Mark Stierwalt
Job Title	Superintendent of Parks
Mailing Address	305 Williams Street Hendersonville, NC 28792
Phone	(828) 230-6508
Email	mstierwalt@hvlnc.gov
NC Business Registration	https://www.formstack.com/admin/download/file/14039109818
Federal Tax ID	56-6001242
How long has the business/organization been in operation in Henderson County?	176 years
Identify key members of the organization:	Mayor- Barbara Volk, City Manager - John Connet, Director Of Public Works- Tom Wooten
Identify and describe any pending legal action against you or your organization:	None that I know of personally.
Type of Grant Applying For:	Destination Enhancement Grant
Name of Project/Event	Hendersonville Parks Disc Golf Course (To be named soon).

2022-2023 Destination Enhancement Grants Application

Start date of project	May 01, 2023
End date of project	Jul 01, 2023

Project Location	96 Balfour Rd Hendersonville, NC 28792	Item B.
Grant Amount Requested	20000.00	
Would you be able to complete your project with partial funding?	Yes	
What is the lowest amount you could accept?	1	
Why?	The course could open without signage, nor amenities, but this would not be setting it up for success and damage it's reputation. It could also open without as less holes. But the goal is to get tournaments and help create a buzz in the disc golf community which will promote it exponentially faster and keep the course at a much higher rating. A higher rating corresponds directly to higher usage from travelers and competitors who depend on ratings to decide where they will play. If we do not receive the full amount the project will likely stall as we want to set it up for success and the greatest impact.	
Overview of project	Our Parks Department has recognized the need for another disc golf course in Henderson County as disc golf continues to gain popularity. The City of Hendersonville parks Department s building a new disc golf course near Kimberly Clark on Balfour rd, approximately 5 minutes north of downtown Hendersonville. This Disc golf course would be a full scale 18 hole course with a wide range of shots to challenge even the most experienced players, while also catering to younger and developing players. From wide open campus style holes to densely forested corridor holes, this location is ideal for a well rounded and diverse course. It offers changes in elevation, play in the shade an sun, a view of the historic quarry pond, short and long shots, greenway access, ample parking, and easy access from interstate 26 and Hwy 25. It will also feature a putting zone that will also act as mini course for kids.	

How many people do you expect to use your project? Please include total use and daily use projections.

Disc golf is one of the fastest growing sports in the country and the demand for quality courses is increasing at an alarming rate. According to HCPR, their disc golf course sees the most consistent use of any of the amenities in Jackson Park. It sees daily, year round usage and has exceeded anyone's expectations. There are sanctioned tournaments (that sell out) multiple times a month and folks are travelling to not just compete here, but also for recreational play as well. There is currently enough demand to host weekly mid week tournaments at Jackson Park. We used the same course designer for Jackson Park's course, Jay McCarthy and laid out a beautiful yet very different course, so that the two courses will complement each other. The new course would be a bit shorter making it easier and more enjoyable for most players. A new high school league has formed and is also competing for space. The Jackson Park course is also very busy in the afternoons making it less than ideal for a team practice. According to our course designer, he expects no less than an average of 500 rounds per week on the new course. There will be ample parking and access from the Oklawaha Greenway and the upcoming Clear Creek Greenway.

Item B.

Description Area

This ROI calculator is used to determine the number of overnight stays it would take for HCTDA to see a return on our investment into your project. The number of room nights would be spread out over multiple years. The calculator is setup to automatically calculate the ROI based off the amount of funds you have requested at the beginning of this application.

Grant Amount Requested

20000.00

Average daily rate for all Henderson County lodging, Sep 2021 - Aug 2022

152.15

Total room nights required for payback of 5% occupancy tax at current ADR

2629

Description Area

Since the HCTDA is required by state law to invest in activities that generate paid overnight stays in Henderson County, this return on investment (ROI) calculation will assist the committee in determining the impact of your event or project. It is only one tool used by the committee to evaluate the strength of your application.

Describe how this project will become self-sustaining over time?

This project will be instantly self sustaining. The City will maintain the course and just need help with the new equipment, concrete pads, construction, and signage. The city owns the land and which is currently unutilized.

How will this project impact business in Henderson County and why? How will this project benefit Henderson County residents? How will this project attract tourists or business travelers to Henderson County?

The course can easily hold 100+ players at a time. Sanctioned tournaments will take place monthly, at a minimum, with approximately 120 players per tournament. When a tournament director combines this course with the Jackson Park course, for a larger tournament, then the field jumps to around 180 competitors (not including family members). Tourists will also take advantage of the opportunity to play both courses. Players average 2-4 hours per round and often visit restaurants and breweries afterwards. Regional recreational players also travel to play courses and will use local businesses when visiting. Higher ranked competitive players will arrive multiple days before tournaments and have several practice rounds over multiple days before typical PDGA sanctioned tournaments. Multiday tournaments will also be scheduled with an average 3 night stay.

Describe your marketing plans. Will there be a social media presence, any paid ads, collateral or media partners? How do you plan to reach people outside of the Greenville-Spartanburg-Anderson DMA? What is your target market for this project? What destination(s) outside of the Greenville-Spartanburg-Anderson DMA do you expect to use this project and why?

The Disc golf Community has a strong social media presence and will promote this course. Players also use Disc Golf Apps, like UDisc, to seek out highly rated courses for when planning for travel. These apps are also used for scoring the round and invite players to comment and rate the course. The higher the community ranks the course the more folks will come from out of town to use it. So our best marketing strategy is to invest in the quality of the course from the beginning. The Western North Carolina Disc Golf Association has expressed interest hosting tournaments and also offered volunteer work days when building the course. By becoming an championship rated course, we will be able to host sanctioned PDGA tournaments which will also be promoted by the PDGA website and calendar. This will bring in more players from the Charlotte, Atlanta, Raleigh, Wilmington, Columbia, Charleston and Knoxville. The City of Hendersonville will also use its website and social media to promote the course.

Description Area

Greenville-Spartanburg-Anderson DMA

What other funding source(s) are there for this project? Will you be able to match the amount of funding requested from different sources? Are there other sponsors already committed?

The WNCDEGA has offered to host multiple fundraising tournaments to help fund the construction and to help elevate the quality of the course. These tournaments are currently being scheduled. They estimate \$1000-3000 per event. The COH is also pursuing naming rights and considering sponsors for individual holes. Our goal is to double the requested amount offering both beginner and advanced baskets and tee pads for most holes. Once operational, we will also have benches for each hole. The City of Hendersonville will be covering the remainder.

Description Area

A budget is required by all applicants. Please fill out the fields below. Please attach budget and most recent complete year financial statement for the business/organization. Click here to download a budget template.

Project Budget

<https://www.formstack.com/admin/download/file/14039109841>

Most recent complete year financial statement for the business/ organization

<https://www.formstack.com/admin/download/file/14039109842>

Item B.

Any other documentation you think is pertinent to this project

<https://www.formstack.com/admin/download/file/14039109844>

Description Area

Income

TDA Grant Requested

20000.00

50% Matching Funds

20000.00

Other Funding

6500.00

Total Income

46500.00

Description Area

Expenses

Project

44000.00

Other Expenses

2500.00

Total Expenses

46500.00

Net Income

0.00

Description Area

Please attach three letters of support from persons not directly associated with the applicant business/organization or its partners.

Letter of Support 1

<https://www.formstack.com/admin/download/file/14039109860>

Letter of Support 2

<https://www.formstack.com/admin/download/file/14039109861>

Letter of Support 3

<https://www.formstack.com/admin/download/file/14039109862>

Application Acknowledgement

Description Area

Once you hit submit on this application you will receive an email with a PDF copy of your application you submitted. If you find any errors please notify Amy at events@visithendersonvillenc.org. You will also receive an email from Adobe Sign after this application is submitted for you to sign your completed application. Applications are incomplete until you complete the signature process through Adobe Sign.

I have read the above statement

Agree

Applicant Printed Name

Mark Stierwalt

Date

Jan 19, 2023

Grant Approval

2022-2023 HCTDA Destination Enhancement Grant Application

Name of Project: Hendersonville Parks Disc Golf Course (To be named soon).

Contact Person: Mark Stierwalt

By signing below, you acknowledge that you understand and agree to the terms and conditions contained within this application.

Indemnity:

Grantee agrees, to the fullest extent permitted by law, to defend, indemnify, and hold harmless HCTDA, its officers, directors, affiliates, employees, volunteers, and agents, from and against any and all claims, liabilities, losses and expenses (including reasonable attorney's fees) directly, indirectly, wholly or partially arising from or in connection with any act or omission of Grantee, its employees or agents, in applying for or accepting the grant, in expending or applying grant funds or in carrying out the festival/event as set forth in the proposal.

Sole Discretion:

All elements of the HCTDA Tourism Grant Program are managed at the sole discretion of the HCTDA, including the application review process and all subsequent funding decisions. Grant awards within this program are made by the HCTDA and are not subject to external oversight or approval.

Terms of Application:

I hereby acknowledge that I have reviewed and understand the terms of this application. I further acknowledge that I have reviewed and understand the [Destination Enhancement Grant Guidelines](#).

Public Records:

I understand and acknowledge that the HCTDA is a quasi-public entity subject to Chapter 132 of the North Carolina General Statutes. Any materials submitted as part of this application and any documentation regarding any funding received are subject to disclosure to any party, public or private, upon request.


Completed Application:

I hereby acknowledge that I have completed this application in good faith, confidence, and counsel, and have done so in full compliance with the law. I have made no attempt to falsify or misconstrue facts or data anywhere in this application.

Mark Stierwalt

Jan 19, 2023

mstierwalt@hvlnc.gov


Mark Stierwalt (Jan 20, 2023 13:37 EST)

Destination Enhancement Grants Budget Worksheet

Item B.

Income:		Amount:				
	TDA Grant Requested:(Amt of monies being requested)		\$20,000.00			
	Other Funding:(Monies you have for the project, other partners, or other grants)					
	COH		\$24,500.00			
	WNCDGA		\$2,500.00			
	Total Income:(Total of TDA Grant Request & Other Funding)		\$ 46,500.00			

Expenses:						
	Project: (Total of project)		\$46,500.00			
	Other Expenses:(Break down of all expenses for the project:)					
	Concrete Pads (COH)		\$18,500.00			
	Baskets (24)		\$12,500.00			
	Signage		\$3,500.00			
	Benches		\$4,500.00			
	Trash cans		\$2,500.00			
	Course Designer		\$2,500.00			
	Parking Lot Improvements (COH)		\$2,500.00			
	Total Expenses:(Total of Project & Other expenses)		\$46,500.00			
	Net Income:(Total Income - Total Expenses)		\$0.00			

Alessi Insurance Services

Item B.

Health - Life - Annuities

To whom it may concern,

Alessi Insurance Services cares about the kids of the community and the overall health of our residents. We are willing to contribute \$2,500 to the cause and get a quality course at Berkeley Park. I would love to speak to anyone who opposes this or needs more knowledge of the benefits of this great cause.

Please contact me if you have any questions.

Michael Alessi.

404-273-3555

14 Towne Place Dr. #120
Hendersonville, NC 28792

Office - 828-290-9979 FAX - 828-490-7409
Cell - 828-290-8098 or 404-273-3555
Email - AlessiInsurance@gmail.com

Dear Grant Selection Committee,

As Director of the Henderson County Parks and Recreation I fully endorse and welcome the addition of the City of Hendersonville's new Disc Golf Course. Our disc golf course at Jackson Park has been overwhelmingly successful and the usage has far exceeded our expectations. We host tournaments multiple times a month with players from surrounding states attending regularly. It is not uncommon to have between 100-200 rounds per day, and the course sees year-round usage. The addition of another course in Henderson County would be a huge benefit to our department as Disc Golf continues to be one of, if not the fastest growing sport in the country. The demand is only increasing, and we are noticing more and more out of state plates in our parking lots. This new course should be an instant success and will benefit our community, offering a more diverse palette for recreation. Please support this project as much as possible.

Bruce Gilliam – Henderson County Parks and Recreation

A handwritten signature in purple ink, appearing to read "Bruce Gilliam". The signature is fluid and cursive, with a large initial "B" and "G".

Hello Henderson County TDA,

January 11, 2023

As the President of the Western North Carolina Disc Golf Association (WNCDGA) I give my full support for the City of Hendersonville Parks department's efforts to expand the parks system with a new disc golf course. With our work in the WNCDGA we have had great community improvement through the building of disc golf courses throughout Western North Carolina and beyond. The growth of the sport of disc golf and what the sport brings to Park's departments, cities, and communities in general has only been a positive from my prospective. Being a less expensive and incredibly approachable outdoor activity has drawn many demographics to the sport and instilled a sense of belonging for many across the world over the last 40 years. Not only do we provide accessible outdoor activities, but we also preserve valuable land and ecosystems necessary for community sustainability.

The growth of the sport has been traceable with the number of members of the Professional Disc Golf Association; Growing from just over 15,000 members in 2010 to nearly 250,000 as of the end of 2022. The events and fundraising through these events are benefiting communities, non-profits, Park's departments, and tourism greatly in this area. The work that WNCDGA itself can accomplish on a year-to-year basis through fundraising for Manna Food Bank, Make a Wish foundation, and Eblen charities, to name a few, can be used as an example of the passion of the players and community of disc golf. In 2022 our club was able to raise nearly \$5000 dollars annually for these charities and more, and we are just one club of many in the area.

Western North Carolina is a growing disc golf hub with attractive courses and retail markets bringing thousands from around the country. Many major tournaments within the PDGA professional tour are within an hour or two of Hendersonville including Charlotte, Rock Hill, Marion, Alpharetta, Fall Branch, and many others. With the proximity to these major events, that bring thousands of spectators, the potentiality of a major event happening in our towns are getting closer and closer. With the existing tourism in our area, as well as the vast availability of lodging, parking, and transportation in general, this isn't out of the question to happen within the next year or so. The more we grow the disc golf scene in this area, the greater the opportunity to bring more dollars to our local economies through these major events, as well as additional tourism and visitation to our local courses.

We, the WNCDGA, fully support these efforts. And I, as an employee of Ocean 10 Security, also support this effort. Ocean 10 has been providing security and surveillance for the Hendersonville HA to improve and protect these communities. I believe rapidly accessible activities for these communities can only benefit the health and well-being of Hendersonville as a whole.

Thank you for your time, we are excited at the prospect of a new project and WNCDGA is ready to assist to make this project reality.

Jordan Adams

Project Manager

O: 828-484-1481 x502

C: 828-808-1407





280 South Beaumont Street

Asheville, NC 28801

(828) 577-9773

To whom it may concern,

As the lead designer with the Disc Golf Design Group, I can attest to the popularity of the sport.... we are currently designing/building 7 courses in the WNC region. Adding a disc golf course at Berkeley Mills Park would be a wonderful addition to the community! Henderson County will greatly benefit from this course on numerous fronts. The site selected is a worthy location with a wide range of shot selection and the course will play well year round. Deep shady sections in the summer and full to partial sun in the winter. The unique view of the historic quarry pond will also offer an unexpected treat for players.

Disc golf is one of the fastest growing and most popular sports in the country. Whole families (and pets too!!) can enjoy a round of golf together. Jackson Park is very busy with some weeks in the summer hosting 1500 rounds of disc golf. As you can tell from those numbers, the course is extremely popular for locals, players from neighboring states, and even folks on business trips from other countries. Disc golf tourism is huge and only growing! This course will complement the Jackson Park Course being more user friendly and will play a bit shorter, appealing to a wider range of players.

We have a very active disc golf club based in Asheville (Western North Carolina Disc Golf Association-WNCDGA). We host fund-raising tournaments for local charities, we have multiple leagues including Juniors, Women, Masters. There is also a High School league in which many schools teams travel to different courses and compete for the season title.

We would love to see the disc golf course at Berkeley become reality. "Build it and they will come!"in droves!!

Thanks for your consideration and hope you have a great day!

Sincerely,

Jay McCarthy



CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

SUBMITTER: Brian Pahle **MEETING DATE:** June 28th, 2023

AGENDA SECTION: Presentations **DEPARTMENT:** Administration

TITLE OF ITEM: Downtown Parking Update – *Brian Pahle, Assistant City Manager*

SUGGESTED MOTION(S):

N/A

SUMMARY:

An update on the downtown parking system.

BUDGET IMPACT: \$

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

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

ATTACHMENTS:

N/A



CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

SUBMITTER: Daniel Heyman, Staff Attorney **MEETING DATE:** June 28, 2023

AGENDA SECTION: PRESENTATIONS **DEPARTMENT:** Legal

TITLE OF ITEM: Proposed regulations related to predatory towing and wheel locks – *Daniel Heyman, Staff Attorney*

SUGGESTED MOTION(S):

N/A.

SUMMARY: The City Council requested that Legal staff research regulations to protect the public from predatory towing practices on private property. “Predatory towing” commonly refers to practices by motor vehicle tow service providers that are illegal or unethical, but there is no definition for the term in North Carolina. There may also be some disagreement about what towing practices are predatory.

Some examples of predatory towing practices may include: (1) charging exorbitant fees for owners to retrieve their vehicles; (2) utilizing spotters to identify vehicles to tow even when there has been no request or complaint from a property owner; and (3) towing a vehicle from a spot that is not clearly marked as being in a potential tow-away zone.

The Legal department has researched regulations that North Carolina municipalities are authorized to enact and has prepared a proposed ordinance for City Council’s review.

The proposed ordinance is being presented for discussion only at this time. Legal staff will also advise on regulations that are preempted by state and/or federal law, and will discuss comments received from other City staff.

ATTACHMENTS:

PROPOSED ORDINANCE



CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

SUBMITTER: Daniel Heyman, Staff Attorney **MEETING DATE:** June 28, 2023

AGENDA SECTION: PRESENTATIONS **DEPARTMENT:** Legal

TITLE OF ITEM: Amendments to Chapter 10 - Animals – *Daniel Heyman, Staff Attorney and Caroline Gunther, ASAC Chair*

SUGGESTED MOTION(S):

N/A.

SUMMARY: The Animal Services Advisory Committee (ASAC) was created in 2020 to, among other duties, “make recommendations to the City Council and staff regarding the Animal Ordinance, policies and procedures, and any other issues requested by the City Council.”

ASAC and Police Department staff have spent significant time since then reviewing Chapter 10 of the Code of Ordinances and have proposed a reorganized Chapter relating to animals.

The proposed ordinance is being presented for discussion only at this time. Based on direction from City Council, City Staff and ASAC will bring the ordinance back to the City Council at a regular meeting for a vote. Because the proposed ordinance includes criminal penalties, it will require two votes to become effective.

ATTACHMENTS:

PROPOSED ORDINANCE

**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 non-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 him 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 foregoing 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 enclosed, 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

<u>New Chapter 10</u>	<u>Old Section Reference</u>	<u>Notes</u>
Sec. 10-1. Animal Control Ordinance Purpose	-	
Sec. 10-2 Definitions	Sec. 10-106, Sec. 10-151	Adds many definitions
Secs. 10-3—10-30. – Reserved.	-	
Sec. 10-31 General Duties of Animal Services Officer.	Sec. 10-106	Sets out duties in greater detail
Sec. 10-32. Animal Enforcement Authority	-	
Sec. 10-33. Inspection, interference, or concealment.	-	Interference w/ ASO is a misdemeanor
Sec. 10-34. Animal Services Advisory Committee	-	
Secs. 10-34—10-60. – Reserved.	-	
Sec. 10-61. – Keeping of certain animals prohibited	Sec. 10-41	Preempted from regulating shelter for certain farm animals. Much clearer prohibitions including roosters.
Sec. 10-62. – Swine	Sec. 10-42	
Sec. 10-63. – Keeping of other farm animals	Sec. 10-43	Adds “other farm animals” (150 ft from a residence)
Sec. 10-64. – Keeping of poultry	Sec. 10-66	Max of 20 birds, no roosters.
Sec. 10-65. – Requirements for construction and maintenance of poultry enclosures.	Sec. 10-70	
Sec. 10-66. – Disposal of dead chickens and other poultry.	Sec. 10-71	
Secs. 10-67—10-90. – Reserved.	-	

Sec. 10-91. – Running at large	Sec. 10-107	Dangerous dog running at large is a misdemeanor
Sec. 10-92. – Protection of Birds	Sec. 10-1, Sec. 10-2	
Sec. 10-93. – Protections of Squirrels	Sec. 10-3	
Sec. 10-94. – Fouling public grounds.	Sec. 10-6	
Sec. 10-95. – Restraint of animals.	Sec. 10-152	Same requirements as existing tether
Sec. 10-96. – Giveaways in Public Spaces.	-	new
Sec. 10-97. – Excessive noises.	-	Previously in the noise ordinance.
Secs. 10-98—10-120. – Reserved.	-	
Sec. 10-121. – Unlawful treatment.	Sec. 10-152	Added specifics on adequate shelter and adequate water
Sec. 10-122. – Abandonment.	-	
Sec. 10-123. – Transport of Animals.	-	
Sec. 10-124. – Confinement of Animals in Motor Vehicles.	Sec. 10-152	Clear procedures on animals left in vehicle
Sec. 10-125. – Animals used in entertainment, shows, and for exhibition.	-	
Secs. 10-126—10-150. – Reserved.	-	
Sec. 10-151. – Vaccination of dogs and cats required.	Sec. 10-113	Rabies is broadly enforced under state law

Sec. 10-152. – Vaccination tag and certification.	Sec. 10-114	
Sec. 10-153. – Bite Notification	-	
Secs. 10-154—10-180. – Reserved.	-	
Sec. 10-181. – Public Nuisance.	Sec. 10-109	Take the place of mischievous dogs
Sec. 10-182. – Declaration of dangerous/potentially dangerous dog.	Sec. 10-110	Removes “potentially dangerous dog” to add clarity to process. Same requirements. Allows personal service of PD orders.
Sec. 10-183. – Appeal.	Sec. 10-110	
Sec. 10 –184. – Enclosures and control measures.	Sec. 10-110	Add req to have liability insurance covering the dog
Sec. 10-185. – Impoundment Authorized.	Sec. 10-115	
Sec. 10-186 – Destruction of animals that cannot be seized or confined by reasonable means.	Sec. 10-111	
Secs. 10-187—10-210. – Reserved.	-	
Sec. 10-211. – Violations and penalties.	Sec. 10-153	
Sec. 10-212. – Civil Penalties	Sec. 10-153	
Sec 10-213. – Civil penalty schedule	Sec. 10-155	New schedule based on severity and how many repeat offenses



CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

SUBMITTER: Brian Pahle **MEETING DATE:** June 28th, 2023

AGENDA SECTION: Presentations **DEPARTMENT:** Administration

TITLE OF ITEM: Edwards Park Update – *Brian Pahle, Assistant City Manager*

SUGGESTED MOTION(S):

N/A

SUMMARY:

An update on the Edwards Park Project.

BUDGET IMPACT: \$

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

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

ATTACHMENTS:

N/A